

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-5982 of 2019

(*Jalil-Ur-Rehman v Province of Sindh & others*)

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 05.05.2025

M/s Rajesh Kumar Khagaija and Majid Ali Dayo advocates for the petitioner.

M/s Ch. Azhar Elahi and Zaheer Ahmed advocates for the respondents.

Ms. Zehra Vayani, Assistant AG

ORDER

Adnan-ul-Karim Memon, J: Petitioner Jalil-ur-Rehman requested this Court to order the respondents to pay his salary from December 2017 onwards and to permit him to resume his duties at his designated position.

2. The petitioner, holding an MBA from Sindh University (1992), was employed by Respondent No. 1 as a Management Trainee in 1996 but was terminated in 1997. He was reinstated in 2009 following Ordinance No. 2 of 2009 and received appreciation letters. Despite being eligible for a step promotion under the same ordinance, it was not granted despite his 2010 application. In November 2017, the petitioner applied for medical leave due to a spinal cord issue, which was initially granted. However, his salary was stopped in December 2017 without explanation. He received a letter in January 2018 alleging unauthorized absence, which he refuted, stating he was on approved medical leave. A show-cause notice followed in April 2018, which he also replied to, maintaining he was on authorized leave. He appeared before an inquiry committee, but no report had been issued.

3. The petitioner's counsel submitted that the petitioner's salary stoppage without suspension is illegal, violating his fundamental rights. He further submitted that Respondent No. 1, a semi-governmental institution under Respondent No. 2, acted unlawfully. Facing financial hardship due to the unpaid salary since December 2017, his service remains intact, but he's not posted or paid. His June 2019 application for resolution remained unanswered. The petitioner's counsel requests that the court order Respondent No. 1 to immediately pay his outstanding salary from December 2017 onwards, reinstate him to his position, grant him the step promotion due under Ordinance II of 2009, and expedite the pending inquiry fairly.

4. The respondents' counsel argued the petition is not maintainable, citing Supreme Court precedents regarding the master-servant relationship in non-statutory bodies with their own service rules. He stated that the

petitioner was dismissed on September 30, 2018, following disciplinary proceedings, rendering the petition regarding salary and reinstatement infructuous. He further argued that Respondent No. 2 has no bearing on the employment of Respondent No. 1, a company. He added that some prayers were deemed past and closed transactions barred by laches. The respondent's counsel confirmed the petitioner's initial appointment as a Management Trainee under a scheme that did not guarantee regular employment, with further employment at the company's discretion, subject to a two-year training and satisfactory performance. However, he acknowledged the petitioner's initial training assignment. He prayed for the dismissal of the petition.

5. We have heard the learned counsel for the parties on the maintainability of the petition and perused the record with their assistance.

6. To answer the first and second proposition, the profile of the Respondent/PSO reveals that PSO is a Public Sector Company, in terms of Section 2 (g) of Public Sector Companies, (Corporate Governance) Rules, 2013 as amended up to date and falls within the meaning of Article 199(1) (a) (ii) read with Article 199(5) of the Constitution. Additionally, the post of Chief Executive/Managing Director of PSO is also a Public Office/Public Sector Post, therefore, falls within the purview of Sub-Clause (1) (b) (ii) of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, which permits the High Court to issue a writ of quo-waranto requiring a person within its territorial jurisdiction of the Court holding or purporting to hold a Public Office to show under what authority of law he claims to hold that office. It is also clear that, while acting under clauses (b) (ii) of Article 199 of the Islamic Republic of Pakistan, 1973 of the Constitution, the High Court declare that the holder of Public Office is entitled if the office in question of that post, it concludes that incumbent has no authority to hold the same; therefore, the Office of PSO is amenable of the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Keeping in view such an analogy, the writ of mandamus can also be issued under Article 199 of the Constitution.

7. To clarify the distinction between statutory and non-statutory rules, the court refers to the Supreme Court's decisions. In Principal Cadet College, Kohat v. Mohammad Shoaib Qureshi (PLD 1984 SC 170), it was held that service rules of a statutory body are not statutory unless made or approved by the Government, serving merely as guidance. However, later Supreme Court judgments in Shafique Ahmed Khan v. NESCOM (PLD 2016 SC 377) and Muhammad Zaman v. Government of Pakistan (2017 SCMR 571) broadened this criterion. The current test considers not just government approval but also the rules' nature and scope. Rules governing

internal control are non-statutory, while those with a broader impact or complementing the main law on crucial matters are deemed statutory. So far as non-statutory rules of PSO are concerned the same shall be effective as the service issues of PSO cannot be pressed due to the non-availability of statutory protection to its employees.

8. The record indicates that disciplinary proceedings against the petitioner culminated in dismissal on September 30, 2019. The court opines that disciplinary matters fall under "Terms and Conditions of Service," which, in this case, are admitted to be non-statutory rules. As such, this is considered an internal service matter of the Respondent company and, in the court's view, cannot be appropriately addressed in a Constitution Petition.

9. For the reasons stated, the court finds that a "Master and Servant" relationship exists between the Petitioner and the Respondent-Authority. Consequently, the petitioner's grievance pertains to the terms and conditions of service, which cannot be enforced through a Writ Petition, especially since the Service Rules involved are non-statutory and are considered internal instructions for the Respondent-Company's employee management. This view aligns with the principles established by the Supreme Court in Shafique Ahmed Khan and others v. NESCOM through Chairman Islamabad and others (PLD 2016 SC 377) and Muhammad Zaman etc. v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (2017 SCMR 571), which differentiate between statutory and non-statutory service rules in the context of writ jurisdiction.

10. Given the aforementioned Supreme Court decisions and the admitted fact that the Respondent Company's service rules are non-statutory, these rules cannot be enforced through a Constitutional Petition under Article 199 of the Constitution.

11. Based on the preceding discussion and cited case law, this Court is not inclined to interfere with the terms and conditions of the Petitioner's service under its Constitutional Jurisdiction, as the Respondent Company operates under non-statutory Service Rules. Consequently, this petition, along with any pending applications, is dismissed. There will be no order as to costs.

JUDGE

Head of the Cost. Benches