

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Tariq Parvez
Mr. Justice Ghulam Rabbani

CIVIL APPEALS NO.468, 471-474, 632-633, 852-859, 883-892, 899-901, 950 & 974 OF 2010

(On appeal from the judgment dated 22.12.2009 passed by the High Court of Sindh at Hyderabad in C.P. No.D-707 of 2009; judgment dated 29.10.2009 passed by the Peshawar High Court, Peshawar in W.P. No. 2140 of 2006, 144 & 398 of 2007, 1938 of 2008 and 2190 of 2009; judgment dated 16.03.2010 in C.P.No.D-297 & 299 of 2008; judgment dated 05.05.2010 passed by the Lahore High Court, Multan Bench in W.P. No. 4811, 5325, 5425, 5728 & 5798 of 2006, 551 of 2007 and 6143, 6691 & 9257 of 2009; judgment dated 03.06.2010 passed by the High Court of Sindh, Karachi in C.P. No.D-750 & 751 of 2006, 1695 & 1696 of 2008, 98, 298, 300, 682, 1950 & 1951 of 2009; judgment dated 15.06.2010 passed by the Peshawar High Court in W.P. No. 339 of 2006; order dated 14.06.2010 passed by the Lahore High Court, Lahore in W.P. No. 21202 of 2009; and judgment dated 17.06.2010 passed by the Lahore High Court, Multan Bench in ICA No. 219 of 2009)

CIVIL APPEALS NO. 468, 471-474, 632-633, 852-859, 899-901, 950 & 974 of 2010

Pakistan Telecommunication Co. Ltd. through its Chairman

... APPELLANT

VERSUS

Iqbal Nasir & 2 others

... RESPONDENTS
[CA 468/2010]

Fazal Karim & 17 others

... RESPONDENTS
[CA 471/2010]

Naseer Khan & 4 others

... RESPONDENTS
[CA 472/2010]

Muhammad Adnan Pasha & 3 others	... RESPONDENTS [CA 473/2010]
Muhammad Idrees & another	... RESPONDENTS [CA 474/2010]
Shakeel Ahmed & another	... RESPONDENTS [CA 632/2010]
Syed Ahsan Ali & another	... RESPONDENTS [CA 633/2010]
Hafiz Muhammad Hussain & 21 others	... RESPONDENTS [CA 852/2010]
Hafiz Muhammad Hussain	... RESPONDENT [CA 853/2010]
Muhammad Naveed Alam & another	... RESPONDENTS [CA 854/2010]
Abdul Ghaffar & 5 others	... RESPONDENTS [CA 855/2010]
Hafiz Muhammad Hussain	... RESPONDENTS [CA 856/2010]
Muhammad Ikhtlaq & 2 others	... RESPONDENTS [CA 857/2010]
Iram Zahra & another	... RESPONDENTS [CA 858/2010]
Iram Zahra & 3 others	... RESPONDENTS [CA 859/2010]
Imtiaz Ali & 39 others	... RESPONDENTS [CA 899/2010]
Qadeer Ahmed & 3 others	... RESPONDENTS [CA 900/2010]
Abid Hussain & another	... RESPONDENTS [CA 901/2010]
Murad Ali Khan & 4 others	... RESPONDENTS [CA 950/2010]
Irfan Bashir & 23 others	... RESPONDENTS [CA 974/2010]
<u>C.A. No. 883 of 2010</u>	
Manzoor Ali & 25 others	... APPELLANTS

VERSUS

Federation of Pakistan through Secretary
Ministry of Information & Technology &
Telecommunication, Islamabad & 3 others ... RESPONDENTS

<u>C.A. No. 884 to 892 of 2010</u> Muhammad Arif Joya	...	APPELLANT [CA 884/2010]
Allah Rakhio & another	...	APPELLANTS [CA 885/2010]
Abdul Ghafoor & another	...	APPELLANTS [CA 886/2010]
Ghulam Shabbir	...	APPELLANT [CA 887/2010]
Shah Muhammad Rajpur	...	APPELLANT [CA 888/2010]
Syed Muhammad Ally Raza & another	...	APPELLANTS [CA 889/2010]
Mukhtiar Ahmed & 6 others	...	APPELLANTS [CA 890/2010]
Naimat Ullah & 3 others	...	APPELLANTS [CA 891/2010]
Muhammad Rafique & 4 others	...	APPELLANTS [CA 892/2010]

VERSUS

General Manager & others ... RESPONDENTS

For the appellants: (in CAs 468,471-474, 632, 633, 853-859, 899-901, 950 & 974/2010)	Mr. Muhammad Munir Piracha, ASC Mr. Mehmood A. Sheikh, AOR, with Ms. Zahida Awan, GM (Legal) Syed Yamin Shah, Manager (HR)
For the appellants: (in CA. 852/2010)	Raja M. Ibrahim Satti, Sr. ASC
For the appellants: (in CAs 883-892/2010)	Mr. Nazir Ahmed Bhutta, ASC Mr. Mehmood A. Sheikh. AOR
For respondents : (in CAs.852-859/2010)	Mr. Muhammad Rafique Rajwana, ASC Mr. M.S. Khattak, AOR

For respondents : (in CAs.882-892 /2010)	Mr. Ejaz Faroze, ASC
For respondents : (in CA.899/2010)	Mir Afzal Malik, ASC
For respondents : (in CA.900 /2010)	Mr. M.A. Ghani, ASC
For respondents : (in CAs.471 & 950/2010)	Malik Qamar Afzal, ASC
For Telecom : Foundation : (in CAs.472-474 & 950/2010)	Mr. Ishtiaq Haider, ASC
Respondents : (in-person)	M/s Iqbal Nazir, Naqi Butt, Izhar-ud-Din Syed Ahsan Ali, Shakeel Ahmed, M. Adnan Pasha
Dates of hearing:	4, 22, 24, 29 & 30.11.2010

J U D G M E N T

Iftikhar Muhammad Chaudhry, CJ –. These appeals, by leave of this Court, are directed against the judgments passed on different dates by the High Court of Sindh at Hyderabad & Karachi, Peshawar High Court at Peshawar & D.I. Khan and Lahore High Court at Multan & Lahore in Constitution/Writ Petitions filed by the respondents/employees of the appellant company “Pakistan Telecommunication Co. Ltd.”, hereinafter referred to as the PTCL, against the termination of their service, and/or denial of the benefit of voluntary separation scheme introduced by the appellant.

2. The facts in C.A. No. 468 of 2010, arising out of judgment dated 22.12.2009 passed by the High Court of Sindh at Hyderabad in C.P. No.D-707 of 2009 are that the PTCL introduced a scheme for its employees known as “Voluntary Separation Scheme” (hereinafter referred to as “VSS”), whereby, apart from other benefits which an

employee was entitled to get, he was also entitled to receive early retirement benefits provided he had rendered a minimum of 20 years of service. The petitioners in the said petition [respondents herein] applied for the benefit of VSS, but were denied the same on the ground that they did not possess the requisite qualifying length of service. They wrote a letter to a learned Judge of the High Court of Sindh, Circuit Bench, Hyderabad which was converted into a Constitution Petition and notices were issued to the concerned authorities. The claim of the said respondents was that they had completed 20 years of service from the date of their appointment, but they were wrongly denied the benefit of VSS. On the other hand, the stance of the PTCL was that the respondents/petitioners were appointed on 14.12.1981 & 24.03.1983 respectively, they passed their recruitment examination on 03.08.1987 and completed their training on 30.10.1988 & 02.04.1990 respectively, therefore, their service could only be considered from the date of successful completion of training, and not from the date of their initial appointment. In rebuttal, the respondents referred to the case of one Mrs. Rubina Khadim, Telephone Operator who was granted similar benefits on the basis of date of her appointment and not with reference to the date of completion of training, and submitted that the act of the PTCL was a clear case of discrimination, which warranted interference by the High Court in the exercise of its constitutional jurisdiction. The learned Division Bench of the High Court allowed the Constitution Petition and directed the PTCL to extend the benefit of VSS to the respondents as well. Following the view thus taken, another learned Division Bench of the said High Court at Hyderabad, *vide* a common judgment dated 16.03.2010 passed in Constitution Petitions No. D-297 & D-299 of

2008 granted relief to the petitioners therein and the PTCL was directed to pay to them the balance amount and monthly pension as claimed by them.

3. Aggrieved by the said judgment/order, the PTCL approached this Court by means of Civil Petitions No. 516, 1185 & 1186 of 2010 wherein leave was granted *vide* separate orders dated 08.07.2010 and 19.07.2010 to consider, *inter alia*, the contentions that writ in the matter could not be issued to the PTCL as it was not performing functions in connection with the affairs of the Government, and even if it was assumed to be performing such functions, still the subject matter of the impugned judgment was not connected with the affairs of the Government, and further whether the rules framed by the PTCL were statutory or not.

4. Civil Appeal No. 901 of 2010 arises out of the judgment dated 17.06.2010 passed by the Lahore High Court, Multan Bench in ICA No. 219 of 2009, filed by the appellant-employee of the PTCL, Multan Region, who had opted for VSS wherein the cut off date was mentioned as 26.05.2008 but he could not be relieved from service due to some unavoidable reasons and continued till 04.06.2008, therefore, he claimed the pay and benefits up-till 04.06.2008, which were declined by the PTCL authorities. He then approached the Lahore High Court, Multan Bench through Writ Petition No. 4690 of 2008, which was dismissed *vide* order dated 08.07.2009. Aggrieved by the said order, the respondent challenged the same in ICA No. 219 of 2009, which was allowed by the Division Bench *vide* order dated 17.06.2010 and the remuneration for the period over and above the cut off date was ordered to be paid to him.

5. This Court, *vide* orders dated 21.09.2010 and 28.09.2010 passed in Civil Petitions No. 1569, 1622-1626, 1742 & 1780 of 2010, and 1678, 1679 & 1694 of 2010 respectively, filed against the above judgments, granted leave to appeal to the PTCL in terms of leave granted in Civil Petitions No. 516 of 2010 and 1185 of 2010.

6. Civil Appeals No. 899 & 900 of 2010 arise out of judgment dated 15.06.2010 passed by a Division Bench of the Peshawar High Court in Writ Petition No. 339 of 2006 and order dated 14.06.2010 passed by a learned Single Judge of the Lahore High Court, Lahore in Writ Petition No. 21202 of 2009 respectively, filed by the petitioners-employees of the PTCL, Peshawar and Lahore Regions seeking a declaration that they were employees of the PTCL from the date of appointment and entitled to the same wages as were being paid to other regular employees of PTCL, and the termination orders made by the PTCL or by the Foundation were void, as also a direction to the PTCL to take them on its strength from the date of appointment and to pay them salary. By the impugned judgment and order, the relief prayed for was granted by the respective High Courts, against which leave was granted by this Court *vide* order dated 28.09.2010 passed in Civil Petitions No. 1678 & 1679 of 2010.

7. Another set of appeals, namely, Civil Appeals No. 471, 472, 473, 474 & 950 of 2010 arises out of the consolidated judgment dated 29.10.2010 passed by the Peshawar High Court in Writ Petitions No. 2140 of 2006, 144 & 398 of 2007, 1934 of 2008 and 2190 of 2009 filed by the petitioners-employees of the PTCL, Peshawar Region against the termination of their services due to the termination of contract by the PTCL with the Telecom Foundation regarding hiring of services of skilled, semi-skilled and unskilled manpower in that region.

It was pleaded that the impugned orders of termination of services were patently *mala fide* as neither their jobs were abolished nor any charge existed against them, which were also discriminatory and deprived them of the equal treatment before, and equal protection of law, inasmuch as various other similarly placed employees were made permanent and were continuing in service. A learned Division Bench of the Peshawar High Court, following the law laid down by this Court in the judgment reported as PTCL v. Muhammad Zahid (2010 SCMR 253), on a parity of reasoning, allowed the writ petitions and declared the impugned orders to be without jurisdiction, without lawful authority and of no legal effect, besides being discriminatory and ordered the petitioners to be restored on their respective posts with all back benefits due to them under the contract agreement except the monthly salary as they had not practically worked on their posts.

8. This Court, *vide* order dated 05.07.2010 passed in Civil Petitions No. 2581, 2582, 398 and 612 of 2010 filed against the above judgment, granted leave to appeal to the PTCL to consider, *inter alia*, the contention that there was no statutory right in favour of the respondents-employees to continue in service despite retrenchment, which aspect was not adverted to by the learned High Court.

9. The next set of appeals, namely, Civil Appeals No. 852 to 859 & 974 of 2010 arises out of the consolidated judgment dated 05.05.2010 passed by the Lahore High Court, Multan Bench in Writ Petitions No. 4811, 5325, 5425, 5728 & 5798 of 2006, 551 of 2007 and 6143, 6691 & 9257 of 2009, all filed by the petitioners-employees of the PTCL, Multan Region against the termination of their services. It was pleaded that in the light of the judgment of this Court reported as Muhammad Zahid (supra), the petitioners were entitled to the same

relief, i.e. the regularization of their appointment and grant of same wages as were being paid to the other regular employees of the PTCL. In pursuance of the interim orders passed by the High Court, the petitioners continued to perform their duties. A learned Single Judge of the Lahore High Court, Multan Bench, in the light of the precedent case of Muhammad Zahid (supra) allowed the writ petitions and granted the relief prayed for.

10. Yet another set of appeals, namely, Civil Appeals No. 883 to 892 of 2010 arises out of the consolidated judgment dated 03.06.2010 passed by the High Court of Sindh, Karachi, in Constitution Petitions No. C.P. No.D-750 & 751 of 2006, 1695 & 1696 of 2008 and 98, 298, 300, 682, 1950 & 1951 of 2009, all filed by the petitioners-employees of the PTCL, Karachi Region against the termination of their services. A learned Division Bench, in the light of the law laid down by this Court in the cases of Muhammad Zahid (supra) and PIAC v. Tanweer-ur-Rehman (PLD 2010 SC 676) held that though PTCL was a person amenable to the jurisdiction of the High Court under Article 199(5) of the Constitution, but since PTCL did not have statutory rules, the writ petitions of the employees of PTCL were not maintainable, therefore, the same were dismissed and the petitioners were allowed to seek such remedies as were available to them under the law. Leave against the aforesaid judgment was granted by this Court *vide* order dated 28.09.2010 passed in Civil Petitions No. 1589 to 1598 of 2010.

11. Mr. Muhammad Munir Piracha, ASC, learned counsel for the appellant PTCL contended that the PTCL was not a person performing functions in connection with the affairs of the Federation within the meaning of Article 199(5) of the Constitution, inasmuch as the Federal Government, on 12.04.2006, entered into an agreement

with Etisalat International Pakistan LLC, hereinafter referred to as “the EIP” whereby 1,326,000,000 shares of the PTCL were transferred to the EIP, therefore, the management of the company vested in the EIP. He argued that the PTCL had succeeded the Pakistan Telecommunication Corporation, hereinafter referred to as “the PTC”, which was governed by section 6 of the Pakistan Telecommunication Corporation Act, 1991 [hereinafter referred to as the Act of 1991], therefore, only such functions of the Corporation, which were performed in pursuance of section 6 *ibid*, could be said to be functions in connection with the affairs of the Federation. The matters dealing with the officers and servants of the PTCL, which vested in the EIP, were not the functions in connection with the affairs of the Federation. The learned counsel maintained that the law laid down in Muhammad Zahid’s case, which was rendered at a time when the controlling share of the concern vested, not with the EIP, but with the Federal Government was required to be revisited/clarified in view of the fact that the controlling shares had subsequently been vested with the EIP.

12. Mr. Muhammad Ibrahim Satti, learned Sr. ASC, also appeared on behalf of the PTCL and submitted that in absence of statutory rules, the employees of the PTCL were governed by the principle of “Master and Servant” and the writ petitions were not competent and the learned High Courts wrongly assumed jurisdiction under Article 199 of the Constitution. He contended that the terms and conditions of service of employees of the PTCL were governed by the contracts of service, according to which they were temporary employees/daily wagers, therefore, they could not claim permanent appointments against the provisions of the contracts, which provided, *inter alia*, that the employees would not have any right of permanent

induction in service. The learned counsel submitted that Muhammad Zahid's case was wrongly relied upon by the learned High Courts in the instant case, inasmuch as this Court has clarified/modified the judgment in the said case in the subsequent judgment to the effect that the employees who were not governed by statutory rules were debarred to invoke the jurisdiction of the High Court under Article 199 of the Constitution. To substantiate his argument, he referred to Executive Council Allama Iqbal Open University v. M. Tufail Hashmi (2010 SCMR 1484), which laid down that the employees of only such organizations were entitled to invoke constitutional jurisdiction of the High Court, which were performing functions in connection with the affairs of the Federation and whose services were governed by statutory rules.

13. Mr. M.A. Ghani, ASC for the respondents-employees in C.A. No. 900/2010 argued that the respondents were workmen as defined in section 2 (xxviii) of the Industrial Relations Ordinance, 1969, section 2 (xxx) of the Industrial Relations Ordinance, 2002 and clause (g) of Order 1 of the Schedule to the W.P. (Standing Orders) Ordinance, 1968, the role of Telecom Foundation was only of employment exchange and they were the employees of the PTCL from the date of appointment, regular after 183 days of service and entitled to same wages as were being paid to regular employees of the PTCL as held in Masood v. PIAC [2001 PLC (CS) 41], which formed the basis of Muhammad Zahid's case (supra). The learned counsel submitted that Masood's case (supra) was also relied upon in Ikram Bari v. National Bank (2005 SCMR 100). In the latter case, the Bank had terminated the services of daily wages employees on the ground that although the employees were appointed by the Bank, yet their salaries were being

paid by the borrowers/loanees. However, the termination orders were set aside by this Court, *inter alia*, holding as under: -

- (1) The fact that the wages of the employees were debited to the borrower's account would make no difference since for all practical purposes and legal consequences they were placed under the administrative control of the Bank;
- (2) Islamic welfare state is under an obligation to establish a society, which is free from exploitation wherein social and economic justice is guaranteed as envisaged by Article 2A of the Constitution; and
- (3) Under Article 38 of the Constitution, State is obliged to secure the well being of the people by raising their standards of living and by ensuring equitable adjustment of rights between employer and employees while Article 3 requires the State to ensure elimination of all forms of exploitation, therefore, the approach of the Bank that temporary Godown staff and daily wages employees should be continued to be governed on disgraceful terms and conditions of service for indefinite period could not be countenanced.

According to the learned counsel, the other case, which lay at the foundation of Muhammad Zahid's case was Muhammad Asam v. PTCL [1997 PLC (CS) 1131] wherein it was laid down that whoever completed 183 days including artificial breaks shall be permanent workman. The claim of the PTCL was that the Foundation was the employer whereas the claim of the employees was that as they worked for, at the premises, and under the administrative control, of the PTCL, therefore, they were the employees of the PTCL. The question as to who was the employer, whether PTCL or the Foundation could not be agitated before the Labour Court where a worker could just file a grievance petition against the employer, therefore, the claim and the conduct of the PTCL being in violation of the definition of workman,

such a question could only be settled in writ jurisdiction of the High Court. The impugned termination orders were void, therefore, the same were rightly challenged before the High Court in its writ jurisdiction. Reference was made to Nazir Ahmed Panhwar v. Govt. of Sindh [2009 PLC (CS) 161] and Municipal Committee, Arifwala v. Muhammad Ramzan (2005 SCMR 1721) for the proposition that in case of violation of the principles of natural justice, writ petition was competent even in a case involving contractual obligation, and to the case of Sharifan Begum v. Abdul Aziz (PLD 1975 SC 475) for the proposition that in case of violation of Article 25 of the Constitution, resort could only be made to the remedy provided by the Constitution.

14. The learned counsel also submitted that the liability imposed upon the employer under the Industrial & Commercial Employment Standing Order of confirming the employees after 183 days' service including artificial breaks could not be defeated by contract as held by this Court in Pakistan International Airlines v. Sindh Labour Court No.5 (PLD 1980 SC 323) and Ikram Bari (supra).

15. Mr. Nazir Ahmed Bhutta, ASC for the appellants in C.A. No. 883 to 892 of 2010 submitted that the appellants-employees were actually appointed in Pakistan Telegraph and Telephone Department in the year 1992, the predecessor of the PTC. They were imparted prescribed departmental training/courses, which they successfully completed. On promulgation of the Act of 1991, they were transferred to the PTC on the same terms and conditions as they were entitled in the T&T Department as its employees in the light of the provisions of section 9 of the Act of 1991 and subsequently on promulgation of the Pakistan Telecommunication (Re-organization) Act, 1996 [hereinafter referred to as the Act of 1996], the terms and conditions of the

transferred employees were protected under section 35(2) and section 36(1) & (2) of the latter Act. However, suddenly the appellants and their other colleagues were terminated from service. Such termination orders were challenged by some of the employees before the Federal Service Tribunal, which were set aside and the employees reinstated in service with back benefits *vide* judgment reported as Ch. Muhammad Ashraf v. State Life Insurance [2002 PLC (CS) 948]. The benefit of said judgment was extended to another lot of employees who had not challenged their termination at the initial stage in the light of the law laid down in Hameed Akhtar Niazi v. Secretary, Establishment Division Government of Pakistan (1996 SCMR 1185). Similarly, the High Court of Sindh at Hyderabad *vide* order dated 28.04.2004 passed in Constitution Petition No. D-283 of 2003 allowed the request of some employees directing the respondents to give equal treatment to the petitioners. The said order was upheld by the Supreme Court *vide* order dated 26.09.2005 passed in CPLA No. 471-K of 2004. The appellants-employees were denied such benefit and were discriminated, therefore, they approached the High Court by means of Constitution Petition, which was dismissed by the impugned consolidated judgment dated 03.06.2010. The said impugned judgment was in conflict with the judgment dated 04.04.2003 passed by the said High Court in C.P. D-2301 and 2410 of 2001, order dated 16.05.2005, which had already been implemented by the PTCL Management, judgment of that High Court reported as 2007 PLC (CS) 174, reinstatement of employees by the PTCL *vide* orders dated 20.11.2001 and 06.08.2002, and judgment of the Lahore High Court passed in W.P. No. 1444 of 2001 against which appeal was dismissed by the Supreme Court in Muhammad Zahid's case.

16. The employees-respondents in C.A. No. 468 of 2010 submitted that six Teleprinter Operators of defunct Central Telegraph Office, Hyderabad, Sindh, namely, Allah Bux, Muhammad Akram, Ateequddin, Iqbal Nasir, Muhammad Naqi Butt and Izharuddin Alvi had given their option under VSS and were retired, out of whom first three were granted pensionary benefits whereas the latter three, i.e., respondents No. 1 to 3 in C.A. No. 468 of 2010, were deprived of the pensionary benefits by ignoring the intervening period between appointment and training, though they were appointed after qualifying the recruitment examination, had been regularized by the competent authority from the date of *ad hoc* appointment, had put in continuous service of 26, 24 and 24 years respectively, were senior to their above mentioned colleagues who were granted the similar benefit, and were qualified to avail the pensionary benefits under the said scheme, having served for more than 20 years. One Mrs. Rubina Khadim was also extended the benefit of VSS counting her service from the date of appointment as against the date of completion of training. They relied upon Muhammad Zahid's case and prayed for equal treatment.

17. Malik M. Rafique Rajwana, ASC for the respondents No. 1 to 20 in C.A. No. 852 of 2010 raised a preliminary objection that the appeal was not maintainable as the appellant had failed to avail the remedy of intra-Court appeal before a Division Bench of the High Court as provided in section 3(2) of the Law Reforms Ordinance, 1972 and the judgment reported as PIAC v. Samina Masood (PLD 2005 SC 831). He further submitted that the judgment dated 05.05.2010 was not being implemented by the appellants, therefore, the respondents filed contempt petitions in which General Manager PTCL, Islamabad appeared and made a statement that in case no stay order had been

granted by the Supreme Court, they would be implementing the judgment dated 23.09.2010. Consequently, they issued letters of implementation/appointment in BPS and the respondents accordingly had joined the PTCL and were posted in different units and were performing their respective duties. Therefore, the appeal had become infructuous.

18. The learned counsel further submitted that W.P. No. 5122 of 2004 was disposed of by the Lahore High Court, Multan Bench after the PTCL had given the assurance/undertaking in the following terms: -

“Learned counsel for the respondent, with reference to the comments filed by the respondents, states that apprehension expressed in the writ petition are rather unfounded, inasmuch as the respondents are taking steps to adjust all the daily wages employees, however, number of employees is large and process initiated will take some time. He, however, ensures that no steps will be taken discriminatory regarding the petitioners.

2. In view of the said statement of the learned counsel for the respondents, grievances stand redressed at the moment and the writ petition is accordingly disposed of.”

Subsequently, in W.P. No. 5325 filed before the same High Court, the following order was passed: -

“Learned counsel contends that the petitioners are old employees and their cases were being actively considered for regularization and in fact an assurance had been given to this Court as well earlier in W.P. No. 5122 of 2004. The contention is that in the garb of the impugned letter (Annex-M), in fact services of the petitioners were sought to be terminated and they were not being allowed to work. Subject to notice for an early date, no interference with the performance of the duties of the petitioners.”

The learned counsel submitted that the PTCL having accepted the version of the respondents could not be permitted to blow hot and cold in the same breath and to violate their own undertaking, which had also been implemented. He stated that the PTCL had framed policy/criteria for adjustment/regularization of the daily wages employees converted to Telecom Foundation, namely, age not more than 50 years on 30.06.2005; minimum one month pay drawn as daily wages employee before conversion to Telecom Foundation; and daily wages employees who had entered PTCL up to 31.12.2001. The said policy was duly pleaded by the PTCL in W.P. No. 5325 of 2006 and W.P. No. 6143 of 2009 stating therein that the entire exercise regarding regularization of the said employees was being done in good faith to accommodate the left over daily wages employees.

19. The learned counsel vehemently argued that the respondents were being discriminated in violation of the provisions of Articles 2A, 4 and 25 of the Constitution, as against the other operators performing services permanently with the PTCL or having been regularized in due course as operators etc., in the International Gateway Exchange performing similar functions. The learned counsel submitted that the respondents employed on daily wages were not regularized despite having rendered service for a period of more than two years as contract employees renewed from time to time while various other daily wages employees who were junior to them described in ground (b) of W.P. No. 6143 of 2009 allowed *vide* order dated 05.05.2010, the subject-matter of C.A. No. 852 of 2010, were regularized. He submitted that the contention of the appellants that the respondents being the employees of the Telecom Foundation, which is an industrial establishment were workmen as defined under

the IRO and the W.P. Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 was held not relevant in Muhammad Zahid's case for the purpose of redressal of grievance of the respondent-employees pertaining to discrimination, which could hardly be dealt with under the labour laws.

20. The learned counsel further submitted that the question of invoking of jurisdiction of High Court under Article 199 of the Constitution by the employees of the PTCL was dealt with at great length in Muhammad Zahid's case wherein the entire legislative history beginning with Telegraph Act, 1885 up to the Act of 1996 and the relevant case law on the subject were minutely examined and the controversy was set at rest once for all, by *inter alia*, holding as under: -

- (1) The Telecommunication undisputedly is the subject which pertains to one of the important affairs of the Federation dischargeable now through the PTCL; hence such entity involved in the same exercise of the sovereign powers, essentially falls within the context of 'person' as defined in clause (5) of the Article 199 of the Constitution, therefore, for the above reasons the grievance of the private respondents was amenable to the writ jurisdiction of the High Court.
- (2) The claim of the appellants that the private respondents are the employees of the Foundation which is an 'industrial establishment' and are 'workmen' as defined in the relevant provisions of the I.R.O., 2002 and as given in the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 in view of the above discussion, relating to the issuance of the writ by the High Court, seems to us not relevant to be dilated upon nor for the redressal of their grievance made in the writ petition which substantially pertains to the contention of

discrimination, can hardly be dealt with under the Labour Laws. Undisputedly, the crux of the case of the private respondents has been that they are being discriminated as against the other Operators performing service permanently with the PTCL or having been regularized in due course as Operators in the International Gateway Exchange performing similar functions in the Exchange apparently amounts to have been grossly violated as against the guaranteed rights under Articles 2A, 4, and 25 of the Constitution by depriving them of their emoluments besides all other service benefits etc., described in paragraph No.2 of the writ petition being paid to other Operators performing service in the said Exchange and similarly placed and, therefore, discriminatory treatment has been meted out to the writ petitioners employed on daily wages and not regularized despite having rendered service for a period of more than 2 years as contract employees renewed from time to time mentioned in Para. No.16 (supra), therefore, the impugned judgment is unexceptionable irrespective of the status of the private respondents be that of a 'worker' or a 'civil servant' or the 'contact employee' having no nexus to the maintainability of the writ petition on the ground of discrimination meted out to them.

21. We have heard the learned counsel for the parties and have gone through the impugned judgments as also the case-law cited at the bar in support of the respective contentions.

22. The question whether the PTCL was a 'person' performing functions in connection with the affairs of the Federation within the contemplation of Article 199(5) of the Constitution was first dilated upon by this Court at great length in Muhammad Zahid's case in which the plethora of case law was gone into and it was held that the employees of the erstwhile T&T Department transferred to the Corporation [PTC] under the relevant provisions of the Act of 1991

and later on succeeded by the PTCL, discharging their functions and duties in the International Gateway Exchange as Operators were inducted permanently or regularized subsequently under the rules necessarily related to one of the affairs of the Federation within the purview of provisions of Article 199 of the Constitution; hence similar duties and functions in the International Gateway Exchange being discharged by the private respondents as Operators could not be distinguished to say that the same did not relate to the affairs of the Federation though conferred upon the Corporation [PTC], and finally upon the PTCL. It was further held that the Telecommunication undisputedly was the subject which pertained to one of the important affairs of the Federation dischargeable now through the PTCL; hence such entity involved in the same exercise of the sovereign powers, essentially fell within the connotations of the word 'person' as defined in clause (5) of the Article 199 of the Constitution; accordingly, the grievance of the private respondents was amenable to the writ jurisdiction of the High Court. However, it was observed that the status of the private respondents, be that of a 'worker' or a 'civil servant' or a 'contract employee' had no nexus to the maintainability of the writ petition on the ground of discrimination meted out to them.

23. It may also be added here that as rightly held by a learned Division Bench of the High Court of Sindh in the judgment impugned in C.A. No. 883 of 2010 that the Federal Government had first sold 12% shares through public subscription and then it sold 26% [all of B class shares] to the EIP and the remaining 62% shares of PTCL were still owned by the Federal Government and as long as the Government owned majority shares in said entity either in its own name, or

whether wholly or partially in the name of any other organization or entity controlled by the Government, PTCL was and should continue to be amenable to the jurisdiction of the High Court under Article 199 of the Constitution. In this view of the matter, the argument that the PTCL was not a person within the meaning of Article 199(5) of the Constitution is not tenable.

24. However, this Court, in the case of Principal Cadet Collage Kohat v. Mohammad Shoaib Qureshi (PLD 1984 SC 170), while dealing with the question, as to whether in absence of any breach of statutory provision the employees of a corporation can maintain an action for reinstatement, held that where the conditions of service of an employee of a statutory body were governed by statutory rules, any action prejudicial taken against him in derogation or in violation of the said rules could be set aside by a writ petition; however, where his terms and conditions were not governed by statutory rules but only by regulations, instructions or directions, which the institution or body, in which he was employed, had issued for its internal use, any violation thereof would not, normally, be enforced through a writ petition. Recently, this Court in Tanweer-ur-Rehman's case (supra), while dealing with the issue of invoking of jurisdiction of the High Court under Article 199 of the Constitution by the employees of the PIAC, held that although the appellant-Corporation was performing functions in connection with the affairs of the Federation, but since the services of the respondent-employees were governed by the contracts executed by them with the employer, and not by the statutory rules framed under section 30 of the Pakistan International Airlines Corporation Act, 1956 with the prior approval of the Federal Government, therefore, they would be governed by the principle of

'Master and Servant'. On the question whether in absence of any breach of statutory provision, the employees of appellant-Corporation could maintain an action for reinstatement etc., it was observed that the said question needed no further discussion in view of the fact that this Court was not of the opinion that if a Corporation was performing its functions in connection with the affairs of the Federation, the aggrieved persons could approach the High Court by invoking its constitutional jurisdiction. But as far as the cases of the employees regarding their individual grievances were concerned, it was held that they were to be decided on their own merits, namely, if any adverse action was taken by the employer in violation of the statutory rules, only then such action would be amenable to the writ jurisdiction. Therefore, in absence of statutory rules, the principle of 'Master and Servant' would be applicable and such employees would be entitled to seek remedy permissible before the Court of competent jurisdiction. Similarly, in M.Tufail Hashmi (supra), after discussing the aforesaid two judgments in detail, it was held that the employees of those organizations, which were performing functions in connection with the affairs of Federation, were eligible to approach the High Court under Article 199 of the Constitution if their services were governed by statutory rules. It was further held that since the employees of AIOU, SME Bank and Pakistan Steel Mills, who approached the Service Tribunal for redressal of their grievances, were not enjoying the protection of statutory rules, therefore, the Service Tribunal had no jurisdiction to adjudicate upon such matters and they would be governed by the principle of 'Master and Servant'.

25. The learned counsel for the respondents though placed on record a copy of the Pakistan Telecommunication Corporation Service

Regulations, 1996 framed under section 20 of the Act of 1991, but failed to show whether the said Regulations were duly notified in the official gazette. However, even if such Regulations were duly made, they were not holding the field after the repeal of the Act of 1991 under which the said Regulations were made. Further, as per Regulation 1.02 thereof, the said Regulations would not apply to a person employed on contract or on work-charged basis or who is paid from contingencies. They would be governed by the principle of 'Master and Servant'. Applying the principles of law enunciated in the above cited judgments to the case in hand, in absence of statutory rules, writ petitions filed by the employees of the PTCL were not maintainable.

26. The argument of the learned counsel that the respondents were the employees of the PTCL from the date of appointment, regular after 183 days of service and entitled to same wages as were being paid to regular employees of the PTCL is untenable. It may be observed that as provided in clause (g) of Order 1 of the Schedule to the W.P. (Standing Orders) Ordinance, 1968, a contract worker is a workman who works on contract basis for a specific period of remuneration to be calculated on piece rate basis, while clause (b) of Order 1 of the Schedule to the W.P. (Standing Orders) Ordinance, 1968, provides that a 'permanent' workman is a workman who has been engaged on work of permanent basis likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment, and includes a *badli* who has

been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months. In this view of the matter, an aggrieved person falling within the definition of workman would be well within his rights to seek remedy at the appropriate forum as provided in Order 12 of the Schedule referred to above. However, as held in PIAC v. Sindh Labour Court No.5 (PLD 1980 SC 323), the respondents had been employed, not on permanent basis, but on contract and would be governed by the provisions of the contract of service. The nature of employment of the respondents can be easily understood from a perusal of a contract of service entered by Muhammad Idrees Khan, respondent No. 1 in C.A. No. 474 of 2010 with the Telecom Foundation, which, *inter alia*, provides as under: -

“TELECOM FOUNDATION

SHORT TERM CONTRACT

Mr. Muhammad Idrees Khan s/o Haji Chamnay Khan is hereby contracted in Telecom Foundation as Cable Guard with effect from _____ at the rate of Rs.153/- per day (Rs.4600/- per month). He is directed to report to A.E. O.F.C. (PTCL) Peshawar for further deployment as and where required by them on the following terms and conditions: -

- 1. PERIOD OF CONTRACT
Service shall be on contract for a period of Eighty Nine (89) days.
-
- 9. TERMINATION OF CONTRACT
This contract shall be liable to termination any time without notice even on account of _____ political activities, trade unions and due to misconduct and unsatisfactory service.

Manager (M&T)
Telecom Foundation

I, Muhammad Idrees Khan s/o Chamnay Khan resident of Village Bab-e-Jadeed P.O. Taru Jabba Tehsil & District Nowshera, have

carefully read the above instructions and agree to the terms and conditions for the employment as Cable Guard on contract basis."

All the employees having entered into contracts of service on the same or similar terms and conditions have no vested right to seek regularization of their employment, which is discretionary with the master. The master is well within his rights to retain or dispense with the services of an employee on the basis of satisfactory or otherwise performance. The contract employees have no right to invoke writ jurisdiction, particularly in the instant case where their services have been terminated on completion of period of contract. Since they fall within the definition of workman, they would be entitled to one month's notice or salary in lieu thereof, as permissible to them under the rule of master and servant.

27. As to the contention of Mr. Qamar Afzal, ASC that the respondent-employees had been discriminated in terms of Article 25 of the Constitution, suffice it to say that in the light of the law laid down in I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041), reasonable classification is permissible. The private respondents in Muhammad Zahid's case were already in service whereas the private respondents herein were working with the PTCL either on contract or on daily wages basis, therefore, the rule of 'Master and Servant' would be applicable. In this view of the matter, Article 25 is not attracted in the present case.

28. The cases of Engineer Naraindas v. Federation of Pakistan (2002 SCMR 82) and Ikram Bari v. National Bank of Pakistan through President (2005 SCMR 100) stand on a different factual matrix, inasmuch as the services of temporary employees (godown staff, daily wagers, etc.) were terminated whereas in the instant case the

employees were working with the PTCL under contracts of service. Even otherwise, the said case had arisen out of a judgment of the Federal Service Tribunal.

29. As to the case of the employees seeking the benefit of VSS, no relief could be granted to them by the High Court in view of the non-maintainability of their writ petitions on the ground that their services were not governed by any statutory rules and even the VSS was not offered under, or in terms of, any statutory provisions.

30. In the light of the above, the case of Muhammad Zahid in which relief was granted on the ground of discrimination irrespective of the status of the employees, be that of a worker, or a civil servant or a contract employee could not be relied upon in the instant case.

31. As regards the objection regarding non-filing of Intra-Court Appeals before filing the petitions for leave to appeal in the instant cases taken by the learned counsel for the respondents-employees, suffice it to say that though a similar view was taken in some of the cases, namely, Imtiaz Ali Malik v. Mst. Surrya Begun (1979 SCMR 22), Pakistan International Airlines Corporation v. Samina Masood (PLD 2005 SC 831) and Accountant General for Pakistan (Revenue) through Auditor-General v. Zia Mohy-ud-Din (PLD 2008 SC 164), but in a number of cases, such as, Mst. Shohrat Bano v. Ismail Dada Adam Soomar (1968 SCMR 574), Punjab Employees Social Security Institution Lahore and others v. Manzoor Hussain Khan (1992 SCMR 441), Province of Punjab through Secretary Excise and Taxation, Government of Punjab v. Sargodha Textile Mills Ltd., Sargodha (PLD 2005 SC 988) and Commissioner of Income Tax v. Messrs Media Network (PLD 2006 SC 787), this Court has held that requiring of filing ICA is a rule of practice for regulating the exercise of discretion which

does not oust or abridge the constitutional jurisdiction of this Court and in certain exceptional circumstances this Court can entertain petitions, or as the case may be, direct appeals even where the remedy of ICA under section 3 of the Law Reforms Ordinance, 1973 has not been availed by a party. We may observe that in the first instance no such objection was taken at any earlier stage of the proceedings. Further, some of the appellants-employees have also directly approached this Court against the impugned judgments passed by a learned Single Judge of the High Court. Therefore, it would not be appropriate to examine the question at this stage, in view of the peculiar facts and circumstances of these cases.

32. As far as the non-implementation of the order is concerned, it may be observed that if an order is bad or cannot be implemented, it would make no difference.

33. Writ petitions, which are the subject matter of Civil Appeals No. 883 to 892 of 2010 also suffered from *laches*, hence the same were not maintainable on that score as well.

34. As a result of the above discussion, the appeals filed by the PTCL are allowed and the judgments/orders impugned therein are set-aside while the appeals filed by the employees are dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

Announced on ____ day of December, 2010
At Islamabad.

CHIEF JUSTICE

APPROVED FOR REPORTING