

Order Sheet**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR****Constitutional Petition No. D - 986 of 2021**

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

Before:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Petitioner : Mujeeb-ur-Rehman s/o Muhammad Hashim ,
 through Ms.Rizwana Jabeen Siddiqui, Advocate

Respondents: 1 & 2 Federation of Pakistan & another
 Through Mr.Ashfaq Ahmed Abro,
 Deputy Attorney General

Respondents: 3 to 9 Chief Executive Officer SEPCO & 6 others
 Through Mr.Saeed Ahmed Baloch, Advocate

Date of hearing : 10.08.2023

Date of order : 22.08.2023

ORDER

ARBAB ALI HAKRO, J.- This Petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The Petitioner seeks to challenge the office Orders dated 09.9.2020 and 04.5.2021, referred to as the "**impugned Orders**". These Orders were issued/passed by respondents No. 3 and 4, resulting in the imposition of a major penalty on the Petitioner, specifically the "*Reduction to the lower post from LS-I to LS-II for a period of one year*"

2. Briefly stated, the facts necessary for a decision of this Petition are that the Petitioner was a permanent employee of SEPCO/WAPDA and held the position of Line Superintendent. He was appointed as the acting S.D.O. for Operation Sub-Division SEPCO Moro-II as a temporary measure by respondent No. 4 through an office order dated 06.8.2019. On 19.9.2019, respondent No. 4 addressed a letter of explanation to the Petitioner, accusing him of acts of omission and commission that could be classified as "misconduct". The Petitioner responded accordingly by submitting his reply. However, his reply was found

unsatisfactory and show cause notice was issued to him. The Petitioner submitted reply to the show cause notice and the respondent No. 4 scheduled a personal hearing of the Petitioner on 02.9.2020. Then on 09.9.2020, respondent No. 4 unexpectedly issued an office Order imposing a major penalty on the Petitioner of "Reduction to the lower post from LS-I to LS-II for a duration of one year". The Petitioner proceeded to challenge the aforesaid Order by submitting an appeal before the competent authority (respondent No. 3). Regrettably, the appeal filed by the Petitioner was dismissed vide Order dated 04.5.2021. Therefore, the Petitioner has contested both the aforementioned impugned Orders in the present Petition and requested the following reliefs: -

- a) To declare the office orders dated 09.9.2020 and 04.5.2021, issued by respondents No.3 & 4 as null and void, abinitio, illegal, unlawful and based on malafide; therefore, the impugned office orders were unwarranted under the law, thus liable to be set-aside/suspended.
- b) To pass ad-interim Order whereby suspend the operation/implementation of office orders dated 09.9.2020 till final disposal of this Petition.
- c) To grant any other relief as deemed fit.

3. Following the notice, respondents No. 3 to 9 provided individualized comments/legal objections opposing the Petition.

4. At the very outset, learned counsel for the Petitioner contended that respondent No. 4 had issued the letter to the Petitioner with an explanation containing accusations of both negligence and breach of duty concerning the L.O.E. on the 11KV TV Booster-7 Feeder of Sub-Division Moro-II, specifically for the month of August 2019. She contends that during a three-month tenure of the petitioner as an acting Sub-Division Officer in Sub-Division SEPCO Moro-II, there was an improvement in payment ratio

and reduction in losses compared to the previous year; however, respondent No.3 and 4 failed to acknowledge or take into account this particular aspect. She next contends that before the Petitioner assumed the position of Acting S.D.O Moro-II, a fraudulent certificate was issued on 25.02.2019, falsely declaring the 11KV T.V. Booster and Feeder to be 100% secure and free from theft. However, upon assuming the charge, the Petitioner discovered that the aforementioned feeder was only 10% secure and experienced a significant number of theft incidents; consequently, the Petitioner sought assistance from the relevant Police Station to file a First Information Report (F.I.R.). She further contends that the Petitioner encountered the abovementioned challenges and exerted significant effort to improve the situation, but respondent No. 3 failed to acknowledge the factual circumstances and dismissed the Petitioner's appeal. This course of action by respondent, No. 3 is severe and marred by intentions of ill will and underlying motives.

5. It is further contended that the imposition of a major penalty without conducting an inquiry is unwarranted; hence impugned orders are liable to be set aside. She argued that respondent No.4 imposed a major penalty against the Petitioner without observing the efficiency and disciplinary rules and without taking into consideration that on similar nature of charges, a penalty of stoppage of annual increment for a period of one year has already been imposed upon the Petitioner vide Order dated 08.9.2020, therefore, no reasonable ground existed for the respondent No.4 to charge the major penalty. Lastly, she contends that both the impugned Orders may be set aside.

6. Conversely, learned counsel for respondent No.3 to 9 (SEPCO) contended that Petition suffers from laches as the impugned Order was passed on 09.9.2020 and the

Petition was filed on 02.6.2021, after a delay of six months. He contends that Petition is not maintainable because the Petitioner is an employee of SEPCO, a company registered under the Companies Ordinance, 1984, and it has no statutory Service Rules. Therefore, the relation between the petitioner and respondents No.3 and 4 is governed under the rule of "*Master and Servant*". Lastly, he submitted that even on merits the Petition is liable to be dismissed.

7. Learned Deputy Attorney General representing respondent No.1 & 2 supported the respondent No.3 to 9's version.

8. We have heard learned counsel for the parties, learned D.A.G., and have perused the record with their assistance.

9. According to Article 199 of the Constitution, the High Court is bound to assist in upholding the law and safeguarding individuals' rights within the confines of the Constitution. This exceptional jurisdiction of the High Court can be exercised in dire circumstances when there is no other legal recourse available, and it can be utilized to challenge and confront an unlawful action committed by an executive or other authoritative body without requiring an extensive investigation into complex or contentious facts. It is imperative to acknowledge that a party invoking the constitutional jurisdiction must diligently establish an unambiguous and indisputable legal entitlement.

10. We intend to consider the objection with regard to admissibility of the current Petition first as it goes to the very root of the case. There is no disagreement that the Petitioner held a position as an employee of SEPCO (Sukkur Electric Power Company), which was established under the WAPDA Act of 1958. However, by virtue of its authority under Section 8(5), WAPDA formed companies for different regions, including

SEPCO, and the services of the Petitioner were placed at the disposal of SEPCO. The Petitioner's receipt of an explanation letter and Show Cause Notice under Rule 5(iv) of the Pakistan WAPDA Employees (E&D) Rules, 1978 ("**the Rules, 1978**") is a matter of official record. Consequent to which, the Petitioner was subjected to a major penalty; "Reduction to the lower post from LS-I to LS-II for a duration of one year," as prescribed by the aforementioned Rules, 1978.

11. Notwithstanding, it is an admitted position that SEPCO, being a company, has no statutory rules. The Rules, 1978, under which show cause notice was issued to the petitioner have been adopted by the SEPCO for streamlining internal affairs of the company. Such adoption does not ipso-facto establish the fact that such rules in the context of SEPCO are statutory and any action stemming from them or taken in terms thereof by SEPCO against any of its employees in respect of his service matter would be amenable to constitutional jurisdiction of the Courts and the aggrieved person would be competent to invoke jurisdiction under Article 199 of the Constitution for redressal of his grievance. In absence of any statutory rules, the service of the petitioner would be governed by the principle of "*Master and Servant*". Hence, the Petitioner is precluded from invoking the constitutional jurisdiction of this Court. It may be reiterated that when the service of employees lack statutory regulation, the guiding principle of "*Master and Servant*" shall dictate their governance. Hence, undoubtedly, the terms and conditions of employment within SEPCO, lacking statutory regulation, fall under the framework of the "*Master and Servant*" rule. As a result, invocation of Article 199 of the Constitution of Pakistan, 1973, is inapplicable. In a similar factual scenario, the Apex Court in the case **Pakistan Electric Power Company vs Syed Salahuddin and others (2022 SCMR 991)**, in Para No.10, 11 & 12, has held as under: -

“10. There is yet another aspect of the matter. A specific objection regarding the jurisdiction of the High Court to entertain the Petition was raised, which was dealt with in the following manner:

"The petitioners being employees of QESCO/PEPCO are governed by statutory rules and as such the constitutional petition filed by the Respondents under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is maintainable."

We find that, in the first place, there was no ground to hold that the statutory rules governed the Respondents. Admittedly, the Respondents, by their own choice, had joined QESCO, which is a distinct and separate legal entity having been incorporated in the erstwhile Companies Ordinance, 1984 and has its own Board of Directors. Just by reason of the fact that QESCO had adopted existing rules of WAPDA for its internal use does not make such rules statutory in the context of QESCO. It was clearly and categorically held by this Court in Pakistan Defence Officers Housing Authority (ibid), Pakistan Telecommunication Company Ltd. through its Chairman v. Iqbal Nasir and others (PLD 2011 SC 132) as well as Pakistan International Airlines Corporation and others v. Tanveer ur Rehman and others (PLD 2010 SC 676) that where conditions of service of employees of a statutory body are not regulated by rules/regulations framed under the Statute but only by rules or instructions issued for its internal use, any violation thereof could not normally be enforced through constitutional jurisdiction and they would be governed by the principle of "master and servant". The learned High Court appears to have not been assisted properly in the matter and therefore omitted to notice the said principle of law laid down in the aforementioned case and reiterated repeatedly in a number of subsequent judgments of this Court.

11. Further, while assuming jurisdiction in the matter, the learned High Court omitted to appreciate that in case of an employee of a Corporation where protection cannot be sought under any statutory instrument or enactment, the relationship between the employer and the employee is governed by the principle of "master and servant" and in such case the constitutional jurisdiction of the High Court under Article 199 of the Constitution cannot be invoked. We also find that although a judgment of this Court dated 07.03.2019 in the case of employees of IESCO was brought to the notice of the High Court in which a similar finding was recorded regarding non-availability of constitutional jurisdiction to the employees of IESCO, the Court appears to have misinterpreted and misconstrued the ratio of the same and therefore arrived at a conclusion which appears to be contrary to the settled law on the subject. We also notice that a judgment of a Division Bench of the same High Court escaped the notice of the High

Court of Balochistan whereby it had clearly held that employees of QESCO could not invoke its constitutional jurisdiction. Further, a judgment of this Court rendered in the case of Chief Executive Officer PESCO, Peshawar (ibid) examined the question of jurisdiction of the High Court under Article 199 of the Constitution in matters relating to employees of PEPCO which is identically placed insofar as it was also incorporated under the Companies Ordinance, 1984 pursuant to bifurcation of various Wings of WAPDA into separate corporate entities and it came to the conclusion that since PEPCO did not have statutory rules, the High Court lacked jurisdiction to interfere in matters involving employment disputes between PEPCO and its employees. The ratio of the said judgment was clearly attracted to the facts and circumstances of this case, which appears to have escaped the notice of the High Court. We are therefore in no manner of doubt that in view of the fact that QESCO does not have statutory rules governing the terms and conditions of service of its employees, the relationship between the Appellant-PEPCO and Respondents Nos.1 and 2 was governed by the principle of "master and servant" and the Respondents could not have invoked the constitutional jurisdiction of the High Court for redress of their grievances.

12. For the foregoing reasons, we find that the impugned judgment of the High Court dated 16.07.2020 rendered in C.P. No. 1233 of 2017 is unsustainable and is accordingly set aside. Consequently, the appeal is allowed."

12. In view of the above discussion and the law as interpreted by the Superior Court, the present Petition is not maintainable as it is filed against SEPCO by its employee in respect of terms and conditions of his service. The Petition stands **dismissed**.

13. Foregoing are the reasons for the short order announced on 10.08.2023, whereby this Constitutional Petition was dismissed Listed application stands disposed of accordingly.

JUDGE

JUDGE