

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.949 of 2015
Fazal Rehman and others

Versus

Federation of Pakistan and others

Dates of Hearing: 23.09.2019 & 14.11.2019
Petitioners by: M/s Ghulam Muhammad Khan and Muzzamil Hussain Shad, Advocates
Respondents by: Hafiz Hifz-ur-Rehman Syed, Saeed Ahmad Zaidi and Muhammad Anwar Mughal, Advocates for F.B.R.
Mr. Atta Ullah Hakim Kundi and Misbah-ul-Mustafa, Advocates for PRAL
M/s Shehzad Ali Rana, Advocate and Ibrar Saeed, Special Prosecutor for S.E.C.P.
Mr. Tariq Mehmood Khokhar, learned Additional Attorney-General
Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General

MIANGUL HASSAN AURANGZEB J.- Through this judgment, I propose to decide writ petition Nos. 949/2015, 835/2015, 1131/2015, 1422/2015, 1613/2015, 1758/2015, 1808/2015, 1820/2015, and 2149/2015 since they entail common questions of law and fact.

2. The common relief sought in the said petitions is that the incorporation of Pakistan Revenue Automation (Pvt.) Limited ("PRAL") as private limited company be declared null and void; that PRAL be declared as the Federal Government's attached department or subordinate office or corporation or commission; that the PRAL Service Rules, 2014 be declared *ultra vires* to the fundamental rights of the petitioners under the Constitution; that respondent No.6 illegally holding the office be restrained from acting as Chief Executive Officer ("C.E.O.") of PRAL; that a direction be issued for regularization of the petitioners' employment; and that a direction for reinstatement be issued with regard to PRAL's employees who were terminated upon expiry of the period provided in their employment contracts.

FACTUAL BACKGROUND:-

3. Between 13.08.1995 and 22.10.2012, the petitioners were appointed for a period of one year on contract basis against different

posts in PRAL. PRAL is a company limited by shares and was incorporated on 12.06.1994 under the provisions of the erstwhile Companies Ordinance, 1984. As per its Memorandum of Association, one of PRAL's objects was to plan and make arrangements for and carry out computerization/automation of all the Federal/Provincial revenues and related works and activities.

4. Apparently on 12.05.1994 (a month prior to PRAL's incorporation), a summary was submitted for the Prime Minister's approval for establishing a private limited company to automate the procedure for tax collection. During a budgetary meeting held on 17.05.1994, the Prime Minister is said to have accorded approval for the establishment of the company. The Auditor General, after conducting an audit of the company, recommended that formal approval for the establishment of the company had to be obtained from the Chief Executive of Pakistan. A summary was submitted by the Chairman, Central Board of Revenue ("C.B.R.") to the Chief Executive of Pakistan seeking approval for the establishment of the company. The said summary was approved by the then Chief Executive of Pakistan vide U.O.No.1(40)Admn-1/2000 dated 04.04.2000 whereby the decision to incorporate PRAL was confirmed. All this information is contained in the Office Memorandum ("O.M.") dated 21.01.2004. The said O.M. shows that PRAL is a limited purpose company providing I.T. support to the C.B.R. and its directorship to be as follows:-

"The composition of the company (i.e. its Directorship) is restricted to ex-officio Members of CBR to the total exclusion of non-government sector. The present composition is as under:-

- (i) Chairman, CBR/ Chairman, BoD,*
- (ii) Member (CE)/ Director,*
- (iii) Member (DT)/ Director,*
- (iv) Member (Admn)/ Director,*
- (v) Member (ST)/ Director,*
- (vi) Member (Customs)/ Director,*
- (vii) Member (IMS)/ Director,*
- (viii) General Management/ Company Secretary*

In the eventuality of transfer of relevant member the Directorship of the Company devolves upon his successor. Nomination of Directors in that sense does not occur."

5. On 02.07.2007, the Federal Board of Revenue Act, 2007 was promulgated whereby the C.B.R. was reconstituted as the Federal Board of Revenue ("F.B.R."). Section 18 of the F.B.R. Act, 2007

provides that reference to the C.B.R. wherever occurring in any law or the rules, regulations, orders, statutory rules and orders (SROs) or notifications etc, shall be read as a reference to the F.B.R.

6. Respondent No.6 (Ms. Rana Ahmed, Member I.T., F.B.R.) was notified as C.E.O. of PRAL vide Form 29 submitted to the Securities and Exchange Commission of Pakistan on 14.02.2014. According to the petitioners, it was during respondent No.6's tenure that the employment of several hundred of PRAL's employees was terminated and the letters were written to the Chief Commissioners and Regional Tax Offices throughout Pakistan requiring them to nominate data entry operators to replace the existing employees of PRAL. In the meantime, the PRAL Service Rules, 1998 were repealed and substituted by the PRAL Rules, 2014. Aggrieved of the said actions, the petitioners filed the instant writ petitions seeking the following relief:-

- (i) that PRAL's status as a private limited company be declared null and void;
- (ii) that PRAL should be declared as the Federal Government's attached department or subordinate office or corporation or commission, and its employees' status be declared at par with government servants;
- (iii) that the PRAL Service Rules, 2014 may be declared *ultra vires* to the fundamental rights of the petitioners and the operation of the said Rules be suspended till finalization of the status of PRAL; and
- (iv) that the petitioners' services be regularized.

It was also prayed that respondent No.6 be restrained from acting as C.E.O. of PRAL after a lapse of maximum period for her current charge. However, since the said respondent does not hold the office of C.E.O. anymore, the petitions were not pressed to that extent of the said prayer.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-

7. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petitions, submitted that the petitioners were initially appointed on contract basis for one year;

that no order for extension of their service contracts were issued; that they were working till the filing of these petitions; that the services of several employees other than the petitioners were terminated without any allegation of misconduct; that PRAL is fully owned by the Federal Government; that PRAL is performing functions in connection with the affairs of the State; that PRAL's memorandum and articles of association clearly provide that it has been established by the Federal Government to assist the F.B.R. in the collection of revenue; that incorporating PRAL as a private limited company is *ultra vires* to Articles 4, 25, 240, and 260 of the Constitution of the Islamic Republic of Pakistan ("the Constitution"); that the Hon'ble Supreme Court, in its judgment passed in Civil Appeal No. 154/1988, held that an organization established through a resolution is not a body corporate but a government department; that pursuant to the Apex Court's said judgment, the Federal Government made a policy with respect to autonomous bodies established through resolutions; that the said policy is contained in the Establishment Division's O.M.No.4/1/91-R.7/R.3 dated 06.09.2000; that the Establishment Division, in its report and para-wise comments furnished in W.P.No.2149/2015, admitted that PRAL enjoys the status of an autonomous body; and that in the Rules of Business, 1973, there are a number of attached departments of Housing and Works Division and Industries & Production Division which have the same status as PRAL but had been declared as attached departments of the said Divisions.

8. Learned counsel further submitted that the PRAL Rules, 2014 give arbitrary powers for the employees' services to be terminated without assigning any reason or the issuance of a show cause notice; that such powers transgress the employees' fundamental right to earn a livelihood; that under the Labour Laws, a worker who completes 90 days of service in a factory or industrial unit is considered as a regular employee and is eligible for certain benefits but no such protection has been given to the employees of PRAL in the PRAL Rules, 2014; that the services of the petitioners and other similarly placed employees of PRAL cannot be terminated arbitrarily after they had completed several years of service; that although the

petitioners were appointed on contract basis for one year, but since they continued to work beyond a period of one year without a formal extension in the period of their contractual employment, they had acquired a legitimate expectation for their services to be regularized; that where an employee is appointed on contract basis for a specific period, and where the contract period is extended for more than two years or where no extension order is issued on the expiry of the initial contract period, the employee attains the status of a regular employee; that the Superior Courts have held that employees of companies in which the government had shares were entitled to be regularized, whereas PRAL is fully owned by the Federal Government; that during the subsistence of an injunction order issued by this Court, the respondents terminated the employment of some of the petitioners; that the petitioners whose services were terminated were regular employees of PRAL and they had also been given promotions and annual increments; and that termination of their services without any disciplinary proceedings or issuance of a show cause notice is against the law. In support of his contentions, the learned counsel placed reliance on case law reported as Imran Sajid Vs. Managing Director/General Manager, (Manager Finance) Telephone Industries of Pakistan (2015 SCMR 1257), Aamir Junaid Vs. Government of the Punjab through Chief Secretary (2014 PLC (C.S) 1), Muhammad Jameel Vs. Taluka Nazim, Taluka Municipal Administration Khairpur (2014 PLC (C.S) 479), Muhammad Shoaib Roomi Vs. Secretary / Additional Secretary, Education Department, Government of Punjab (2005 SCMR 605), Ikram Bari etc. Vs. National Bank of Pakistan (2005 SCMR 100), Managing Director, Sui Southern Gas Company Ltd., Karachi Vs. Ghulam Abbas (PLD 2003 S.C 724) and Dr. Anwar Ali Sahto Vs. Federation Of Pakistan (PLD 2002 S.C 101).

9. Learned counsel for the petitioners also submitted that instant petitions are maintainable since under memorandum and articles of association of PRAL, it is entrusted with a function which involves the exercise of public power; that the control of PRAL is fully vested in the Government; that funds are provided by the State for the functioning of PRAL; and that PRAL can safely be considered as a

person performing functions in connection with the affairs of the Federation and is, therefore, amenable to the Constitutional jurisdiction of this Court. In support of these contentions, the learned counsel relied on clause III of PRAL's memorandum of association, clause 54 of its articles of association as well as cases reported as Tariq Masood Khan Vs. Federation of Pakistan through Secretary, Ministry of Water & Power (2014 CLD 924), Muhammad Shoaib Vs. Project Director, National ICT Scholarship Program, Ministry Of Information Technology, Islamabad (2011 CLD 23), Muhammad Mubeen-Us-Salam etc. Vs. Federation of Pakistan through Secretary, Ministry of Defence (PLD 2006 S.C 602), Pakistan International Airline Corporation Vs. Tanweer-ur-Rehman (PLD 2010 S.C 676), Pakistan Telecommunication Company Limited through General Manager Vs. Muhammad Zahid (2010 SCMR 253), Aitcheson College, Lahore Vs. Muhammad Zubair (PLD 2002 S.C 326), Maqsood Ahmad Toor Vs. Federation of Pakistan (2000 SCMR 928), Mrs. M.N. Arshad Vs. Miss Naeema Khan (PLD 1990 S.C 612), Salahuddin Vs. Frontier Sugar Mills & Distillery Ltd. (PLD 1975 S.C 244) and University Of Dacca Vs. Zakir Ahmad (PLD 1965 S.C 90). Learned counsel for the petitioners prayed for the writ petitions to be allowed in terms of the relief sought therein.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS:-

10. On the other hand, the learned counsel for PRAL submitted that PRAL is neither a statutory body nor does it have statutory service rules; that in the absence of violation of any statute on PRAL's part, the constitutional jurisdiction of this Court could not be invoked by the petitioners; that the petitioners have no *locus standi* to file the writ petitions; that the petitioners were temporary employees and their service contracts were extended from time to time; that the service contracts were extended on 28.07.2014; that the order for the extension in service contracts was communicated to the petitioners and was published on the website of PRAL; that the petitioners have not come to the Court with clean hands; that the petitioners have withheld information from the Court about extension of their

contracts; and that after expiry of the contracts, the petitioners cannot claim to remain in service as of right.

11. Furthermore, it was also submitted that on the basis of being a Member I.T., F.B.R., respondent No.6 was also an *ex-officio* member of PRAL's Board of Directors; that no remuneration was paid to respondent No.6 for being on the Board of PRAL; that appointment of respondent No.6 as C.E.O. of PRAL was made by PRAL's Board of Directors in accordance with Article 45 of PRAL's articles of association and sections 199 and 200 of the Companies Ordinance, 1984 (prior to its repeal by the Companies Act, 2017); that the petitioners' services were terminated as part of institutional reforms in PRAL; that the petitioners' appointments in PRAL were made without any competitive process; that the petitioners were appointed on the basis of extraneous considerations and nepotism; that the petitioners, being employees of a private limited company, cannot expect to be given the status of Government servants; that the Hon'ble Supreme Court, in its judgment dated 16.07.2000 passed in C.P.Nos.1220 and 1221 of 2010 titled "Pakistan Revenue Automation (Pvt.) Limited Vs. Abdus Sami Saggu, etc." had held that services of PRAL's employees were not regulated by any statutory law or even by statutory rules, and therefore no indulgence in the Constitutional jurisdiction could be shown; and that the said decision was reiterated by the Hon'ble Supreme Court in its order dated 31.03.2016 passed in C.P.No.946 of 2015 titled "Syed Hassan Pervaiz Vs. Board of Directors, Pakistan Revenue Automation (Pvt.) Limited, etc."

12. Learned counsel for PRAL further submitted that prior to the incorporation of PRAL, the Government had established the Resource Mobilization and Tax Reform Commission ("R.M.&T.R.C.") to assist the C.B.R. in the automation of revenues; that R.M.&T.R.C. was disbanded in the year 1994-95 and PRAL was incorporated on 12.06.1994; that the executive authority of the Federation extends to all those subjects over which Parliament has the authority to make laws; that under Article 90 of the Constitution, executive authority of the Federation is exercised by the Federal Government in the name of the President; that Article 142 of the Constitution provides that the Parliament has exclusive power to make laws with respect to any

matter in the Federal Legislative List; that Item No.31 in the Federal Legislative List includes matters pertaining to the incorporation of corporations; that in view of Item No.31 in the Federal Legislative List, the incorporation of companies comes within the ambit of the executive authority of the Federation; and that the Federal Government's owned and controlled companies are also envisaged under Articles 18(c) and 253 of the Constitution. Learned counsel for the respondents/PRAL prayed for the petitions to be dismissed.

13. The learned Assistant Attorney-General adopted the arguments of the learned counsel for PRAL. He further submitted that a writ petition is not maintainable where the respondent had not violated any provision of law or statutory rules. He placed reliance on the law laid down in the case of Manzoor Ahmed Vs. Federation of Pakistan (2018 PLC (C.S.) 1224).

14. I have heard the contentions of the learned counsel for the parties as well as the learned Assistant Attorney-General and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 3 to 5 above and need not be recapitulated.

15. Syed Hassan Parvaiz, a former employee of PRAL, had challenged the termination of his services in writ petition No.936/2014 before this Court. Vide order dated 20.01.2015, the said writ petition was dismissed as not maintainable on the ground that PRAL, being a company incorporated under the provisions of the Companies Ordinance, 1984, was not amenable to the jurisdiction of this Court under Article 199 of the Constitution. The said writ petition was dismissed on the basis of the law laid down by the Hon'ble Supreme Court in its judgment dated 16.07.2010 passed in Civil Petition No.1220/2010 titled Pakistan Revenue Automation (Pvt.) Limited Vs. Abdul Sami Saggu. Against the said order dated 20.01.2015, Syed Hassan Parvaiz preferred Intra Court Appeal No.70/2015, which was dismissed by the Division Bench of this Court vide order dated 16.02.2015. The said concurrent orders passed by this Court were challenged by Syed Hassan Parvaiz before the Hon'ble Supreme Court in Civil Petition No.946/2015. The order dated 14.03.2016 shows that the Hon'ble Supreme Court had raised a

question: “*how a company can be registered by the FBR and under what law.*” Subsequently, vide order dated 31.03.2016, the said petition was dismissed. However, the Hon'ble Supreme Court required a proper response to be filed to its earlier order dated 14.03.2016.

16. These writ petitions were filed before this Court while Civil Petition No.946/2015 was still pending before the Hon'ble Supreme Court. Since the question agitated by the petitioners in these writ petitions was substantially the same as the one pending before the Hon'ble Supreme Court, the proceedings before this Court were adjourned *sine die*. In these circumstances, some of the petitioners filed a petition under Article 184(3) of the Constitution before the Hon'ble Supreme Court praying for the same relief as the one sought by the petitioners in these petitions. Due to an office objection, the said petition was not numbered. The appeal against the office objection was dismissed by the Hon'ble Supreme Court vide order dated 14.03.2017. By that time Civil Petition No.946/2015 had been dismissed by the Hon'ble Supreme Court. After it was brought to the notice of the Hon'ble Supreme Court that this Court had adjourned the proceedings *sine die*, it was observed in the said order dated 14.03.2017 that the writ petitions pending before this Court may be revived. Consequently, this Court recalled the order to adjourn the proceedings *sine die* and heard the matter on merits.

17. The first question that needs to be determined is whether the Federal Government, through the F.B.R., could have incorporated a private limited company. After the Prime Minister's approval dated 17.05.1994, PRAL was incorporated on 12.06.1994 under the provisions of the erstwhile Companies Ordinance, 1984. The said approval of the Prime Minister was confirmed by the Chief Executive of Pakistan vide U.O. No. 1(40)Admn-1/2000, dated 04.04.2000. It goes without saying that the approval was given by the Chief Executive of Pakistan in pursuance of the Provisional Constitution Order, 1999 which was given Constitutional protection through the insertion of Article 270-AA in the Constitution.

18. Article 97 of the Constitution provides *inter alia* that the executive authority of the Federation shall extend to all matters with

respect to which the Parliament has power to make laws. Under Article 142(a) of the Constitution, the Parliament has the exclusive power to make laws with respect to any matter in the Federal Legislative List contained in the Fourth Schedule to the Constitution. Item No.31 in Part-I of the Federal Legislative List includes the subject of incorporation of the corporation for variety of purposes. For the purposes of clarity, Item No.31 in Part-I of the Federal Legislative List is reproduced herein below:-

“31. Corporation, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Province and carrying on business only within that Province, or co-operative societies, and of corporations, whether trading or not, with objects not confined to a Province, but not including universities.”

19. It is no one's case that the Constitution explicitly bars formation of a private limited company by the Government without a statute enabling the Government to do so. The government-owned corporate entities can be divided into corporations created by statute and companies incorporated under the provisions of the Companies Ordinance, 1984 or under any other law for the time being in force. The provisions of the Companies Ordinance, 1984 under which PRAL was incorporated also did not bar the formation of a company by the Government. The question involved in the case of Moti Lal etc. Vs. The Government of the State of Uttar Pardesh (AIR 1951 Allahabad 257), was whether the Government of a State under the Indian Constitution had the power to carry on trade or business like running a Government Bus Service in the absence of a legislative enactment authorizing the said Government to engage itself in such trade or business. To the extent of the exercise of the executive authority of the Union of India, Article 73 of the Indian Constitution is essentially in pari materia with Article 97 of the Constitution of the Islamic Republic of Pakistan, 1973 which deals with the executive authority of the Federation of Pakistan. The members of the Full Bench of the Allahabad High Court returned separate views on the question. In a subsequent judgment in the case of Jawaya Kapur etc. Vs. The State of Punjab (AIR 1955 SC 549), the Indian Supreme Court dealt with the judgment in Moti Lal's case (*supra*) in the following terms:-

“... Different views were expressed by different Judges on this question. Chief Justice Malik was of opinion that that in a written Constitution like ours the executive power may be such as is given to the executive or is implied, ancillary or inherent. It must include all powers that may be needed to carry into effect that aims and objects of the Constitution. It must mean more than merely executing the laws. According the chief justice the state has a right to hold and manage its own property and carry on such trade or business as a citizen has the right to carry on, so long as such activity does not encroach upon the right of others or is not contrary to law. The running of a transport business therefore was not per se outside the ambit of the executive authority of the State. Saparu, J., held that the power to run a Government bus service was incidental to the power of acquiring property which was expressly conferred by article 298 of the Constitution. Mootham and Wanchoo, J.J., who delivered a common judgment, were also of the opinion that there was no need for a specific legislative enactment to enable a State Government to run a bus service. In the opinion of these learned Judges an act would be within the executive power of the State if it is not an act which has been assigned by the Constitution of India to other authorities or bodies and is not contrary to the provisions of any law and does not encroach upon the legal rights of any member of the public. Agarwala, J., dissented from the majority view and held that the State Government had no power to run a bus service in the absence of an Act of the legislature authorizing the State to do so. The opinion of Agarwala, J., undoubtedly support the contention of Mr. Pathak but it appears to us to be too narrow and unsupportable.”

20. In the case of Jawaya Kapur (*supra*), the Indian Supreme Court further laid down the law regarding the necessity of specific legislation to sanction a governmental action and observed that such legislative sanction would only be required where the Government needed certain powers in addition to what they possess under ordinary law. Paragraphs 19 and 20 of the said judgment read thus:-

“19. Specific legislation may indeed be necessary if the Government require certain powers in addition to what they possess under ordinary law in order to carry on the particular trade or business. Thus when it is necessary to encroach upon private rights in order to enable the Government to carry on their business, a specific legislation sanctioning such course would have to be passed.

20. In the present case it is not disputed that the entire expenses necessary for carrying on the business of printing and publishing the text books for recognised schools in Punjab were estimated and shown in the annual financial statement and that the demands for grants, which were made under different heads, were sanctioned by the State Legislature and due Appropriation Acts were passed. For the purpose of carrying on the business the Government do not require any additional powers and whatever is necessary for their purpose, they can have by entering into contracts with authors and other people. This power of contract is expressly vested in the Government under article 298 of the Constitution. In these circumstances, we are unable to agree with Mr. Pathak that the carrying on of the business of printing and publishing text books was beyond the competence of the executive Government without a specific legislation sanctioning such course.”

21. As per PRAL's memorandum and articles of association, PRAL is a corporate vehicle to provide automation related services to the Federal and Provincial Revenue Divisions/ Departments. PRAL has not been assigned a subject distinct from the functions of the F.B.R. Its objects are such as not to encroach upon the private trade rights of citizens. Collection of revenue is the primary objective of the F.B.R. The automation and computerization of the process of revenue collection is merely an incidental activity to the said primary objective of the F.B.R. No new activity was being undertaken by the Federal Government to establish a company for the automation of revenue collection. Hence, it is my view that there was no mandatory requirement for law to be enacted empowering the Federal Government to form a company for the provision of automation services to the F.B.R.

22. As regards the claim of the petitioners that being employees of PRAL, a wholly government owned company, they are entitled to be given the status of the employees of a Government department or for their services to be regularized so as to give them the status of Government servants. The Rules of Business, 1973 framed under Article 99 of the Constitution do not show PRAL as an attached department of the Revenue Division or the Ministry of Finance. PRAL is a private limited company incorporated ordinarily under the provisions of the Companies Ordinance, 1984. Even employees of corporations created by statute automatically do not acquire the status of Government Servants. At no material stage were the petitioners' names sent to the Cabinet Sub-Committee for the regularization of their services so as to give them the status of Government servants. On all these counts, the petitioners are not entitled to be given the status of the employees of a Government department. Reference in this regard can be made to the following cases:-

- (i) In the case of Lt. Col. Shujauddin Ahmad Vs. Oil & Gas Development Corporation (1971 SCMR 566), the petitioner, an employee of the Oil and Gas Development Corporation, sought leave to appeal against the High Court's order dismissing an

application for injunction against his termination. He took the ground that the Corporation, being under the executive control of the Government, was performing functions of the Government, therefore employees of the Corporation were persons holding civil posts in connection with the affairs of the Federation and their service in the Corporation was also in the service of Pakistan within the meaning of Article 242 of the Constitution of 1962. The Hon'ble Supreme Court repelled the said argument by holding that the employees of statutory Corporations neither acquire the status of Government servants nor are the guarantees given by the Constitution applicable in their case.

- (ii) In the case of Tanvir Iqbal Siddiqui Vs. The Principal, Overseas Pakistanis Foundation Girls College (1994 SCMR 958), the petitioner, an employee of Overseas Pakistanis' Foundation Girls College, Islamabad unsuccessfully assailed his termination in the Constitutional jurisdiction of the High Court. The High Court declined to intervene on the ground that O.P.F., which ran the College though an autonomous body, was not the creation of any Statute. Furthermore, it was held that since O.P.F. was not a statutory organization, the petitioner's remedy lay in filing a civil suit. The order of the High Court was maintained by the Hon'ble Supreme Court. In the said report, it was held as follows:-

“The O.P.F. is decidedly not a department of the Federal Government. The fact that it has not been created by virtue of any Statute has also not been disputed before us. It is not shown that the Foundation performs the functions in connection with the affairs of the "Federation" within the meaning of Article 199 of the Constitution. The High Court, therefore, rightly came to the conclusion that the writ petition is not competent. We have not been persuaded to differ with the view expressed by the learned Single Judge.”

- (iii) In the case of Muhammad Qasim etc. Vs. Federation of Pakistan (2019 PLC (C.S.) 1491), a Division Bench of this Court maintained the learned Single Bench's decision for dismissal of the writ petition seeking a direction for regularization of the petitioners. In the said judgment, I had the occasion to hold as follows:-

“7. It is our view that the dimensions and parameters of a competitive process for a permanent appointment and a contractual/ temporary appointment are altogether different. Competition for a contractual/temporary employment is not as aggressive and competitive as competition for a permanent employment. Many vying for permanent employment would not bother applying for contractual/temporary employment. This is more so when there is no representation in the advertisement inviting applications for contractual/temporary employment that the same would somehow transform into a permanent employment. If a person employed purely on temporary basis is to be given a permanent employment without any competitive process it would amount to stealing a march on hundreds of thousands of able would-be applicants who did not apply for temporary/contractual employment, but would have applied had they known that the contractual employment would, without any further competitive process, turn into permanent employment. The conversion of a person's temporary/contractual employment into permanent employment without any transparent competitive process, would be a clear violation of Articles 3 and 9 of the Constitution. Equal opportunity in public employments is a constitutional mandate. The principle of "each according to his ability to each according to his work" can only be achieved by appointing meritorious candidates in the public sector through strict competition. Such competition for a permanent employment in the public sector cannot be given a go-bye simply because a contractual employee, desirous of his employment being made regular/permanent, was given contractual employment through a competitive process. The equality clause enshrined in the Constitution is to be followed scrupulously by the public sector. The youth of this Islamic Republic burning the midnight oil to secure permanent employment in the public sector through an open competitive process would be let down and demoralized if the contractual employment of persons like the appellants is converted into permanent employment without a competitive process. Such a relaxation would be a bad precedent to a large number of qualified people aspiring for permanent employment in the public sector.

8. Learned counsel for the appellants did not place on record any provision in respondent No.2's service Rules under which the appellants' temporary/contractual employment could be converted into a permanent employment. For this Court to grant the relief prayed for by the appellants in their writ petition would be tantamount to rewriting the provisions of their employment contracts. Admittedly, the appellants, during their contractual employment were not working against sanctioned posts. Furthermore, they were being paid out of State Life Insurance Emigrants Fund.”

23. Admittedly, the PRAL Service Rules, 1998 as well as the PRAL Service Rules, 2014 are non-statutory. The nature of the petitioners' service was purely contractual in nature. Now, the employees of a company owned and controlled by the Government cannot invoke the

Constitutional jurisdiction of this Court for pressing into service, their non-statutory terms and conditions of employment. Similarly, contractual obligations also cannot be enforced by this Court in exercise of the jurisdiction under Article 199 of the Constitution. This Court, in the case of Manzoor Ahmed Vs. Federation of Pakistan (2018 PLC (C.S) 1224), had held that an 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. Similarly, in the case of First Woman Bank Ltd Vs. Muhammad Tayyab etc. (2020 PLC (C.S.) 86), I had the occasion to hold as follows:-

15. An employee of a company, just like the appellant bank, whose majority shareholding is owned by the federal 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 v. Federation of Pakistan (2012 PLC (C.S.) 1205) and Pakistan International Airline Corporation v. Tanveer-ur-Rehman, (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."

24. Moreover, the Hon'ble Supreme Court, in its judgment dated 16.07.2010 passed in Civil Petitions No.1220 and 1221/2010, upheld the dismissal of the writ petitions filed by the employees of PRAL against the termination of their services. Paragraph 7 of the said judgment is reproduced herein below:-

"7. It is a principle too well established by now that where the employees were not civil servants whose service conditions were regulated by law or where the service of an employee was not regulated by law or where the service of an employee was not regulated even by statutory rules then such-like employees could not invoke the constitutional jurisdiction of a High Court because their

service was a contractual relationship between the employer and employee and the remedies for any alleged breach of such-like contractual service lay elsewhere. The petitioner-company in the present case was admittedly a company incorporated under section 32 of the Companies Ordinance of 1984 as a private company limited by shares. The services of the employees of the said company were regulated not by any statutory law or even by statutory rules and their service was, therefore, only a contractual appointment. It had been noticed by the High Court itself that the respondents had opted for the service of the said company because it offered "exorbitant salaries" as compared to the government employees of various ministries and departments. In this view of the matter, no indulgence could be shown to the respondents as they could not be allowed to have their bread and buttered not only on two sides but on all sides. The respondents had knowingly and consciously opted to join a private company knowing fully well, even from the terms of their appointments, that their appointments were purely contractual in nature with no statutory security of service. In this view of the matter, they were not entitled to the kind of relief which was allowed to them by the High Court. We do not consider it necessary to bring on record the high salaries, perks and privileges which had tempted the respondents to join the said company in preference to becoming civil servants by joining a governmental office or department. Resultantly, we find that the two impugned judgments passed by the Lahore High Court could not be sustained in law."

25. Additionally, in the order dated 02.06.2011 passed by the Hon'ble Supreme Court in Civil Review Petition No.162/2010 titled Muhammad Irfan Vs. Pakistan Revenue Automation (Pvt.) Limited etc., it was held that the Pakistan Revenue Automation (Pvt.) Limited is a private limited company against which Constitutional petition under Article 199 of the Constitution is not maintainable.

26. On the basis of the said judgment, this Court, vide the order dated 20.01.2015, dismissed writ petition No. 936/2014 filed by an employee of PRAL against the termination of his services. Intra Court Appeal No.70/2015 against the said order dated 20.01.2015 was also dismissed by this Court vide order dated 16.02.2015. Civil Petition No. 946/2015 against the said orders was dismissed by the Hon'ble Supreme Court vide order dated 31.03.2016.

27. This Court has held that the service rules governing the terms and conditions of the petitioners' service are non-statutory and had been framed under the authority of the memorandum and articles of association of PRAL. The petitioners made no submission as to how the said rules were in derogation of the powers of PRAL under its memorandum and articles of association or the law. The petitioners cannot seek to place a fetter on the power of a company to undertake

its indoor management. Reference can be made to the case of M.C.B. Limited Vs. Abdul Waheed Abro etc (2016 SCMR 108). Insofar as the protection of the terms and conditions of the petitioners' service falls under labour laws the petitioners may, subject to law, avail their remedy before the competent forum.

28. In view of the above, the instant petition as well as the connected petitions are dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2020

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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