

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1825/2017

**Rashid Hussain
Versus.**

**Federation of Pakistan through Secretary, Ministry of
Information Technology and 2 others**

Date of Hearing: 13.02.2020.
Petitioner by: Mr. Muhammad Asif Mehmood, Mr.
Nawazish Ali Gondal and Mr. Jameel
Hussain Qureshi, Advocates.
Respondents by: Mr. Muhammad Nadeem Khakwani,
learned Assistant Attorney-General, Mr.
Shahid Anwar Bajwa and Ms. Faiza Naseer
Advocates along with Mr. Raheel Zafar,
Senior Manager Legal P.T.C.L.

MIANGUL HASSAN AURANGZEB, J:-Through the instant writ petition, the petitioner, Rashid Hussain, is seeking a direction to respondent No.2/Pakistan Telecommunication Company Limited ("P.T.C.L."), to pay his pension from the date of his retirement along with periodical increases and medical allowance as announced by the Federal Government for civil servants. The petitioner had retired after his option for the Voluntary Separation Scheme-2012 ("V.S.S.") was accepted by the P.T.C.L. The petitioner was employed in the Pakistan Telecommunication Corporation ("P.T.C.") after the enactment of the Pakistan Telecommunication Corporation Act, 1991 ("the 1991 Act").

2. Learned counsel for the petitioner submitted that the petitioner was appointed in the P.T.C. on 19.02.1995, and thereafter, stood transferred to P.T.C.L. under the provisions of the Pakistan Telecommunication (Re-organization) Act, 1996 ("the 1996 Act"); that the petitioner retired from service in the year 2012 after opting for the V.S.S.; that in the case titled as "Masood Ahmed Bhatti Vs. Federation of Pakistan etc." (2012 SCMR 152), the Hon'ble Supreme Court held *inter-alia* that the status of service rules governing the petitioner's terms and

conditions of service in the P.T.C. were statutory; that the petitioner having more than 17 years of qualifying service is entitled to the payment of pension along with increases as announced by the Government from time to time; that the petitioner was also a “transferred employee” as defined in section 36(1) read with section 35(2) of the 1996 Act, and therefore, is entitled to the same benefit as given to the petitioners in the said case; that the terms and conditions of the petitioner’s service including his entitlement to pensionary benefits could not be altered to his detriment, even though he had received the benefits under the V.S.S.; that such protection is implicit in sections 35 and 36 of the 1996 Act; that the transferred employees those who opted for the V.S.S. in 1997-1998 are getting pension despite having less than twenty years of service; and that under Regulation 423(2) of the Civil Service Regulations the competent authority is empowered to condone the deficiency of six months in service period to qualify a retired employee for pension but the petitioner has been retired illegally without any pension. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for a direction to be issued to P.T.C.L. to pay the petitioner his pension along with the periodic increase in the same manner as paid to the civil servants.

3. On the other hand, learned counsel for the P.T.C.L. raised objections to the maintainability of this petition. It was submitted that since the V.S.S. was not a statutory instrument, this petition was not maintainable. Furthermore, it was submitted that since P.T.C. or P.T.C.L. had no statutory rules, the instant petition was liable to be dismissed. It was also submitted that the petitioner was not employed by the Telephone and Telegraph Department (“T&T Department”), but by the P.T.C. after the enactment of the 1991 Act; and that since the rules governing the petitioner’s terms and conditions were not statutory, the instant petition was not maintainable.

4. As regards the merits of the case, it was submitted that the petitioner had never remained an employee of the T&T

Department; that on 19.02.1995, the petitioner was appointed by the P.T.C.; that the petitioner never remained civil servant and the terms and conditions of his service were not statutory; that under section 36 of the 1996 Act petitioner's status as non-civil servant and corporation employee is protected; that the V.S.S. was announced by P.T.C.L. on 26.07.2012; that the said scheme was purely at the option of P.T.C.L.'s employees; that on 24.09.2012, the petitioner voluntarily opted for the V.S.S.; that by seeking an increase in his pension as granted by the Federal Government to civil servants, the petitioner is trying to wriggle out of what he had agreed to accept under the V.S.S.; that the petitioner is not a civil servant, and is not entitled to the increase in his pensionary benefits and that the petitioner is to be paid his pension in accordance with the option exercised by him for the V.S.S.

5. Furthermore, it was submitted that the judgment of the Hon'ble Supreme Court in the case titled as Masood Ahmed Bhatti Vs. Federation of Pakistan etc. (supra) is on a different footing; that the employees in the said case came within the meaning of a "departmental employees" as they had been employees of the T&T Department; that the petitioner in the instant case was not employed by the T&T Department prior to 1991, but he was appointed by the P.T.C. in 1995; and that the petitioner was not entitled to be given the same benefit regarding increase in pension as was granted and payable to the civil servants. Learned counsel for the P.T.C.L. 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 with their able assistance.

7. At the outset, I deem it appropriate to deal with the objections taken by the learned counsel for P.T.C.L. to the maintainability of the petitions. It first needs to be determined whether those petitioners who were employed in the P.T.C. after the enactment of the 1991 Act, could agitate a grievance regarding the terms and conditions of their service before this

Court in its constitutional jurisdiction. The answer to this question would depend on whether the terms and conditions of such an employee of P.T.C. are governed by statutory rules or regulations. If such rules or regulations are not statutory, the principle of master and servant would govern the relationship between the employee and the employer organization. In the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2011 S.C. 132), it has explicitly been held that the Pakistan Telecommunication Corporation Service Regulations, 1996 framed pursuant to Section 20 of the 1991 Act had not been notified in the official gazette. Since the said Regulations did not have a statutory status, the employees of P.T.C. employed after the enactment of the 1991 Act and governed by the said Regulations could not agitate a dispute regarding the terms and conditions of their service (including their right to receive pension), by filing a petition under Article 199 of the Constitution.

8. It is not disputed that on 19.02.1995, the petitioner was appointed as an Engineering Supervisor (Grade-II) in the P.T.C. and after the enactment of the 1996 Act, the petitioner stood transferred to the P.T.C.L. It is also not disputed that on 26.07.2012, the V.S.S. was announced by P.T.C.L and that on 24.09.2012, the petitioner voluntarily opted for the V.S.S. The option/application form for the V.S.S. signed and submitted by the petitioner shows that the petitioner's date of joining service was 19.02.1995. The petitioner's employment with the P.T.C.L. came to an end when the petitioner's application to opt for the V.S.S. was accepted by the P.T.C.L. under the terms of the V.S.S., petitioner was *inter alia* paid 04 severance pays for each year of his eighteen years of service as well as a separation bonus of Rs.300,000/-. In the application form submitted by the petitioner, he had confirmed that the option for the V.S.S. exercised by him was irrevocable. Since it is an admitted position that the petitioner was employed in P.T.C. after the enactment of the 1991 Act, his terms and conditions of service were not governed by statutory rules. Hence, in view of the law laid down by the Hon'ble Supreme Court in the case of Pakistan

Telecommunication Company Limited Vs. Iqbal Nasir (supra), the instant petition is liable to be dismissed as not maintainable.

9. As regards the departmental employees who were employed in the T&T Department and transferred to P.T.C. and subsequently to P.T.C.L. by dint of Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act, their status would be different to those employees who had been employed in P.T.C. after the enactment of the 1991 Act or who were employed in P.T.C.L. after the enactment of the 1996 Act. Section 9 of the 1991 Act and Sections 35 and 36 of the 1996 Act protected the terms and conditions of service of the departmental employees. In view of the law laid down by the Hon'ble Supreme Court in the cases of P.T.C.L. Vs. Masood Ahmed Bhatti (2016 SCMR 1302), Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif (2015 SCMR 1472) and Muhammad Riaz Vs. Federation of Pakistan (2015 SCMR 1783) such employees (i.e. departmental employees) could agitate a grievance regarding the terms and conditions of their service in the Constitutional jurisdiction of this Court. However, the door of this Court exercising Constitutional jurisdiction cannot be left ajar for those employees who had also opted to avail the benefits under the V.S.S. I say this because the Hon'ble Supreme Court in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (supra), held as follows:-

"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."

(Emphasis added)

10. But for the option for V.S.S. exercised by the petitioner, he would have continued to remain in service for a period so as to make his service pensionable. There would have been no occasion for this dispute to have arisen had the petitioner not opted for V.S.S. Had the petitioner completed twenty years of service, he would have been entitled to the payment of pension on retirement.

11. Since the learned counsel for the petitioner was not able to show that the rules governing the terms and conditions of the petitioner's service were statutory, and since the petitioner had opted for and received benefits under the V.S.S., I do not find this petition to be maintainable. Consequently, this petition is dismissed as not maintainable. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 03-03 - /2020.

(JUDGE)

Aamer Baig*