

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.3689/2015**

**Zahir Khan**

**Versus.**

**Ministry of Water and Power through, its Secretary and others**

<b>S. No. of order / proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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**10.02.2020**

**Mr. Majid Rashid Khan, Advocate for the petitioner,  
Mr. Saeed Khan Akhundzada, Advocate for respondent No.3,  
Mr. Nadeem Khakwani, Assistant Attorney General.**

Through the instant writ petition, the petitioner, Zahir Khan, seeks a direction to respondent No. 1 (Secretary, Ministry of Water and Power) and respondent No. 2 (Chief Executive Officer, Pakistan Electric Power Supply Company) to issue an order to respondent No.3 (Chief Executive Officer Peshawar Electric Supply Company) to declare the petitioner's leave preparatory to retirement ("L.P.R.") on encashment by revising PESCO's letter dated 15.04.2014.

2. Learned counsel for the petitioner submitted that on 26.04.1974, the petitioner was appointed as Assistant Lineman; that after the incorporation of Peshawar Electric Supply Company (Pvt.) Ltd. ("PESCO") in 1998, the petitioner became a regular employee of the said company; that on 20.02.2014, the petitioner applied for encashment of L.P.R.; that vide office order dated 15.04.2014 issued by Superintending Engineer (Operation) PESCO Khyber Circle, Peshawar, the petitioner was granted L.P.R. on

encashment with effect from 07.05.2014 to 06.05.2015; that the petitioner was then served with a copy of the office order dated 15.04.2014 through an endorsement letter dated 14.05.2014 wherein the word 'encashment' was crossed; that the petitioner moved an application and departmental appeal dated 19.05.2014 and 18.06.2014, respectively, for verification and revision of cutting on the office order dated 15.04.2014 but respondent No.3 refused to rectify the mistake unless an order is passed by respondents No. 1 and 2; and that the petitioner lodged complaint to the Federal Ombudsman but the same was dismissed due to lack of jurisdiction.

3. Learned counsel further submitted that since respondents No. 1 and 2 have control over the affairs related to terms and conditions of petitioner's service with respondent No.3 this Court has jurisdiction to issue direction as prayed for; that the impugned action of respondent No.3 is a forged interpolation done illegally with *malafide* intention therefore a writ can be issued; that respondent No.3's action of withdrawing encashment of L.P.R. is against the principle of *locus poenitentiae*; and that the respondents have deprived the petitioner of his legal right since a long time. Learned counsel prayed for the petition to be allowed as prayed for.

4. In support of his contentions, learned counsel placed reliance on the cases reported as "Government of the Punjab etc. Vs. Muhammad Imran etc." (2019 SCMR 643), "Aziz Gul Ex-office Superintendent Cantonment Board, Kohat Vs. Federation of Pakistan etc." (2019 PLC (CS) Note 24), "Lahore Electric Supply Company Limited

etc. Vs. National Electric Power Regulatory Authority etc.” (PLD 2018 Islamabad 20), “Peshawar Electric Supply Company Ltd. Vs. Wafaqi Mohtasib Islamabad” (PLD 2016 SC 940), “Munsif Shah Vs. PEPCO etc”(2013 PLC (C.S.) 223), “M/s Karachi Steel Mills etc. Vs. Wapda etc.” (PLJ 2013 Islamabad 241), “LPG Association of Pakistan through Chairman Vs. Federation of Pakistan etc.”(2009 CLD 1498), “Sh. Abdul Sattar Lasi Vs. Federation of Pakistan etc.” (2006 CLD 18), “Anoud Power Generation Limited Vs. Federation of Pakistan etc.”(PLD 2002 SC 340), “M/s Lucky Cement Limited Vs. The Central Board of Revenue etc.” (PLD 2001 Peshawar 7), Trading Corporation of Pakistan Private Limited Vs. Pakistan Agro Forestry Corporation (Private) Limited etc” (2000 SCMR 1703), “Flying Kraft Paper Mills (Pvt.) Ltd. Charsadda Vs. Central Board of Revenue, Islamabad” (1997 SCMR 1874), “Nawabzada Muhammad Shahabuddin Vs. The Chairman, Federal Land Commission” (1996 CLC 539), “Ghulam Haider Badini etc. Vs. Government of Pakistan through Ministry of Information and Broadcasting etc. (1995 CLC 1027), “The Engineer-In-Chief Branch etc. Vs. Jalaluddin (PLD 1992 SC 207), “Messrs Al-Iblagh Limited Vs The Copyright Board, Karachi” (1985 SCMR 758), “Asghar Hussain Vs. The Election Commission Pakistan etc. (PLD 1968 SC 387), and “Pakistan through Secretary, Ministry of Finance Vs. Muhammad Himayatullah Farukhi” (PLD 1969 SC 407).

5. On the other hand, learned A.A-G and learned counsel for the PESCO raised preliminary objection to the maintainability of the instant writ petition. They submitted that effective relief has

been sought against respondent No. 3 which performs function beyond territorial jurisdiction of this Court; that respondents No.1 and 2 are not necessary and proper parties; that since PEPCO and PESCO do not have any statutory service rules, the instant writ petition is not maintainable; and that the relationship between PESCO and the petitioner is that of 'master and servant'. Learned counsel for PESCO also submitted that the petitioner cannot claim L.P.R. encashment since he availed leave for 365 days prior to his retirement. Learned counsel, however, prayed for the writ petition to be dismissed as not maintainable.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. Before going into the merits of the case, I deem it appropriate to first decide the objection raised by the learned counsel for PESCO as to the maintainability of the instant writ petition.

8. PESCO was formed in order to take over a part of the Power Wing of WAPDA. After its formation, PESCO made offers of regular appointment to the regular employees of WAPDA, who were already serving in the Area Electricity Board Peshawar. PESCO was to adopt WAPDA's rules to the maximum extent possible after the approval by PESCO's Board of Directors. It is an admitted position that the service rules governing the petitioner's employment with PESCO are not statutory.

9. The law on the subject is clear that principle of 'master and servant' was applicable to the employees whose services were not governed by any statutory rules. Employee of a company,

owned by the government, in the absence of violation of law or any statutory rule, could not press into service the Constitutional jurisdiction of the High Court in order to seek relief with respect to his employment. Reference in this regard may be made to the law laid down in the cases of “Samiullah Narago Vs. Federation of Pakistan (2012 PLC (C.S.) 1205), Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2013 SC 132), and Pakistan International Airline Corporation Vs. Tanveer-ur-Rehman and others, (PLD 2010 SC 676)”. In the latter case, it has been held as follows:-

*“19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction.”*

10. Vide judgment dated 21.06.2012 passed by the Hon'ble Supreme Court in civil petition No.1591/2011 titled “Chief Executive Officer PESCO, Peshawar Vs. Muhammad Aftab-ur-Rehman and others”, it was held *inter-alia* that a writ petition against PESCO filed by its employee was not maintainable in the absence of statutory rules. The Hon'ble Supreme Court, vide said judgment dated 21.06.2012, set-aside the

judgment passed by the Hon'ble Peshawar High Court, which had issued a writ against PESCO at the instance of an employee who had raised a grievance regarding the terms and conditions of his service. Paragraphs 6 and 7 of the said judgment dated 21.06.2012 are reproduced herein below:-

*"6. It would be seen that as long as ago in 1984 in the case of Principal Cadet College Kohat Vs. Muhammad Shoaib Qureshi (PLD 1984 SC 170), this Court had held that where the terms and conditions of service of an employee of a statutory body were governed by statutory rules then any action taken against him in derogation of the said Rules could be set aside by writ jurisdiction. However, in absence of such statutory rules any violation thereof could not normally be enforced through a Writ Petition. Recently this Court in the case of Pakistan International Airlines Corporation and others Vs. Tanweer-ur-Rehman and others (PLD 2010 SC 676) has held that although the Corporation was performing functions in connection with the affairs of the Federation but in the absence of statutory rules any adverse action taken by the employer was not amenable to the writ jurisdiction of the High Court and in these circumstances the principle of Master and Servant would be applicable. A similar view was taken by this Court in the case of Pakistan Telecommunication Co. Ltd. Through Chairman (supra).*

*7. Admittedly the Petitioner Company has been incorporated under the Companies Ordinance and does not have any statutory rules though it may be discharging functions in connection with the affairs of the Federation i.e. power generation. Hence in the absence of statutory rules any violation of the terms and conditions of service of the employees would not attract the writ jurisdiction of the High Court. In these circumstances we are of the opinion that the Learned High Court did not have the jurisdiction to entertain the Writ Petition of the Respondent No.1 and hence the impugned Order is not sustainable."*

11. Since the Hon'ble Supreme Court has already held in the abovementioned judgment dated 21.06.2012 that the PESCO does not have

statutory service rules, this Court cannot take a view different. As a consequence, I hold that the instant petition is not maintainable and the same is, therefore, dismissed with no order as to costs. After holding so, it is not necessary to delve into the merits of the case.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

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