

Form No: HCJD/C

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Intra Court Appeal No. 337 of 2014

Pakistan Television Corporation Ltd., etc.

Versus

Hafeez Ur Rehman, etc.

Intra Court Appeal No. 653 of 2014

Baqir Hussain.

Versus

Federation of Pakistan, etc.

Appellant by : **Mr. Shahid Mehmood Khokhar, Advocate in ICA No. 337/2014.**

Mr. Jam Khurshid Ahmed, Advocate in ICA No. 653/2014.

Respondents: **M/s Ehtasham Aslam & Ch. Ishtiaq Mehrban, Advocates in ICA No.337/14.**

Mr. Shahid Mehmood Khokhar & Ch. Ishtiaq Mehrban, Advocates in ICA No. 653/2014.

Raja Khalid Mehmood Khan, learned Deputy Attorney General.

Date of Decision : 06.03.2019

AAMER FAROOQ, J. - This appeal is directed against judgment dated 24.09.2009 in Writ Petition No. 2527 of 2009.

2. The facts, leading to the filing of the instant petition are that the respondents filed a petition under Article 199 of the Constitution before the Hon'ble Lahore High Court, Rawalpindi Bench seeking direction that their case be treated at par in accordance with the judgment of Hon'ble Supreme Court of Pakistan in Civil Review Petition No. 34-L/2008. Respondents were employees

of Pakistan Television Corporation, who were removed from service in 1978 and were subsequently reinstated in 1989. They filed a petition seeking benefits of service for the period from 20.02.1978 to 10.10.1989 including pensionary benefits in (W.P No.2527 of 2009). The respondents sought the benefit of the earlier judgment of the Hon'ble Lahore High Court, wherein, relief was allowed to similarly placed employees in ***W.P No. 24480/2009 "Wajahat Ali Siddiqui vs. Pakistan Television Corporation, etc"*** vide judgment dated 16.06.2010.

3. Learned counsel for the appellants, *inter alia*, contended that the impugned judgment is not tenable; that the appellants were reinstated subject to execution of undertaking that they would not claim back benefits.

4. Learned counsel for the respondents, *inter alia*, contended that where employee has been reinstated in service and there is no fault of his, he is entitled to the back benefits. Reliance was placed on cases reported as ***"Khalid Mehmood vs. State Life Insurance Corporation of Pakistan and others"*** (2018 PLC 182) as well as ***"Hamid Mustafa vs. University of Veterinary and Animal Sciences and 06 others"*** (2018 PLC (C.S) 1082). It was submitted that since the respondents were reinstated and they had earlier been removed from service without any fault of theirs, hence they are entitled to the back benefits. It was further submitted that a petition under Article 199 of the Constitution is maintainable even Rules of service are non-statutory. Reliance was placed on cases reported as ***"Muhammad Rafi and another vs. Federation of Pakistan"*** (2016 SCMR 2146) as well as ***"Hameed Akhtar Niazi vs.***

Secretary, Establishment Division, Government of Pakistan”
(1996 SCMR 1185).

5. Learned counsel for the parties have been heard and documents placed on record examined with their able assistance.

6. The facts, leading to the filing of instant appeal have been mentioned hereinabove therefore need not be reproduced.

7. Similarly placed employees of Pakistan Television Corporation filed a petition before the Hon’ble Lahore High Court i.e. W.P 24480 of 2009, which was dismissed vide judgment dated 16.06.2010, petition for leave to appeal was filed (CPLA No. 1456-L/2010) which was declined and the august Apex Court concluded as follows:-

" In the aforesaid circumstances, we are of the considered view that the learned High Court was correct in dismissing the Writ Petition of the petitioners, inter alia, on the ground that the respondent No.1 does not have statutory service rules and the jurisdiction of the High Court was barred as has been held by this Court in the judgment relied upon by the learned counsel for the respondents".

8. Even a Review Petition was filed (CRP No.1-L of 2012) which was dismissed vide order dated 31.12.2012. In this backdrop, it is an admitted position that the rules of service of Pakistan Television Corporation are non-statutory, however, the respondents seek the benefit of decision of the Hon’ble Supreme Court of Pakistan in case titled ***"PTV Corporation vs. Agha Shahid Rashid"*** dated 20.02.2009, whereby while dismissing the petition for leave to appeal on behalf of PTV Corporation, in similar facts and circumstances, the Hon’ble Supreme Court of Pakistan observed that the judgment shall be in personam only. In the impugned judgment, the judge in

chambers has placed reliance on the above referred judgment of the august Apex Court in disposal of the matter. Since the rules of service of PTV Corporation are non-statutory and the matter has been decided by the august Apex Court conclusively in this behalf vide judgment dated 23.05.2011, the matter stand settled. On behalf of respondents reliance was made on **2016 SMCR 2146** ibid to argue that where rules of service are non-statutory a petition under Article 199 of the Constitution is still maintainable. There is no cavil with the referred judgment of the august Apex Court as which observing so it placed reliance on case reported as **"Pakistan Defence Officers Housing Authority vs. Lt. Col Syed Javed Ahmed" (2013 SCMR 1707)** however, such petition is only maintainable where there is violation of principles of natural justice or law.

9. Even otherwise, respondents were reinstated on 07.10.1989 on certain terms and conditions. One of the conditions was that the re-employment shall not entitle them to claim any arrears of salary or allowances for the period they were out of service. Respondents concurred to the terms and conditions and submitted their rejoining hence at this stage they are estopped from retracting from their acceptance.

10. In view of above reasons, the instant appeal is allowed and the impugned judgment is set aside. Consequently, the Writ Petition filed by the respondents stand dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

(AAMER FAROOQ)
JUDGE

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JUDGEMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

I.C.A No. 653 of 2014

Baqir Hussain.

VS

Federation of Pakistan, etc.

**Petitioner's by : Mr. Jam Khurshid Ahmed, Advocate
for the Petitioner.**

**Respondents by : Mr. Shahid Mehmood Khokhar & Ch.
Ishtiaq Mehrban, Advocates.
Raja Khalid Mehmood Khan, learned
Deputy Attorney General.**

Date of Decision : 06.03.2019

AAMER FAROOQ, J. - For the reasons recorded in detailed judgment of even date passed in I.C.A No. 337 of 2014, instant petition is dismissed.

**(MOHSIN AKHTAR KAYANI)
JUDGE**

**(AAMER FAROOQ)
JUDGE**

Shakeel Afzal

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