

# IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-4053 of 2016

**Present:**

Mr. Justice Syed Hassan Azhar Rizvi  
Mr. Justice Adnan-ul-Karim Memon

Syed Maqbool Hussain Zaidi  
Petitioner, through:

Malik Naeem Iqbal, Advocate

Federation of Pakistan,  
Respondent No.1 through:

Shaikh Liaquat Hussain,  
Assistant Attorney General

Pakistan Telecommunication Company  
Limited & others, Respondents No.3 and  
5 to 10 through:

Mr. Haider Waheed and Mr.Shahzaib  
Akhtar Khan, Advocates

Date of hearing: 9.8.2017, 17.8.2017, 18.9.2017, 7.11.2017, 11.12.2017 and  
20.12.2017.

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**J U D G M E N T**

**Adnan-ul-Karim Memon, J.** The Petitioner has filed this petition against order dated 14.12.2015 passed by Respondent-Company, whereby he was removed from service and asserted that it was passed without observing legal procedure and in violation of fundamental principles of natural justice and equity and that the order dated 24.6.2016, whereby his Departmental Appeal filed on 30.12.2015 against the said impugned order was rejected, is also unlawful; hence, the petitioner has prayed for striking down of both these orders.

2. Brief facts of the case presented by the petitioner are that on 29.6.1995, he joined Pakistan Telecommunication Corporation, a statutory body (hereinafter referred to as PTC) and as per letter dated 13.7.2009 available at page 397 of the file, his previous service was counted for the purpose of pay protection, pension and

Leave Account, with effect from 2.2.1989 to 29.6.1995. Petitioner asserted that he was an employee of Pakistan Telecommunication Corporation prior to the formation of the Company Limited (PTCL) under section 34 of Pakistan Telecommunication (Reorganization) Act, 1996. Petitioner averred that under Section 36 of the Act, 1996 terms and conditions of service of employees of the Corporation transferred to the PTCL in pursuance of sub section 2 of Section 35 of the Act, 1996 have been protected under public policy. The petitioner asserted that sub section (1) of Section 36 of the said Act, provides that the Federal Government shall ensure the existing terms and conditions of service and rights, including pensionary benefits of the transferred employees and the terms and conditions of service of any transfer employee shall not be altered adversely by the company except in accordance with law, or with the consent of said employees.

3. That as per averments of the petitioner, the Respondents contends that they issued a show cause notice dated 01.12.2015 to the petitioner followed by final show cause notice dated 08.12.2015 alleging that the petitioner appeared in Television program, wherein he used unwarranted/detrimental remarks against the privatization process of PTCL, as well as, company management; thus, defamed the Company repute before the general public. The petitioner contends that neither show cause notice was served upon him nor Departmental Inquiry was conducted by the Respondent-Company providing him an opportunity of hearing before his removal from service vide the impugned order dated 14.12.2015.

4. That being aggrieved by the impugned removal order dated 14.12.2015; the petitioner filed Departmental Appeal on 30.12.2015 before the Chief Executive Officer of the Respondent-Company/the Respondent No.3. Petitioner further contends that as the Appeal was not receiving attention of Respondent-Company, the petitioner was constrained to file Constitutional Petition No. D-74 of 2016 and this Court vide Order dated 25.5.2016 directed the Respondent-Company to decide the Departmental Appeal of the petitioner within three weeks after giving full opportunity of hearing to him. Pursuant to that the Respondent-Company rejected the petitioner's Departmental Appeal vide impugned order dated 24.6.2016 and the petitioner being aggrieved by and dissatisfied with the said orders filed the instant petition on 18.7.2016 before this Court.

5. Upon notice, the Respondents No. 3 to 10 of the Company filed comments and denied the allegations leveled against them by the petitioner.

6. Mr. Malik Naeem Iqbal, learned Counsel for the petitioner has contended that the Respondent No.8 issued the impugned Removal from Service order dated 14.12.2015, without adopting due process of law. As such, the respondent-Company has violated Article 10-A of the Constitution and deprived the petitioner of his fundamental rights protected under Constitution, 1973, and the impugned Removal from Service order dated 14.12.2015 is liable to be set aside by this Court. The Counsel for the petitioner further argued that petitioner is a transfer employee in the Respondent-Company and his terms and conditions are protected under Section 35 and 36 of Pakistan Telecommunication (Reorganization)

Act, 1996 and Civil Servant Act, 1973 and Rules framed there under. Per Counsel, the petitioner filed Department Appeal on 30.12.2015 before the Respondent No. 3 against the impugned Removal from Service Order dated 14.12.2015. But, due to inaction of the Respondent-Company, he was constrained to file Constitutional Petition No.D-74 of 2016 and on direction from this Court vide Order dated 25.5.2016, the Respondent-Company processed his Appeal and rejected the same vide impugned Order dated 24.06.2016, without assigning any cogent/fresh reason. He further contended that the petitioner has impugned the Order regarding his removal from service and rejection of his Appeal through the instant petition before this Court and has prayed for setting aside both the orders dated 14.12.2015 and 24.6.2015 passed by the Respondent-Company.

7. Mr. Haider Waheed, the learned Counsel for the Respondent-Company raised objection to maintainability of the instant petition on the premise that PTCL has no statutory service rules and the Respondent-Company is being managed by the its own rules and regulations; therefore, the instant Petition is not maintainable in law. He argued that petitioner was an employee of Respondent-Company till the year 2015, when he was dismissed from service in disciplinary proceedings on the ground of his appearance on National Satellite Television (Business Plus Channel) on 27.11.2015, when he leveled false allegations and defamatory remarks against the Respondent-Company, and shared such remarks with several other employees of the Company via e-mail on the same day. He stated that Petitioner was served upon the show cause notice dated 01.12.2015 narrating the charges against him, which was not Responded to

by the Petitioner, hence, it was followed by another show cause notice dated 08.12.2015, but, the Petitioner did not respond to this notice also. He concluded that in view of petitioner's such conduct, he was removed from the service vide order dated 14.12.2015 and his departmental filed on 30.12.2015 against the impugned order was also rejected vide the order dated 24.6.2016, wherein it was held that the petitioner committed misconduct; hence, he was rightly removed from service. The learned Counsel in support of his contention referred to Rule 2(4) of the Civil Servants (Efficiency & Discipline) Rules, 1973 which defines misconduct. The learned counsel further added that as per Rule 21 of Pakistan Telecommunication (Reorganization) Act, 1996, no Government servant shall, except with the previous sanction of the Government or any other authority empowered by it in this behalf, would participate in a Radio Broadcast or Television program.

8. The learned Counsel for the Respondents claims that the petitioner has admitted his participation television program; therefore, he is not competent to file Constitutional Petition to and allege infringement of his fundamental right. Per Counsel, the allegations leveled by the Petitioner are serious in nature and cannot be condoned. He supported the impugned action of removal of the Petitioner from service taken by the Respondent-Company and relied upon the case of Nawab Syed Raunaq Ali Etc. Vs. Chief Settlement Commissioner and others [PLD 1973 SC 236], Abdul Aziz Vs. Muhammad Ali and others [PLD 1967 Lahore 762], Shahid Hussain Qureshi Vs. Manager, Small Business Finance Corporation and another [2001 YLR 454], Deedar Ali Vs. The State [2001 YLR 462], Kaniz Fatima Vs. Muhammad Salim

[2001 SCMR 1493], State Life Insurance Corporation of Pakistan Vs. Pakistan Tobacco Co. Ltd [PLD 1983 Supreme Court 280], Collector of Customs Vs. Saeed-ur-Rehman [PLD 1989 Supreme Court 249], The Deputy Inspector General of Police, Lahore Vs. Anis-ur-Rehman Khan [PLD 1985 Supreme Court 134], Javed Akhtar Vs. Secretary, Ministry of Interior, Government of Pakistan, Islamabad [1991 SCMR 140], Muhammad Tufail Vs. Assistant Commissioner/Collector [1989 SCMR 316], Muhammad Saleem Akhtar Vs. The Director, Food, Punjab Lahore [1987 SCMR 829], Executive Engineer and others Vs. Zahid Sharif [2005 SCMR 824], Jan Muhammad Vs. The General Manager, Karachi Telecommunication Region, Karachi [1993 SCMR 1440], Tariq Mehmood Vs. District Police Officer, Toba Tek Singh and another [PLD 2008 SC 451], Muhammad Naeem Akhtar Vs. Managing Director Water and Sanitation Agency, LDA, Lahore [2017 SCMR 356], Fazal Elahi Siddiqi Vs. Pakistan through Secretary, Establishment Division [PLD 1990 SC 692], Amir Hamza Vs. Federation of Pakistan/President of Pakistan/Prime Minister of Pakistan through Secretary to the Government of Pakistan [1997 PLC (C.S.) 732], Engineer Jameel Ahmed Malik Vs. Pakistan Ordnance Factories Board, Wah Cantt [2004 SCMR 164].

9. We have considered contention of the learned Counsel for both the parties and have minutely gone through the material available on record with their assistance and case law cited at the bar.

10. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution, 1973. The background of the Respondent-Company

is that the Respondent-Company is indeed a Company, which is performing functions in connection with affairs of Federation and as such, is amenable to Constitutional jurisdiction of High Court. Mere fact that company is a limited company, registered under the Companies Ordinance, 1984, limited by shares, is not sufficient to hold that Constitutional petition could not be maintained against it. Even if companies are registered under the Companies Ordinance but are funded by the Federal or Provincial Government and are under the dominant control of the State, the jurisdiction under Article 199 of the Constitution 1973 would lie against such companies. Reference is made to the case of **Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.)** reported in 2004 SCMR 1274.

11. The learned Counsel for the Respondent Company (PTCL) argued that it is not under the control of the Federal Government, hence, cannot be construed as a person in terms of Article 199(5) of the Constitution, 1973. This contention of the learned Counsel is misconceived as this question has been set at rest by the Hon'ble Supreme Court of Pakistan in the case of PTCL and others Vs. Masood Ahmed Bhatti and others (2016 SCMR 1362) the relevant portion of the Judgment is reproduced below:

*“The question whether the PTCL was a ‘person’ performing functions in connection with the affairs of the Federation within the contemplation of Article 199(5) of the Constitution was first dilated upon by this Court at great length in Muhammad Zahid’s case in which the plethora of case law was gone into and it was held that the employees of the erstwhile T&T Department transferred to the Corporation [PTC] under the relevant provisions of the Act of 1991 and later/on succeeded by the PTCL, discharging their functions and duties in the International Gateway Exchange as Operators were inducted permanently or regularized subsequently under the rules necessarily related to one of the affairs of the Federation within the purview of provisions of Article 199 of the*

Constitution; hence similar duties and functions in the International Gateway Exchange being discharged by the private respondents as Operators could not be distinguished to say that the same did not relate to the affairs of the Federation though conferred upon the Corporation [PTC] and finally upon the PTCL. It was further held that the Telecommunication undisputedly was the subject which dischargeable now through the PTCL; hence such entity involved in the same exercise of the sovereign powers, essentially fell within the connotations of the Constitution; accordingly, the grievance of the private respondents was amenable to the writ jurisdiction of the High Court. However, be that of a 'worker' or a 'civil servant' or a 'contract employee' had no nexus to the maintainability of the writ petition on the ground of discrimination meted out to them.

23. It may also be added here that as rightly held by a learned Division Bench of the High Court of Sindh in the judgment impugned in C.A. No. 883 of 2010 that the Federal Government has first sold 12% shares through public subscription and then it sold 26% all of B class shares to the EIP and the remaining 26% shares of PTCL were still owned by the Federal Government and as long as the Government owned majority or partially in the name of any other organization or entity be amenable to the jurisdiction of the High Court under Article 199 of the Constitution. In this view of the matter the argument that the PTCL was not a person within the meaning of Article 199 (5) of the Constitution is not tenable.

24. However, this Court in the case of *Principal Cadet College Kohat v. Muhammad Shoaib Qureshi* (PLD 1984 SC 170), while dealing with the question, as to whether in absence of any breach of statutory provision the employees of a corporation can maintain an action for reinstatement, held that where the conditions of service of an employee of a statutory body were governed by statutory rules, any action prejudicial taken against him in derogation or in violation of the said rules could be set aside by a writ petition; however, where his terms and conditions were not governed by statutory rules but only by regulations instructions or directions, which the institution or body, in which he was employed, had issued for its internal use, any violation thereof would not, normally, be enforced through a writ petition. Recently, this Court in *Tanweer-ur-Rehman's case* (supra), while dealing with issue of invoking of jurisdiction of the High Court under Article 199 of the Constitution by the employees of the PIAC, held that although the appellant-Corporation was performing functions in connection with the affairs of the Federation; but since the contracts executed by them with the



employer, and not by the statutory rules framed under section 30 of the Pakistan International Airlines Corporation Act, 1956 with the prior approval of the Federal Government,, therefore, they would be governed by the principle of 'Master and Servant'. On the question whether in absence of any breach of statutory provision, the employees of appellant could maintain an action for reinstatement etc., it was observed that the said question needed no further discussion in view of the fact that this Court was not of the opinion that if a Corporation was performing its functions in connection with the affairs of the Federation, the aggrieved persons could approach the High Court by invoking its constitutional jurisdiction. But as far as the cases of the employees regarding their individual grievances were concerned, it was held that they were to be decided on their own merits, namely if any adverse action was taken by the employer in violation of the statutory rules, only then such action would be amenable to the writ jurisdiction. Therefore, in absence of statutory rules, the principle of 'Master and Servant' would be applicable and such employees would be entitled to seek remedy permissible before the Court of competent jurisdiction. Similarly, in *M. Tufail Hashmi (supra)*, after discussing the aforesaid two judgments in detail, it was held that the employees of those organizations, which were performing functions in connection with the affairs of Federation, were eligible to approach the High Court under Article 199 of the Constitution if their services were governed by statutory rules. It was further held that since the employees of AIOU, SME Bank and Pakistan Steel Mills, who approached the Service Tribunal for redressal of their grievances, were not enjoying the protection of statutory rules, therefore the Service Tribunal had no jurisdiction to adjudicate upon such matters and they would be governed by the principle of 'Master and Servant.'

9. The same view was held in the case of *Pakistan Telecommunication Company Limited through General Manager and another v. Muhammad Zahid and 29 others (2010 SCMR 253)* which attained finality as review there against was also dismissed. We departure much less outright from the dicta of this Court laid down in the cases of *Principal Cadet College, Kohat v. Muhammad Shoaib Qureshi*, *Pakistan Red Crescent Society v. Syed Nazir Gillani*, *Executive Council, Allama Iqbal Open University, Islamabad through Chairman and another v. Muhammad Tufail Hashmi*, *Pakistan Telecommunication Company Ltd. through Chairman v. Iqbal Nasir and others*, *Pakistan International Airlines Corporation and others v. Tanveer-ur-Rehman and others*, *Oil and Gas Development Company and others v. Nazar Hussain and others*, *Syed Tahir Abbas Shah v. OGDCL through M.D Head Office, Islamabad and another*, *Muhammad Tariq Badar and*

*another v. National Bank of Pakistan and others, Pakistan Telecommunication Employees Trust (PTET) through M.D Islamabad and others v. Muhammad Arif and others, Pakistan Telecommunication Corporation and another v. Riaz Ahmed and 6 others, and Divisional Engineer Phones, Phones Division, Sukkur and another v. Muhammad Shahid and others(supra).*

12. As per the profile of PTCL and the dicta laid down by the Hon'ble Supreme Court in the case of PTCL and others (supra) as well as in the case of Pir Imran Sajid and others Vs. Managing Director/General Manager Telephone Industries of Pakistan and others (2015 SCMR 1257), the instant petition is maintainable. The relevant extracts of the judgment are reproduced below: -

*“A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employee of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionery benefits of the transferred employees. Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court. (Emphasis added).”*

13. The issue before us is whether Departmental Inquiry into allegations with approval of the Competent Authority was conducted by the Respondent-Company, whether legal and procedural formalities, which include charge sheet, were complied with by the Respondent-Company before imposing major penalty of

“Removal from Service” upon on the petitioner. The documents of the Pakistan Post Office placed on Court record by the petitioner, which relate to issue of show cause notice to him, also need to be considered, so as, to ensure transparency in action of the Respondent-Company.

14. We have noticed that this Court vide Order dated 25.5.2016 passed in Constitutional Petition No.D-74 of 2016 directed the Respondent-Company to decide the Department Appeal of the Petitioner, and the Respondent-Company has decided the said Departmental Appeal vide order dated 24<sup>th</sup> June 2016, the decision is reproduced below:

*In light of the foregoing it has been found that the “Removal from Service” Notification dated 14.12.2015 merits no interference. You were given an ample opportunity to show cause against the charges leveled against you, which you chose not to avail. Even if the show cause notice was not received by you as claimed, it has little or no impact on the merits of the case at this stage, since you already had a copy of the show cause notice and even provided ample opportunity again during the hearing of departmental appeal, but neither you provided a satisfactory written reply nor gave any plausible answers to the charges.*

*However, it is apparent and an admitted position after the hearing in your departmental appeal that you did appear on a television program and you do not disown the views that were expressed, in your official capacity and without permission/authorization of the competent authority. As a result thereof, the undersigned finds you guilty of misconduct as per the provisions of Regulation 6.22 and 6.23 of the PTCL Service Regulations, 1996, and the undersigned is of the opinion that the imposition of the penalty of “Removal From Service” in accordance with Regulation 7.04 (b) (iii) of the said Regulations which has been awarded earlier is in accordance with law.*

*This Departmental Appeal in light of the above facts does not merit consideration and is hereby accordingly rejected.”*

15. Much emphasis has been laid by the learned counsel for the Respondent Company that petitioner has committed misconduct within meaning of Rule 2 (4) of Government servants (Conduct) Rules, 1964. And relied upon Rule 21 of the said Rules 1964, the excerpt of the said rule is reproduced herein below:-

Rule:-21-

*“Radio broadcasts or television programmes and communications to the press.... No Government servant shall, except with the previous sanction of the Government or any other authority empowered by it in this behalf, or in the bona fide discharge of his duties, participate in a radio broadcast or television programme or contribute any article or write any letter, either anonymously or in his own name or in the name of any other person to any newspaper or periodical.*

*Provided that such sanction shall generally be granted if such broadcast or television programme or such contribution or letter is not, or may not be considered likely to jeopardize the integrity of the Government servant, the security of Pakistan or friendly relations with foreign States, or to offend public order, decency or morality, or to amount to contempt of court, defamation or incitement to an offence:*

*Provided further that no such sanction shall be required if such broadcast or television programme or such contribution or letter is of a purely literary, artistic or scientific character.”*

16. In Government servants (Efficiency and Discipline) Rules 1973 “Misconduct” is defined. Rule 4 contemplates minor and major penalties. Rule 5 empowers authorized officer to direct enquiry against Government servant through an enquiry officer or enquiry committee or if he is satisfied, may order that there would be no enquiry in the interest of security of the country. If it is decided that there should be enquiry either by enquiry officer or enquiry committee then procedure laid down in Rule 6 is to be followed and the requirements enumerated therein are that charge shall be framed and the Government servant proceeded against would be allowed to reply to the charge after which evidence is to

be recorded by examining witnesses in support of the charge allowing opportunity to the affected Government servant to cross examine the witness he can also produce witnesses in his defence. In the present case no inquiry into the allegations leveled by the Respondent-Company against the petitioner was conducted and the required procedure, which includes charge sheet, was also not followed, so as, to ensure transparency in arriving at a decision of imposing major penalty of removal from service upon the petitioner. Hence, the action is not sustainable in law. The Honorable Supreme Court judgment in the case of Saad Salam Ansari Vs. Chief Justice High Court of Sindh through Registrar reported in (2007 SCMR 1726) and Muhammad Naeem Akhtar Vs. Managing Director Water & sanitation Authority, LDA, Lahore reported in (2017 SCMR 357) support our view.

17. The issue raised in the present proceedings by the learned Counsel for the Respondent-Company is that the Petitioner participated in Television program; therefore, they rely on the Rule 6.22 of PTCL Service Regulations, 1996 for removal of the petitioner from service, which contention is not sustainable in law as discussed in preceding paragraph. The relevant excerpt of the Rule 6.22 is reproduced as under:-

*“6.22 Radio broadcasts or television programs and communication to the press:- **No employee shall, except with the previous sanction of the Chairman** in the case of employee in BPS 17 and above, Member (Administration) in the case of other employees in PTCL Headquarters and General Manager concerned in the case of other employee in the Telecommunication Region, or **in the bona fide discharge of his duties, participate in a radio broadcast or, television program** or contribute any article or write any letter, either anonymously or in his own name or in the name of any other person to any newspaper or periodical.”*

18. Reverting to the second plea taken by the learned Counsel for the Respondent-Company that Petitioner has admitted the fact that he had participated in the program is hardly a ground to dispense with legal and procedural requirements to be considered by the Competent Authority. Record reflects that petitioner has denied the contents in para No.2 of rejoinder that he has participated/appeared in a National Television, whereas Respondent-Company has emphasized that petitioner did participate in the program. In the given circumstances of the case, we cannot determine the veracity of these claims, while exercising Constitutional Jurisdiction, leaving it for the competent forum to probe into the claim and counterclaim of the parties.

19. Condemning the petitioner without providing him an opportunity to be heard in the manner as provided under the law and such an approach of Respondent-Company would promote miscarriage of justice.

19. The case law relied upon by the learned Counsel for the Respondent-Company is distinguishable in facts and circumstances of the case in hand.

20. In view of the above facts and circumstances of the case discussed above, the instant Constitutional Petition is allowed, the impugned orders dated 14.12.2015 and 24.6.2016 are set aside, the Respondent-Company is directed to reinstate the petitioner in service forthwith to his original position, and conduct an impartial inquiry into the allegations leveled against the petitioner, by giving him an opportunity of hearing as per law. Such inquiry must be

completed within two months of the date of this judgment. Back benefits would depend upon results of fresh notice/proceedings.

21. The instant Constitutional Petition stands disposed of in the above terms along with listed application(s).

Karachi  
Dated:- 03.01.2018

JUDGE

JUDGE

Zahid/\*