

Form No: HCJD/C

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Intra Court Appeal No. 91 of 2018**

Syed Kamran Ali.

Versus

Federation of Pakistan, etc

**Appellant's by : Sardar Muhammad Ghazi, Advocate,**

**Respondents by : M/s Misbah Ul Mustafa Safir, Attaullah  
Hakim Kundi.**

**Rana Khawar Hussain, Assistant  
Attorney General.**

**Mr. Sajid Mehmood Qazi, J.S, M/o  
Petroleum.**

**Date of Decision : 03.07.2018**

**AAMER FAROOQ, J. -** This judgment shall decide the instant appeal as well as ICA Nos. 88 of 2018, 89 of 2018 and 90 of 2018 as common questions of law and facts are involved.

2. The facts, in brief, are that the appellants were employees of respondent No. 3 and they worked on attachment basis in Ministry of Petroleum and Natural Resources. Respondent No.3 is wholly owned subsidiary of respondent No.4 . The services of the appellants were terminated by respondent No.3 vide impugned letters, which were assailed by way of petition under Article 199 of the Constitution. However, the referred petitions were dismissed by the Judge-in-Chambers, vide the impugned judgments. During the course of proceedings in the appeals comments/replies

were called from respondents as the same had not been done in the case earlier.

3. Learned counsel for the appellants, inter-alia, contended that respondent No.3 is a person for the purposes of maintainability of petition under Article 199 of the Constitution on the ground that it is wholly owned subsidiary of respondent No.4, which again is a Government owned entity. It was further submitted that the Government of Pakistan/ Ministry of Petroleum and Natural Resources, has administrative Control over respondents No.3 and 4. It was further contended that it is an established law that even where the rules of service are non-statutory a petition under Article 199 of the Constitution is maintainable. It was contended that while issuing the letters of termination the respondents have violated the law inasmuch as no show cause notice was issued, nor any prior intimation was given. Hence, the appellants have been condemned unheard, which is in violation of principle of natural justice. It was further submitted that the appellants are regular employees of respondent No.3 and their services could not have been terminated in a whimsical manner. Reliance was placed on cases reported as **"PIA vs. Tanweer Ur Rehman"** (PLD 2010 SC 676), **"Ms. Salma MossaJee vs. Federation of Pakistan"** (2014 SCMR 135), **"Rana Muhammad Sarwar vs. Government of Punjab and another"** (1990 SCMR 999), **"Jawaid Ghafoor vs. Pakistan Civil Aviation Authority"** (2010 PLC (C.S) 276), **"Shahid and others vs. PIA "** (1998 PLC (CS) 773) & **"PTCL vs. Masood Ahmed Bhatti"** (2016 SCMR 1362).

4. Learned counsel for respondents No.3 and 4, inter-alia, contended that though respondent No.3 is controlled by the Government, however, it is a private limited company. It was submitted that the rules of service have been framed by respondent No.3 by its Board of Directors, which are not statutory, hence, the relationship between the company and its employees is that of master and servant. It was contended that the fact that the appellants were regular employees did not mean that their services could not be terminated inasmuch as under ISGS Executive Staff Rules the services of confirmed Regular Executives may be terminated on two months notice or on payment of remuneration. It was submitted that all four appellants were paid salary in lieu of notice and also other benefits, which they have accepted and the cheques stand duly encashed. It was further submitted that where relationship is that of master and servant a petition under Article 199 of the Constitution is not maintainable.

5. Appellants are aggrieved of termination of their service by respondent No.3. The status of respondent No.3 is admitted i.e. it is though a private limited company but is a wholly owned subsidiary of respondent No.4, which in turn is owned by Federal Government. In cases of such like entities a petition under Article 199 of the Constitution is maintainable. Reliance is placed on cases reported as **"PIA vs. Tanweer Ur Rehman"** (PLD 2010 SC 676). Respondent No.3 does not have any statutory rules of service, however, its Board of Directors have framed service rules. The general rule is that where the rule of service are not statutory the relationship between employer and employee is that of master and servant.

However, where the employer is a public entity or falls within the concept of a person carrying on the affairs of Federation and/or province, it has been held in numerous cases that a petition under Article 199 of the Constitution is maintainable, where, there is violation of law. Reliance is placed on **"Pir Imran Sajid vs. Managing Director"** (2015 SCMR 1257), **"Ms. Salma MossaJee vs. Federation of Pakistan"** (2014 SCMR 135) as well **"Pakistan Defence Officer's Housing Auhtoirty vs. Lt. Jawaid Ahmed"** (2013 SCMR 1707).

6. Admittedly, there is no violation of statute in the instant case. The appellants have alleged that there is violation of law inasmuch as principles of natural justice have been flouted by termination of service of appellants without any opportunity of hearing. The appellants were initially appointed on Contract in 2009, however, in 2011 their contractual services were regularized and it was provided that the services shall be governed by ISGS Rules. Under the referred rules, services of confirmed regular executive could be terminated on two months notice or payment of remuneration for the same period in lieu thereof.

7. Learned counsel for respondent No.3 categorically submitted that salary in lieu of notice was paid to all the appellants alongwith other emoluments which were duly accepted, however, it is contended that only in one case since the official car is retained, therefore, some amount has been withheld. Under Clause 1.8.3.5 of the aforementioned service rules it is also provided that respondent No.3 reserves the right to dismiss any employee from service without notice who is found guilty of misconduct or any fraud on

behalf of the company, as per disciplinary rules. The referred Rules, which govern relationship between the parties make it clear that there is no requirement of issuance of notice prior to termination of service. In view of the referred position, there is no violation of any statute or other law calling for interference in the matter. The appellants since have accepted the salary in lieu of notice and other benefits therefore, are estopped from challenging the termination. The impugned termination letters clearly stipulate that they were issued by Competent Authority and there is nothing on record to the contrary.

8. For the foregoing reasons, the above mentioned appeals are without merit and are accordingly ***dismissed.***

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

*\*Shakeel Afzal\**

*Uploaded By: Engr. Umer Rasheed Dar*