

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon

C.P. No.D- 2115 of 2014

Mansoor and another.Petitioners

Versus

Federation of Pakistan and
Others.Respondents.

Ms. Nasim Abbasi, advocate for the Petitioners.

Mr. Humayoon Khan, Deputy Attorney General for Pakistan.

Mr. Mumtaz Alam Laghari, Advocate for respondent No.2&3.

Date of hearing & order : 17.09.2020

ORDER

ABDUL MAALIK GADDI, J.- Through this constitutional petition, Petitioners Mansoor and Abdul Razzaque have prayed for following relief(s):-

- "A) To declare that the act of respondents is illegal, unlawful against the term and condition of employment, hence liable to be set-aside.
- B) To declare that issuance of transfer order, just after introducing V.S.S Scheme, (*Simultaneously*) based on malafide intention to putting pressure upon Petitioners to accept V.S.S Scheme, and not at all, therefore liable to be set-aside.
- C) It is also prayed that during this writ petition the respondents very kindly be restrained from Harassing the Petitioners through illegal and unwarranted transfer and to dispense with their service illegally and unlawfully under the garb of illegal and unlawful disciplinary proceedings etc.
- D) To suspend the operation of impugned orders i.e, Annexure-P/7 & 8, till the disposal of this petition.

OR**Ad-interim Relief may kindly be granted.**

E) Any other relief(s) which this Honourable Court may deem fit and proper may kindly be granted."

2. The case and claim of the Petitioners is that they are having domicile of Hyderabad and are employed and performing their duties as Telephone Operators in the respondents' concerned since 06.12.1994, i.e. prior to promulgation of "**Pakistan Telecommunication (Re-organization) Act, 1996**; that both Petitioners are old employees of respondents, hence terms and conditions of their service are protected under section 35(2) and 36 of the said Act and as per employment orders they are liable to serve anywhere within the area of Hyderabad Region; that very recently respondents introduced Voluntarily Separation Scheme (V.S.S) and in this regard a letter dated 31.10.2014 has been received in Hyderabad office and the documents of the said scheme have been handed over individually to all the employees; however, both Petitioners being old employees of respondents concerned refused to accept such V.S.S scheme; therefore, in order to put pressure upon the Petitioners, respondent No.3 with malafide intention issued an inter-office Memo on 12.11.2014, whereby both Petitioners have been transferred and posted under SM HRBP Quetta for further posting in QTR Operation against the Rules and Regulations. Petitioners further stated that the above said memo / transfer orders are illegal, unlawful and against the terms and conditions of employment, hence liable to be set aside.

3. Respondent No.2 filed their comments, stating therein that Petitioners being employees of Central Organization are bound for transfer at any time if they remained posted for more than 03 years at one station; that both Petitioners have been transferred as per PTCL Employees Transfer & Posting policy by competent authority without any malafide intention; that the V.S.S. Scheme is a voluntary office and no one was compelled to join such scheme; that the Petitioners are violating the lawful orders of the competent authority for transfer, posting as being Federal Essential Service Employee they have to join their service anywhere in Pakistan. Lastly it is prayed that present petition is not maintainable and therefore liable to be dismissed.

4. Learned counsel for Petitioners while arguing the matter in the same line as mentioned in main petition has contended that the petitioners were employed in service by Federal Government in Telephone and Telegraph Department, which department was converted in Pakistan Telecommunication Corporation and ultimately became Pakistan Telecommunication Company Limited and terms and conditions of the petitioners' service is protected under section 35(2) and 36 of the Pakistan Telecommunication (Re-organization) Act, 1996 and as per employment orders they are liable to serve anywhere within the area of Hyderabad Region. It is further stated by the learned counsel that recently respondent introduced Voluntarily Separation Scheme (V.S.S) and in this regard a letter dated 31.10.2014 has been received in Hyderabad Office and the documents of the said scheme have been handed over individually to all the employees. However, both the petitioners being old employees of respondents concerned refused to accept Voluntarily Separation Scheme, therefore, to put pressure upon the petitioners, the respondent No.3 without any reason issued an inter-office Memo having special administrative order with the malafide intention on 12.11.2014, whereby the petitioner No.1 Mansoor who is serving as Telephone Operator and working under Manager CMC Hyderabad (RGM HYTR) and the petitioner No.2 Abdul Razzaque who is serving as Telephone Operator and working under Business Manager TDR Hyderabad have been transferred and posted under SM HRBP Quetta for further posting in QTR Operation against the rules and regulations. The learned counsel for the petitioners further contended that the said transfer orders of the petitioners are illegal, unlawful and against the terms and conditions of employment and the same have been issued just after introducing Voluntarily Separation Scheme to harass the petitioners for their ulterior motives, therefore, the same are liable to be set aside as illegal and unlawful.

5. On the other hand, learned D.A.G for Pakistan at Hyderabad and learned counsel for respondent No.2 and 3 though opposed this petition, but they are not able to controvert the factual and legal position, which has been agitated in this petition.

6. We have heard the arguments of learned parties' counsel and perused the entire record.

7. As regard the contention of learned counsel for respondents No.2 and 3 that this petition is not maintainable; before proceeding further, it would be convenient to refer to section 9(1) and (2) of **the Act of 1991** as well as section 36(1) to (3) of **the Act 1996**, which read as under:-

***“9. Transfer of departmental employees to the Corporation---(1)** Notwithstanding anything contained in any law, contract, contract or agreement, or in the conditions of services, all departmental employees shall, on the establishment of the Corporation, stand transferred to, and become employees of the Corporation, on the same terms and conditions to which they were entitled immediately before such transfer, provided that the Corporation shall be competent to take disciplinary action against any such employee.*

(2). The terms and conditions of service of any such person as is referred to in subsection (1) shall not be varied by the Corporation to his disadvantages.”

***36. Terms and Conditions of service of employees.--(1)** No person transferred to the Company pursuant to subsection (2) of section 35, hereinafter referred to as "Transferred Employee", shall be entitled to any compensation as a consequence of transfer to the Company:*

Provided that the Federal Government shall guarantee the existing terms and conditions of service and rights, including Pensionary benefits of the Transferred Employees.

(2) Subject to subsection (3), the terms and conditions of service of any Transferred Employee shall not be altered adversely by the Company except in accordance with the laws of Pakistan or with the consent of the transferred Employees and the award of appropriate compensation.

(3) At any time within one year from the effective date of order vesting property of the Corporation in the Company, the Federal Government may, with the prior written agreement of a Transferred Employee, require him to be transferred to or revert him back and be employed by the Authority, National Telecommunication Corporation, Trust or the Federal Government on the same terms and conditions to which he was entitled immediately before such transfer.”

8. A glance at the abovementioned provisions would reveal that the departmental employees / Petitioners on their transfer to the Corporation became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996 with same terms and conditions of their initial appointments. 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 and more; and, 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 this Court. In these circumstances, instant petition is maintainable before this Court. In this context we are fortified by the case of **P.T.C.L v. Masood Ahmed Bhatti** (2016 SCMR 1362), wherein while dealing with the same issue involved in that case has observed as under:-

“ A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employees 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. Though in the cases of 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) it was held that the departmental employees on their transfer to the Corporation and then to the Company would continue to be the Civil Servants, but this interpretation does not appear to be correct as they on their transfer became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. -----.

7. The argument of Mr. Khalid Anwar, learned Sr. ASC for the petitioners that where a three-Member Bench of this Court in the case of Pakistan Telecommunication Company Ltd. v. Iqbal Nasir and others (supra) held that the employees of PTCL being governed by the principle of master and servant could not invoke jurisdiction of the High Court under Article 199 of the Constitution, another Bench with

equal number of Judges could not deviate therefrom, is based on misconception when the employees in the aforesaid case, were not those whose terms and conditions of service on their transfer to the Corporation and the Company were protected and guaranteed under section 9 of the Act of 1991 and sections 35(2) and 36(1) and (2) of the Act of 1996, but those who were employed on contract or on work-charge basis. We, therefore, do not feel inclined to agree therewith.----.”

9. Perusal of offer orders / appointment letters issued in favour of the Petitioners reveals that the terms and conditions were agreed between parties i.e. employer and employee and before us controversy is only the implementation of said terms. Since the petitioners are seeking issuance of writ on the strength of a term incorporated in their appointment letters. They have challenged their transfer orders through this petition on the ground that they could have only been transferred anywhere in Southern Telecommunication Region, Karachi (Sindh) under Pakistan Telecommunication Corporation but have been transferred beyond the said agreed terms and conditions, which cannot be done. When this aspect of the case was confronted to learned counsel for respondents No.2 and 3, he has no plausible answer with him.

10. Significantly, as per offer orders / appointment letters of the Petitioners dated 06.12.1994 and 14.12.1994, respectively, (available at Pages-11 and 19 of the Court file) they were appointed as Telephone Operators to serve anywhere in Southern Telecommunication Region, Karachi and since services of all employees of Pakistan Telecommunication Corporation including the Petitioners were transferred in terms of the Act, 1996 to Pakistan Telecommunication Company Ltd. and terms and conditions of their services have remained same, therefore, the Petitioners cannot be transferred outside the Region for which they were initially appointed (i.e. Southern Telecommunication Region, Karachi), hence the impugned memos / transfer orders of the Petitioners dated 12.11.2014 are illegal and unlawful and have been issued without any justification. During course of the arguments, we have also asked the question from learned counsel for respondent No.2 and 3 as well as learned D.A.G, to justify the issuance of the impugned memos / transfer order in the light of said offer orders / appointment letters issued in favour of the Petitioners but again they have not been able to answer the same.

11. In view of what has been discussed above, instant petition is allowed alongwith listed application(s); and, as a result thereof the impugned memos / transfer orders of the Petitioners dated 12.11.2014 being illegal and unlawful are set aside.

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