

**ORDER SHEET**  
IN THE HIGH COURT OF SINDH AT KARACHI  
Constitutional Petition No.D-6251 of 2016

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Order with Signature of Judge(s)

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1. For hearing of Misc. No.30291/18.
2. For hearing of main case.

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**18.09.2018.**

Syed Ansar Hussain Zaidi, Advocate for the petitioner.  
Mr. Altamash Faisal Arab, Advocate for the respondent No.1.  
Shaikh Liaquat Hussain, Assistant Attorney General for Pakistan for the  
respondent No.2.

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The instant petition has been filed seeking setting aside of the order dated 26.10.2016 as, according to the learned counsel, the same has been passed in an illegal manner, without fulfilling the required formalities in this behalf.

Brief facts of the case are that the petitioner had worked in the respondent No.1 Corporation from 1992 as a transferred employee. A Show Cause Notice bearing Ref. No.BZS/HR/Displn/ELB-2015/, dated 01.06.2016, was issued to him on the ground that being an employee of the respondent No.1 he has contested in the Local Bodies Elections from UC-22 Gelani Railway Station and has been elected on the said seat. The petitioner furnished a reply of the Show Cause Notice, which was duly received by the respondent No.1 on 07.06.2016. Subsequently the petitioner was removed from service vide order /letter bearing Ref. No.BZS/HR/Displn/ELB-2015/, dated 26.10.2016. It is against this order of the respondent that the present petition has been filed.

Syed Ansar H. Zaidi Advocate has appeared on behalf of the petitioner and submitted that the petitioner is double prejudiced by the action of the respondent No.1, since firstly he was removed from service and secondly when his option for VSS was accepted by the respondent No.1 the stigma of termination from service should have been removed as a result thereof the petitioner would now never be able to join any service due to this termination. He states that the petitioner would be satisfied if directions are issued to the respondent that when

his VSS was accepted, the stigma of his termination from the service may be removed.

Mr. Altamash Faisal Arab, learned counsel for the Respondent No.1 has raised the issue of maintainability of the instant petition, and stated that it is the petitioner who had approached the respondent No.1 with the prayer to reinstate him on humanitarian ground and to offer him VSS-2016 package. He stated that since the petitioner had himself approached the respondent by filing a Mercy Appeal for VSS-2016, which was accepted and he was paid his VSS amount, hence, the instant petition is meritless and needs to be dismissed. He further stated that as per the policy no employee could participate in the election and the employee taking part in elections is liable to be terminated. He therefore prays for dismissal of petition on this issue also.

Shaikh Liaquat Hussain, Assistant Attorney General for Pakistan, representing the respondent No.2, has adopted the submissions made by Mr. Altamash.

We have heard both the learned counsel at considerable length and have perused the record.

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 the Federation and as such, is amenable to Constitutional jurisdiction of the 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 the 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. The Hon'ble Supreme Court of Pakistan in the case of PTCL and others Vs.

Masood Ahmed Bhatti and others (2016 SCMR 1362) has already settled the issue of maintainability of the petition against the PTCL, 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 depart 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).*

We are further fortified by the decision rendered by the Hon’ble Supreme Court 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 pensionary 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).”*

The issue before us is whether the petitioner participated in the Local Bodies Election 2015 and elected counselor from Union Council-22 District East, Karachi, which act of the petitioner falls within the ambit of misconduct under the law?

Much emphasis has been laid by the learned counsel for the Respondent Company that petitioner has committed misconduct within meaning of Rule 24 of Government servants (Conduct) Rules, 1964. An excerpt of the said rule is reproduced herein below:-

**Rule:-24(3):-**

*“No Government servant shall canvas or otherwise interfere or use his influence in connection with or taken part in any election to a legislative body, whether in Pakistan or elsewhere.”*

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 requirement 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.

Now we would like to shed light on section 36(1) ( e ) of Sindh Local Bodies Act, 2013, which provides as under:\_

- (1) A person shall be disqualified from being elected or chosen as and from being a member of the Council, if-**
- (e) he is in the service of any statutory body or a body which is owned or controlled by the Government or the Federal Government or a Council or, in which any of such Government or Council has a controlling share or interest, except the holders of elected public office; provided that in case of a person who has resigned or retired from any such service, a period of not less than six months has elapsed since his resignation or retirement; or**

In the present case show cause notice dated 1<sup>st</sup> June 2016 was served upon the petitioner, who admitted in the paragraph 4 of the memo of petition that he contested Local Bodies Election of Union Council-22, Jilani Railway Station, on

05.12.2015 and was elected against the seat of the General Member of Ward-I Union Council-22 of District East Karachi.

The impugned order dated 26.10.2016 prima facie suggest that the charges leveled against the petitioner were of gross misconduct, the competent authority considered the defense plea of the petitioner and after providing personal hearing to the petitioner imposed the penalty of removal from service upon him. The defense plea taken by the petitioner that his case does not fall within the purview of employment and he was authorized to participate in the Local Bodies Election-2015 pursuant to the judgment dated 30.12.2007 passed by the learned Division Bench of this Court in Election Appeal No. 8 to 10 of 2007 does not support his view point on the basis of above referred rule & regulations.

We have also perused the judgment as discussed supra. The matter discussed in the Election Appeals was with regard to the nomination papers of the candidates, which were rejected under Article 63-(k) of the Islamic Republic of Pakistan 1973 on the ground that candidates were working in Pakistan Telecommunication Company Limited in which the Government had 26% shares or interest. This decision in our view is quite distinguishable from the facts obtaining in the instant matter as in the present admittedly the petitioner was a regular employee of the PTCL and the Government Servants Efficiency & Disciplinary Rules 1973, as adopted by PTCL as well as the Government Servants (Conduct) Rules 1964, has put an embargo upon the employees to participate in the Local Bodies Elections, which if violated, would definitely in our view fall within the ambit of misconduct, as defined under the Government Servants (Conduct) Rules 1964.

In view of the above facts and circumstances of the case discussed above, we do not find any merit in the instant Constitutional Petition which stands dismissed along with the listed application(s).

Karachi  
Dated:- 18.09.2018

JUDGE

JUDGE