

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.322 of 2016
Shoaib ur Rehman
Versus.

The M.D., Telephone Industries of Pakistan (Pvt.) Ltd. and another

Date of Hearing: 23.01.2018
Petitioner by: Mr. Safdar Shaheen Pirzada, Advocate,
Respondent No.1 by: Mr. Abdur Rehman Qadar, Advocate.

MIANGUL HASSAN AURANGZEB, J:-Through the instant writ petition, the petitioner, Shoaib ur Rehman, former General Manager (Digital Switching) in the Telephone Industries of Pakistan ("T.I.P."), impugns notification dated 03.12.2014 whereby the petitioner's pensionary benefits were forfeited, and all other facilities availed by him and his family from the T.I.P. were recalled as a consequence of the petitioner's conviction and sentence of rigorous imprisonment for a period of five years vide judgment dated 27.11.2014, passed by the learned Judge Accountability Court No.1, Islamabad, in Reference No.15/13-IBD, titled "State Vs. Azad Bakht etc".

2. The position taken by the petitioner in his writ petition was that the National Accountability Bureau had filed Reference No.15/13-IBD titled "State Vs. Azad Bakht etc", before the learned Accountability Court, Islamabad; that the petitioner was one of the accused in the said reference; that in the said reference, it was alleged that the petitioner had committed an offence under Section 9 of the National Accountability Ordinance, 1999, and had caused a loss amounting to Rs.26.85 Million to the T.I.P.; that the trial culminated in the judgment dated 27.11.2014, whereby the petitioner was convicted, and was sentenced for a period of five years rigorous imprisonment with a fine of Rs.5 Million; that the said judgment has been challenged before this Court in writ

petition No.4904/2014; that vide order dated 12.05.2015, this Court has suspended the operation of the said judgment; that the appeal of the National Accountability Bureau against the said order dated 12.05.2015 has been dismissed by the Hon'ble Supreme Court; and that respondent No.1, vide impugned notification dated 03.12.2014, forfeited the petitioner's pension, and recalled all other facilities availed by the petitioner and his family.

3. Learned counsel for the petitioner further submitted that the sole ground for issuing the impugned notification dated 03.12.2014 is the judgment dated 27.11.2014; that respondent No.1 did not consider the petitioner's meritorious record before issuing the said impugned notification; that pension is the petitioner's only source of income; and that the forfeiture of the petitioner's income has violated the petitioner's fundamental rights. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned notification to be set aside.

4. On the other hand, the position taken by the learned counsel for respondent No.1 was that writ petition was not maintainable; that since the service rules of T.I.P. are not statutory in nature, the instant petition is liable to be dismissed. In this regard, reliance was placed on the judgment dated 24.03.2011, passed by the Hon'ble Supreme Court in Civil Appeal No.424/2009 titled "Fakhar-ul-Islam Qureshi Vs. Government of Pakistan through Secretary, Ministry of Finance".

5. Furthermore, learned counsel for respondent No.1 contended that the petitioner's conviction by the learned accountability Court has till date not been set aside by the appellate forum; and that the mere suspension of a sentence does not do away with a conviction. In this regard, he placed reliance on the judgments reported as PLD 1990 SC 823, 2013 CLC 1856

and 2003 CLC 300. He submitted that if the petitioner's conviction is set-aside by the appellate forum, the order whereby the petitioner's pension was forfeited, would be recalled and he would be paid his pensionary benefits. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record.

7. I propose first to deal with the preliminary objection taken by the learned counsel for respondent No.1 regarding the maintainability of this petition. The admitted position is that the service rules of T.I.P. are not statutory. The stance of the learned counsel for respondent No.1 is that since T.I.P. is a public limited company with no statutory service rules, the writ petition seeking the setting aside of the notification, whereby the petitioner's pension was forfeited on the ground of his conviction by the accountability Court, is not maintainable. The service rules governing the petitioner's service in T.I.P. were not statutory.

8. The question whether a writ petition can be filed against the T.I.P. by an employee aggrieved of T.I.P.'s decision with respect to his service, was considered and decided by the Hon'ble Supreme Court in the judgment dated 24.03.2011, passed in Civil Appeal No.424/2009, titled "Fakhar-ul-Islam Qureshi etc. Vs. Government of Pakistan through Ministry of Finance etc." T.I.P. was respondent No.2 in the said appeal. The appellants, who were retired employees of T.I.P., were seeking an increase in the pensionary benefits in the same way as were being paid to former government employees or employees of organizations owned and controlled by the Federal Government. The said appeal was filed by an employee of T.I.P. after his writ petition had been dismissed by this Court. Vide the said judgment dated 24.03.2011, the Hon'ble Supreme Court held that since T.I.P.'s service rules were not statutory, the writ petition filed by the employee of T.I.P. with

respect to a matter concerning his service, was not maintainable. It is pertinent to reproduce herein below paragraphs 4 and 5 of the said judgment of the Hon'ble Supreme Court:-

“4. Heard. While arguing the matter, learned counsel for the appellants has categorically admitted that the constitution petition filed by the appellants would only be competent, if the rules on which the appellants are basing their right are ‘Statutory Rules’ in nature. We are also of the view that notwithstanding the company being a corporate body, having the control and management of the Government and also performing functions in relation to the State or not, no writ can be issued, if it does not have the ‘statutory rules’ of service, therefore, without in any way dilating upon the first two propositions, we are confining ourselves to this aspect of the case. To show that the rules are statutory, the learned counsel for the appellants has specifically referred to “Executive Pension Rules – 1986 of the respondent No.2”, when asked, he has stated that these rules have been approved by the Federal Government and regarding this, mention is made to Rules 6 and 7 which read as under:-

“6. Amendment in Pension Rules

Amendment to these Pension Rules can only be made with the prior approval of the Board after with the prior approval/concurrence of the Federal Government.

7. Where the TIP Executive Pension Rules 1986, are silent, the corresponding provision of Pension Rules / Regulations / Instructions applicable to Civil Servants of the Federal Government shall apply to the TIP Executive also.”

He has also been made reference to letters dated 14.5.1986 and 29.1.1986 to urge that these rules were submitted for the approval of the Ministry of Finance, Government of Pakistan and were so finally approved.

5. It is an admitted position that respondent No.2 has not been constituted by any Act of the Parliament/Statutes, rather it is a body corporate formed under the company law, obviously in such a situation there is no authority and mandate of law empowering anyone to make the rules, which could in terms of that specific law be approved by the Federal Government; it is only the Articles of Association perhaps, that the rule making mechanism is envisaged. These Articles cannot be considered to be the substitute of law, therefore, if any rules have been drawn under the articles and got approved even from the Federal Government, such rule do not attain the status of “Statutory Rules”, for the purpose of which it is imperative that the rule making power and authority must originate, spring from and arise from a Statute. Thus, even assuming as argued by learned counsel for the appellants that respondent No.2 is a body corporate, controlled and managed by the Federal Government and some of its functions are in furtherance of the State activities, yet, when the rules do not qualify the test of being ‘Statutory Rules’, only for the reason that the Federal

Government as a superfluous exercise and without the mandate of law has approved the rules; such cannot be held to be statutory. Therefore, on that account the constitution petition was untenable. As the said proposition has been resolved in the matter against the appellants, therefore, in the light thereof, we do not find it appropriate to dilate upon the other question on which the leave was granted in this matter.”

9. In the case of *Pir Imran Sajid Vs. Managing Director/General Manager (Manger Finance) Telephone Industries of Pakistan etc. (2015 SCMR 1257)* the appellants were seeking the regularization of their services in T.I.P. on the basis of a decision of the Sub-Committee of the Cabinet on Regularization of contract/daily wages employees in T.I.P. The Hon'ble Supreme Court while allowing the said appeal against the judgment of the Hon'ble Peshawar High Court, whereby the writ petitions filed by T.I.P.'s employees seeking the regularization of their services, was cognizant of its earlier judgment dated 24.03.2011, passed in Civil Appeal No.424/2009, and distinguished the same in the following terms:-

“5. The learned counsel for the respondents, in support of his second objection i.e. lack of statutory service rules, relied upon the judgment in the case of Fakhr-ur-Islam Qureshi (Civil Appeal No.424 of 2009), authored by one of us (Mian Saqib Nisar, J.), whereby the said appeal was dismissed on the ground that relationship between the appellant, retired employee and TIP is not governed by statutory rules. Such reliance, in our view, is wholly mis-placed for the reason, that unlike in the present case the appellants therein were seeking pensionary benefits on the basis of pensionary rules, which rules were non-statutory. Whereas in the present case, the appellants are seeking implementation of the directive of the Prime Minister of Pakistan and the decision of the cabinet sub-committee for their regularization sought to be enforced by the relevant ministry.”

10. Since the judgment dated 24.03.2011, passed by the Hon'ble Supreme Court in Civil Appeal No.424/2009 holds good, and has not been over turned by the judgment reported as *2015 SCMR 1257*, the preliminary objection raised by the learned counsel for respondent No.1 regarding T.I.P.'s service rules to be non-

statutory, succeeds. Resultantly, this petition is dismissed as not maintainable. I refrain from touching the merits of the case, lest it may prejudice to the parties case before the competent forum. There is catena of case law in support of the view that where a Court holds a petition not to be maintainable, it ought not to delve into or give findings or even observations on the merits of the case. Reference in this regard may be made to the judgments in the cases of S.M. Waseem Ashraf Vs. Federation of Pakistan through Secretary, Ministry of Housing & Works and others (2013 SCMR 338), Yousuf A. Haroon Vs. Custodian of the Karachi Hotel Project (2004 CLC 1967), and Messrs Voyage de Air, General Sales Agent, Shaheen Air International Vs. Shaheen Air International Pvt. Ltd. (2006 CLC 173). There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018

(JUDGE)

Qamar Khan*

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Approve for Reporting.