

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 932 of 2013

JAVED MAHMOOD
Versus
GOVERNMENT OF PAKISTAN ETC

Date of Hearing: - **14.3.2013**
Petitioner By: - Mr. Zaheer Bashir Ansari, Advocate.
Respondents By: - Syed Ali Zafar, ASC, Mr. Zafar Khaliq Khan for
respondent No.1.
Mr. Abdul Hafeez Amjad Advocate for
respondent No.2,
Mr. Masroor Shah, Advocate for respondent No.3

J U D G M E N T
MUHAMMAD ANWAR KHAN KASI, CJ:

This Writ Petition challenges the notification dated 4.3.2013 issued by Finance Division, Government of Pakistan, whereby respondent No.2 was nominated as Director/Deputy Managing Director Pak China Investment Company Ltd. in place of the petitioner for a tenure of three years with immediate effect.

2. It is inter alia contended that the petitioner was appointed under Articles 31 and 33 of the Articles of Associations of Pak China Investment Company Ltd as Director/Deputy Managing Director for tenure of three years vide Notification dated 11.01.2011 and, therefore, his appointment could not have been cancelled abruptly before expiry of tenure and that too without assigning any reason.

3. It is next argued that there had never been complaint against him and the impugned notification has been issued without adopting legal procedure in violation of principles of *audi altrem pattrem*, which has also deprived him of his fundamental rights.

4. It is further contended that according to the Joint Venture Agreement dated 18.7.2007 between the Governments of the Peoples Republic of China and Islamic Republic of Pakistan, the 1st Deputy Managing Director shall be appointed by respondent No.1 for a period of three years and therefore the Deputy Managing Director shall be alternatively nominated by the two parties with mutual consent, while the management of respondent No.3 shall be



under the leadership of its MD, therefore, the impugned notification is a sheer violation of the agreement as well as Articles 29,30,31 and 33 of the Articles of Associations.

5. Learned counsel, in support of his arguments, placed reliance upon case laws reported as PLD 2012 Supreme Court 132, 2012 PLC (C.S) 462, PLD 2010 Supreme Court 676, 2011 PLC (C.S) 116, 2012 PLC (C.S) 807, 2011 PLC (C.S) 26 which discuss the relevant issue as under:-

“Number of Articles of the Constitution make it clear that Constitution is not silent about economic life of the nation and concomitant fundamental rights of its citizens; there is ever-greater nexus between proper and independent functioning of regulatory bodies and economic life of the nation and its citizen. It was further held that process of appointment in the organization is a matter of public importance which has a direct linkage with fundamental rights of the people of Pakistan and courts can exercise jurisdiction in such matters.”

“Remedy of writ petition was permitted in cases involving contract between the person and the State, because it was more efficacious and speedy remedy as compared a civil suit. Petitioner, in circumstances, could claim remedy by invoking writ jurisdiction of High Court---Notification through which the petitioner was removed before expiry of contractual period, had reflected that the petitioner was not heard before his removal--- “Maxim audi alteram partem” was to be read in to the relevant law, unless its application was excluded by express words.”

“Primary test must be; whether functions entrusted to organization or person concerned are indeed functions of State involving some exercise of public power; whether control of organization vests in substantial manner in the hands of government; and whether bulk of funds is provided by the State. If such conditions are fulfilled, then person, including body politic or body corporate, may be regarded as person forming functions in connection with the affairs of Federation or Province’

“State owned companies are amenable to constitutional jurisdiction under Article 199 of the Constitution...Good governance and institutional building require that the requirements, demands and needs of the institution are tailored into the objective criterion/test so that the best suited human resources is selected for the post.”

“Non assigning of reasons, non communication and non existence of reasons were entirely different thing--- Termination of appointment without existence of any cogent reason or cause was not warranted and was an act of mala fide---When the Cell had acquired permanent status and decision in that regard was taken much before termination order passed against petitioner, temporary rights attached to appointment of petitioner matured into permanent rights---Expression used in appointment letter ‘contract appointment’ was distinguishable from appointment to a post under Government but not necessarily meant that petitioner who was not a civil servant, was not holding any public office---Public element

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was attached to the appointment and reasonable basis for drastic and sweeping action should be there in support of decision against petitioner---In the case of contract employees of where Rules or Instructions adopted by authorities were surrendered to statutory rules or statute, the pleasure of master was subject to contract of government and employee would become entitled to statutory protection---High Court in exercise of constitutional jurisdiction set-aside order terminating service of petitioner as the same was illegal, without lawful authority and of no legal effect."

"Doctrine of legitimate expectation which, in appropriate cases, had become a substantive and enforceable right to provide relief against manifest injustice, when aggrieved person had no statutory right to claim any relief---As such the doctrine could act as deterrent for holders of public power from acting unreasonably or exercising their power arbitrarily and had given an inherent right to individuals to save themselves from being victims of the abuse of discretion by authority."

6. The petition was vehemently contested by the respondents through their separate para-wise comments whereby the very maintainability of the petition was challenged on the ground that factual controversies cannot be resolved through Writ Petition, petitioner has no locus standi as he is no more a Director of the Company, the Director shall hold the office at the pleasure of the respective parties and none can ask for a particular posting.

7. On merits, it was stated that the procedure for the nomination of respondent No.2 is in accordance with law and the petitioner was replaced due to the complaint dated 1.3.2013 of respondent No.3, who had categorically stated that the performance of Company has been declined due to non co-operation and non professional attitude of the petitioner. The learned counsel referred PLD 2011 Supreme Court 132, 1995 SCMR 453, 2001 SCMR 909, 1997 SCMR 1508, 1993 SCMR 346 and 1998 SCMR 68 wherein it was held that :-

"Wrongful termination of service of employee of a corporation, remedy, relationship between a Corporation and its employee was that of master and servant and remedy for wrongful termination of service of an employee was a suit for damages and not relief for re-instatement.

It was further held that when the relationship was based on a contract freely entered into by the parties, then the principle of Master & Servant is applicable."

8. Heard & record perused.

9. It is an admitted fact that the petitioner was appointed for a period of three years vide notification dated

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01.01.2011 and without assigning any reason the appointment could not have been cancelled.

10. As far as the complaint dated 01.03.2013 is concerned, the actions on it require a proper inquiry against the petitioner, because serious allegations have been levelled and without proper opportunity of defence, no prompt action could have been taken.

11. Record reveals that the impugned notification does not mention the fact about receipt of any complaint from respondent No.3 and, therefore, the replacement-removal of petitioner cannot be considered as *legal or lawful*.

12. It is also evident from perusal of Joint Venture Agreement that the appointments of Deputy Managing Directors shall be made alternatively with mutual consent of the parties, therefore, even if the petitioner was to be replaced another man from Pakistan could have been appointed for the remaining period only, therefore, from this score too the impugned notification cannot be declared as legal or lawful.

13. The good governance demands adopting the proper procedure of law, decision on merits in accordance with law and penal actions after proper opportunity of defence and avoiding of appointments on the basis of political pressures.

14. The Courts are, therefore, under obligation to curb the activities which lead to injustice to individuals and frustration in the society.

15. For the foregoing reasons and following the commanding verdicts reported in PLD 2012 Supreme Court 132, 2012 PLC (C.S) 462, PLD 2010 Supreme Court 676, 2011 PLC (C.S) 116, 2012 PLC (C.S) 807, 2011 PLC (C.S) 26, the petition is accepted and impugned notification dated 4.3.2013 is set aside as being illegal and without any lawful justification. Parties are left to bear their own costs.

CHIEF JUSTICE

Announced in Open Court, on this 1st April, 2013.

CHIEF JUSTICE

M. Suhail
1st April, 2013

APPROVED FOR REPORTING