

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 1416 of 2021

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner: Zulfiqar Ali through Mrs. Razia Ali Zaman,
Advocate.
Respondent 3 to 8: through Mr. Mumtaz Alam Leghari, Advocate
Mr. Ashfaq Nabi Qazi, Assistant Attorney
General
Date of hearing
& decision: **23.11.2021**

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the
petitioner has prayed as under:-

- a. That this Honorable court may be pleased to set-aside the impugned transfer letter dated 23.08.2021 issued by respondent No.7, being illegal, unjustified based on malafide, but further restraining the respondent No.3 & 7 from applying own made non-statutory Rules / directives in the case of petitioner in respect of terms and conditions of services of petitioner.
- b. That this Honorable court may be pleased to declare the performance Appraisal of Transferred Employees, by the respondents under non-statutory, Performance Management System (PMS), as unlawful, illegal, unconstitutional, without jurisdiction and against the principles of natural Justice and suspended the operations of impugned email and impugned letter dated 16.08.2021 regarding the pay scale of petitioner which is not applicable to the transfer employee including the petitioner and all subsequent actions taken against the transferred employees based on PMS, which has been enforced upon them with malafides and to their detriment, by further directing them to award same BPS as equal to other government Basic Pay Scale Employees and Pay, Allowances, yearly increases past and present arrears to petitioner according to government Basic Pay Scale as per government notification since 2005 onwards weighted through (AGPR) Accountant General of Pakistan Revenue.
- c. That this Honorable court may be pleased to direct the respondent Nos. 3 and 4 to apply Civil Servant Act, 1973, Civil Servant (Appointment, Promotion and Transfer) Rules 1973, Civil Servants (Efficiency and Disciplinary) Rules 1973, pay, pension and gratuity rules, leave rules 1980 which are applicable to the Civil Servants of Federal Government in the matters of petitioner.

- d. That this Honorable court may be pleased to issue directions to respondents Nos. 3 to 7 not to take any adverse action against the petitioner towards the stoppage of his salary, and other benefits of petitioner by restraining him not to harass and pressurized the petitioner by way of termination, transferring him on account of instant petition.
- e. That this Honorable court may be pleased to direct the respondent Nos. 3 and 4 to refer disciplinary matters of the transferred employees including petitioner to the authorities competent to take action and decide the same as per Civil Servant Act 1973 and Civil Servant (Efficiency Disciplinary) Rules 1973 and not otherwise.
- f. That this Honorable court may be pleased to direct the respondents to incorporate in the salaries of “transferred employees” all financial increases given by the Federal Government to its employees being governed under Civil Servant Act 1973 which have been grabbed since 2005, including revised pay scales of 2011, enhance rates of house requisition, medical allowance and conveyance allowance etc from the dates of their admissibility.

2. The petitioner namely, Zulfiqar Ali who is present along with his counsel has briefed us about his case with the averments that he is an employee of Pakistan Telecommunication Corporation Company Ltd (PTCL). Initially, he was inducted into service with PTC in 1993 and his service is protected under the Civil Servants Act 1973 and Rules framed thereunder including Leave Rules, 1980, Pay, Pension, and Gratuity Rules also applicable to his case. Per petitioner the impugned emails and office letters dated 15.6.2017, 19.3.2021, and 16.8.2021 issued by respondent company are against the terms and conditions of service of the petitioner, he, therefore, prays for setting aside the impugned transfer order dated 23.8.2021 issued by respondent company being illegal, unjustified based on malafide intention. Petitioner has also called in question the performance Appraisal of transferred employees issued by the respondent company to be illegal and unconstitutional. He prays for protection of his pay under the enhanced rates under revised pay scales 2011.

3. Conversely learned counsel representing the respondent company has raised the question of maintainability of instant petition on the premise that the terms and conditions of service of the petitioner with the respondent company are non-statutory thus no vested right is created in his favor to call in question the policy decisions taken by the respondent-company; that transfer and posting is exclusively prerogative of the competent authority of the respondent company and petitioner has to serve at any place in Pakistan as per his terms and conditions of service; that no

discrimination has been meted out with the petitioner as depicted by him; that in absence of statutory rules, the principle of master and servant would be applicable in his case as such the constitutional petition is not maintainable. He prayed for dismissal of the instant constitutional petition.

4. We have heard learned counsel for the parties and perused the material available on record.

5. Per the petitioner, the impugned letter dated 23.8.2021 placing him on waiting has been issued on the basis of a performance appraisal called the Performance Management System in vogue in the PTCL. It is the case of the petitioner that the impugned letter and the Performance Management System are contrary to his terms and conditions of service; that his terms and conditions of service are those that are applicable to a civil servant which were preserved under Section 9 of the Pakistan Telecommunication Act, 1991 and then by sections 34 and 36 of the Pakistan Telecommunication (Re-Organization) Act, 1996, as so held in the case of PTCL v. Masood Ahmed Bhatti (2016 SCMR 1362).

6. We have gone through the case of Masood Ahmed Bhatti. That case pertained to the terms and conditions of persons who were civil servants employed with the T&T Department whose terms and conditions as such were protected upon their transfer to the PTC and then to the PTCL by virtue of Section 9 of the PTC Act, 1991 and sections 35 and 36 of the Re-Organization Act, 1996 respectively. On the other hand, the petitioner was admittedly inducted into the PTC in 1993. He was never a civil servant with the T&T Department. Therefore, Section 9 of the PTC Act, 1991 was not relevant to the petitioner. Resultantly, the argument that the petitioner is to be governed by terms and conditions applicable to a civil servant is entirely misconceived. The case of Masood Bhatti is of no help to the petitioner. In the case of PTCL v. Muhammad Samiullah, decided on 20.4.2021 in Civil Appeal No. 616 of 2020, the Hon'ble Supreme Court has distinguished Masood Bhatti's case for those employees of PTCL who were never civil servants with the T&T Department.

7. From the record it appears that after accepting the Performance Management System for many years of his service with PTCL, this is the first time the petitioner has taken issue to it. In fact,

in paras 2 to 4 of the petition, the petitioner acknowledges that he had previously benefitted from the Performance Management System.

8. On the merits of the case, learned counsel for the petitioner has not been able to demonstrate that the impugned placement letter has been issued with any malafides so as to call for any interference in constitutional jurisdiction. Resultantly, the petition is dismissed.

JUDGE

JUDGE

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