

# THE HIGH COURT OF SINDH, KARACHI

**Before:**

**Justice Mohammad Karim Khan Agha**

**Justice Adnan-ul-Karim Memon**

## **CP No D-2636 of 2009**

[Pakistan National Shipping Corporation v. The Federation of Pakistan and others]

Petitioner : through Mr. Khalid Javed, Advocate.

Respondent No. 3 Nemo

Respondents Nos. 1 and 2 : through Ms. Wajiha M. Mehdi, Assistant Attorney General

Dates of hearing : 30-04-2025

Date of order : 30-04-2025

## **ORDER**

**Adnan-ul-Karim Memon, J.** Pakistan National Shipping Corporation (PNSC), has invoked Article 199 of the Constitution to seek judicial review of two decisions: the Wafaqi Mohtasib's (Federal Ombudsman's) ruling on July 27, 2007, and the subsequent presidential rejection of their appeal on October 9, 2009. These decisions were in favor of a disabled individual (respondent No. 3) who alleged his appointment did not align with the quota for the differently abled persons under the law. An excerpt of the order of the appellate authority is reproduced as under:-

“I am directed to refer to your representation No. nil, dated 15.11.2007, on the above subject, and to say that the President has been pleased to pass the following orders-

2. The complainant claims that he is a disabled person. His grievance is that the Agency (Pakistan National Shipping Corporation) has not appointed him to any post reserved for disabled persons, although he has been ranked in applications from time to time. He made a complaint to the Wafaqi Mohtasib. The Agency objected to the jurisdiction of the Mohtasib to investigate the complaint in view of the provisions of Article 9(2) of the Establishment of the Office of Wafaqi Mohtasib Ordinance, 1983 Regarding the complainant's suitability for appointment the Agency contended that the complainant does not qualify for employment in the Agency having permanent deafness, The Mohtasib overruling the Agency's contentions has recommended:

(i) The Agency (PNSC) should forthwith proceed to make the appointments against 2% quota reserved for disabled persons in pursuance of the government's policy on the subject, and

(ii) Consider the complainant's application for appointment against this quota.

3. The Agency has made a representation against the Mohtasib's recommendation.

4. In its representation the Agency contended that there is a plethora of judgments on the issue that Mohtasib could not investigate the complainant's complaint in view of the bar of jurisdiction contained in Article 9(2) of the 1983 Order By President's Secretariat letter dated 07. 10.2008 the Agency was told

that the bar of jurisdiction under Article 9(2) *ibid* applies to the complaint by an employee concerning any matter relating to the Agency in which he is or has been working in respect of any personal grievance relating to his service *rein*. The bar of jurisdiction does not apply to the job seeker who was not already in service. The Agency was also asked to furnish copies of the judgments on which it relies. The Agency was specifically cautioned that the judgments which it would refer should be of the cases where the complainant was not the employee of the relevant Agency but a job seeker. In response to the letter the Agency referred to the following judgments i.e. PLD 2001 Karachi 304, 1001 PLC (CS) 907, 2002 SCMR 958, 2002 PLC (CS) 960 and PLD 2003 Karachi 405. It is regrettable to note in all the judgments referred to by the Agency the complainant was either the employee of the relevant Agency or a person claiming through an ex-employee. The Supreme Court of Pakistan in *Federation of Pakistan vs Muhammad Tariq Pirzada* 1999 SCMR 2744 at 2751 has held: "He (complainant) had yet to enter the service and was not already in service for the purpose of the claim as made by him. Article 9 of the Order, therefore, could not stand in his way in seeking redress of his grievance through a complaint filed by him before the Wafaqi Mohtasib. We are, therefore, inclined to hold that the complaint lodged by the complainant before the Wafaqi Mohtasib was not hit by Article 9(2) of the Order.

5. So far as the objection to the complainant's suitability, is concerned that is not valid. The Agency was asked to explain that if it was not employing any disabled person has it complied with provisions of the Disabled Persons (Employment and Rehabilitation) Ordinance of 1981. The Agency's reply to the query was totally irrelevant. It is regrettable to note that the Agency has been contesting the complaint and pursuing the representation on totally peripheral grounds. It is guilty of maladministration.

6. Accordingly, the President has been pleased to reject the representation of the Agency. The receipt of this order shall be acknowledged by the Chairman of the Agency under his own"

2. PNSC's lawyer contended that both the Ombudsman's initial decision dated 27-/2007 (concerning private complaint No.K/00296/2006-SB-671) and the President's appellate order dated 09.10.2009 are unlawful, unreasonable, and beyond the legal authority of these bodies in matters of service. Consequently, he argued that these decisions are invalid and requested that this court dismiss the disabled person's complaint, asserting it was improperly filed. Furthermore, PNSC's counsel argued that the President's order of October 9, 2009, communicated through a Section Officer, does not constitute a valid judicial order under Article 32 of the President's Order No.1 of 1983 (citing legal precedent **SBLR 2008 SC 40**). He also claimed that it violated principles of natural justice by denying PNSC a fair hearing (referencing **1999 SCMR 2189 & 1999 SCMR 2744**) and contravened Section 24-A of the General Clauses Act 1897. The lawyer further asserted that the Wafaqi Mohtasib's decision of July 27, 2007, is illegal, without proper jurisdiction, and without factual basis. He maintained that their objections regarding the complaint's admissibility were not adequately addressed by either the Mohtasib or the President of Pakistan. Additionally, PNSC's counsel pointed out that the President did not personally issue or sign the appellate order. He emphasized that the complainant never actually applied for a position or demonstrated his eligibility with PNSC, under the relevant law, before lodging his complaint with the Mohtasib, thus questioning the finding of maladministration. Finally, PNSC's counsel stated that the petitioner has no other legal avenue available and is therefore, directly seeking relief through this

Constitutional Petition as the petitioner's primary recourse. He concluded by requesting that this court grant the captioned petition.

3. Private respondent is called absent without intimation; however, we have gone through his reply to the petition who narrated his ordeal with the submissions that the PNSCs' current plea was not raised before the learned Ombudsman and even after the Ombudsman's direction, they did not mention it to the President during the appeal. The Ombudsman repeatedly asked for a list of disabled employees, which the petitioner company failed to provide. The Ombudsman noted the petitioner's failure to provide this data, concluding they had not appointed any disabled individuals in violation of government orders applicable to all federal entities and even private organizations, rejecting the petitioners' "sensitive undertaking" excuse. The Ombudsman highlighted his valid disability certificate and registration, deeming him qualified for the 2% quota, and found the agency guilty of maladministration and disobedience. The President rejected the petitioner's appeal, noting their irrelevant replies and pursuit of peripheral grounds, finding them guilty of maladministration. Throughout, the petitioner company submitted the Ordinance's inapplicability, never claiming to have appointed disabled individuals under it. Only after the court's direction, they belatedly claimed to have appointed eight disabled persons, then claimed the records were destroyed, a claim never made before the lower forums or in the initial petition. This suggested that these appointments were never made under the disabled quota, especially given their own reported low employee numbers. He prayed for the dismissal of the petition.

4. The court has listened the arguments presented by PNSC's lawyer, the Assistant Attorney General, and considered the private respondent's response to the petition. The central issue under consideration is whether the Wafaqi Mohtasib and the President of Pakistan as an appellate authority possess the legal power to make orders regarding employment-related disputes (service matters).

5. It is urged that, as per Section 13(i) of the PNSC Ordinance 1979, the management of PNSC rest with its Board of Directors. While PNSC has its service regulations, framed under Section 39 of the same ordinance, these are considered non-statutory. Notably, the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968 does not apply to PNSC, as stated in Section 3 of the PNSC Ordinance. The "Disabled Persons' Employment and Rehabilitation Ordinance 1981" intends to promote the employment and welfare of disabled individuals. In June 2006, Respondent No.3 complained to the Wafaqi Mohtasib (Respondent No.2), alleging that PNSC failed to respond to his application for a position under the disabled persons' reserved quota, which he claimed violated government directives. On July 27, 2007, the Wafaqi Mohtasib

issued an order directing PNSC to proceed with the appointment according to the disabled persons' quota as per government policy, consider Respondent No.3's application for a role under this quota, and submit a compliance report within two months in terms of Article 11(2) of the President's Order No.1 of 1983. PNSC, being aggrieved by and dissatisfied with the decision, filed a representation against the Mohtasib's ruling with the President of Pakistan, as mandated under Article 32 of President's Order No.1 of 1983. However, the President / appellate authority rejected PNSC's representation, a decision conveyed to PNSC in a letter dated October 9, 2009. This letter reportedly described PNSC's challenge to the complaint as based on "totally peripheral grounds" and found them "guilty of maladministration." Consequently, PNSC initiated this petition in 2009 to challenge both the President's order and the Mohtasib's original findings and obtained an interim order 08.3.2024.

6. PNSC is challenging the Wafaqi Mohtasib's and President's decisions regarding the appointment of disabled individuals under a quota, submitting that this quota policy does not apply to them in terms of the Supreme Court judgments in the cases of Federation of Pakistan through Establishment Division v. Brig. (Rtd.) Zulfiqar Ahmed Khan and others (2007 SCMR 1313) and Peshawar Electric Supply Company Ltd. v. Wafaqi Mohtasib (Ombudsman) Islamabad and others (PLD 2016 Supreme Court 940).

7. The Wafaqi Mohtasib (Ombudsman), a statutory body appointed by Pakistan's President, resolves maladministration complaints against government entities ("agencies") as defined by The Order, 1983. Its investigative jurisdiction under Section 9 excludes matters before courts/tribunals, foreign/defense affairs, and personal service grievances within an employee's agency. Section 33 provides "additional jurisdiction" for informal dispute resolution. Clarifying service matter jurisdiction, the Ombudsman's circulars (including Aug 16, 2019, and Nov 10, 2023) generally exclude complaints from current/former employees against their agency, with exceptions for specific post-retirement and in-service benefits, and complaints from deceased employees' families. Following an Islamabad High Court ruling (*PESCO vs. President*), the Ombudsman (clarification Dec 3, 2020) ceased investigating such internal service grievances, except to facilitate agency-offered relief. The Ombudsman interprets its jurisdiction as: (1) No jurisdiction over internal service complaints of current/former employees. (2) Jurisdiction over service complaints against other agencies. (3) Jurisdiction over deceased employees' families' service complaints. (4) Under Section 33, can "entertain" retired employees' service complaints against their former agency for potential informal resolution.

8. High Courts and the Supreme Court have consistently addressed the maintainability of Article 199 petitions against Wafaqi Mohtasib (Ombudsman) and Presidential decisions under The Order, 1983. While Section 29 seemingly bars court jurisdiction over Mohtasib actions, the Supreme Court has established that High Courts retain the power under Article 199 to intervene if the Mohtasib or President acted beyond their legal authority, violated natural justice, or issued unreasoned orders. Crucially, the Supreme Court in *PIA vs. Wafaqi Mohtasib* (1998 SCMR 841) and *PESCO vs. Wafaqi Mohtasib* (PLD 2016 SC 940) ruled that a Constitutional Petition challenging a Mohtasib's order is permissible even without a prior Presidential Representation (under Article 32) if the Mohtasib's order lacked jurisdiction. The existence of Section 29 does not prevent judicial review in cases of jurisdictional defects.

9. The Supreme Court in *Federation of Pakistan vs. Brig. (Rtd.) Zulfiqar Ahmed Khan* supra ruled that pension matters based on civil service tenure are service-related, falling under the Service Tribunal's purview (Article 212), not the High Court or Mohtasib. The Mohtasib lacks jurisdiction (Article 9(2)) over personal service grievances against one's own agency. Thus, the Mohtasib's involvement was improper, and the High Court's reversal of the subsequent orders was overturned. Similarly, in *Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib*, supra the Supreme Court defined "mal-administration" broadly but affirmed the Mohtasib's powers are limited by Article 9. Ordering an overage appointment under a quota is an executive function outside the Mohtasib's scope. Article 9(2) also bars the Mohtasib from handling personal service grievances within a Federal Government "Agency," including government-controlled companies. If the Mohtasib exceeds this jurisdiction, the High Court can intervene constitutionally, and the alternative remedy of representation doesn't limit this power.

10. The Supreme Court in *Sui Northern Gas Pipelines Limited vs. President of Pakistan* (2020 SCMR 242) followed its precedent set in *Peshawar Electric Supply Company Ltd. v. Wafaqi Mohtasib*, supra. Quoting the *PESCO* case, the Court reiterated that the Wafaqi Mohtasib lacks jurisdiction under Article 9 of The Order, 1983, to entertain complaints regarding appointments or recommend appointments by relaxing age limits in public sector companies, as these are executive functions. Consequently, the Supreme Court in the *Sui Northern* case held that the Wafaqi Mohtasib did not have jurisdiction to hear Respondent No.3's case against the Petitioner Company, and the Lahore High Court erred in dismissing the Writ Petition.

11. These judgments consistently affirmed that matters concerning a respondent No.3's service complaint with an agency fall outside the Wafaqi

Mohtasib's (Ombudsman's) jurisdiction, as explicitly prohibited by Sub-Section (2) of Section 9 of The Order, 1983.

12. Based on the Supreme Court's rulings on service matter jurisdiction, this court finds that neither the Mohtasib nor the appellate authority had the authority to issue a formal Recommendation in service related matters. Consequently, the petition is allowed and both challenged decisions are set aside. However, acknowledging the petitioner's counsel's goodwill, this court directs respondent No.3 to apply for the position through the proper legal channels, and the competent authority of petitioner's corporation is directed to consider his candidature based on the differently-abled quota under the law within three months.

**JUDGE**

**HEAD OF CONST. BENCHES**