

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

W.P.No.2346 of 2017

Manzoor Ahmed

**Versus.**

Federation of Pakistan through Secretary, Ministry of Water and  
Power, Government of Pakistan and others

<b>Date of Hearing:</b>	22.02.2018
<b>Petitioner by:</b>	Mr. G.M. Chaudhary, Advocate.
<b>Respondents by:</b>	Mr. Ahsan Mehmood Satti, learned Assistant Attorney-General with Akhlaq Ahmad, Sr. Private Secretary PEPCO, Syed Kazim Hussain Kazmi, Advocate for respondents No.2 to 4, Mr. Muhammad Asif Khan, Advocate for respondent No.5.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Manzoor Ahmed, impugns (1) office order dated 20.10.2016, issued by Pakistan Electric Power Company (Pvt.) Ltd. ("PEPCO"), whereby the petitioner's promotion as Chief Engineer (BPS-20) was withdrawn, and (2) letter dated 17.05.2017, issued by PEPCO, whereby the petitioner's departmental appeal against the withdrawal of his promotion was turned down. Furthermore, the petitioner seeks a declaration to the effect that PEPCO's office order dated 02.03.2016, whereby the petitioner was promoted as Chief Engineer (BS-20) purely on temporary basis, was validly made and that the same could not be withdrawn. The petitioner has also prayed for a host of other reliefs incidental to the above mentioned relief.

2. Learned counsel for the petitioner submitted that on 24.02.1983, the petitioner was appointed as a Junior Engineer (National Pay Scale-17) in WAPDA; that after the incorporation of Islamabad Electric Supply Company (Pvt.) Ltd. ("IESCO") in 2002, the petitioner became a regular employee of the said company; that on 11.01.2003, IESCO issued the petitioner's employment letter; that under the terms and conditions of the

petitioner's employment with the IESCO, after 31.12.2004, the petitioner could neither be transferred to anywhere else in Pakistan in order to serve any WAPDA related company, nor could he be promoted against a vacancy occurring in any other WAPDA related company; that after 31.12.2004, the petitioner could only be considered for promotion against vacancy occurring only in IESCO; that in January 2014, the petitioner was promoted as Superintendent Engineer (BS-19); that vide office order dated 02.03.2016 issued by PEPCO, the petitioner was promoted as Chief Engineer (BS-20) 'purely on temporary basis' and his services were placed at the disposal of Quetta Electric Supply Company (Pvt.) Ltd. ("QESCO"); that vide office order dated 03.03.2016, issued by IESCO, the petitioner was relieved from IESCO so that he could join his new assignment in QESCO; and that on 07.03.2016, the petitioner submitted a departmental appeal praying for his services to be retained in IESCO on humanitarian and medical grounds; that during the pendency of the said departmental appeal, the petitioner was placed under suspension, vide PEPCO's office order dated 16.03.2016; and that vide letter dated 28.03.2016, PEPCO did not allow the petitioner's departmental appeal due to non-availability of a vacant post in IESCO and called upon the petitioner to join his new assignment in QESCO at the earliest.

3. Learned counsel for the petitioner further submitted that on 04.04.2016, the petitioner submitted a review petition to the Managing Director, PEPCO, against the said letter dated 28.03.2016; that even though the petitioner had been informed that there were no vacant posts in IESCO against which the petitioner could be promoted, but a number of persons were promoted and upgraded in IESCO; that on 29.03.2016, a letter of explanation was issued to the petitioner, which letter was duly replied by the petitioner on 19.04.2016; that after an opportunity of personal hearing was afforded to the petitioner and after considering the petitioner's medical reports, PEPCO, vide its letter dated 15.08.2016, asked IESCO to pay the petitioner's

subsistence grants and medical facility admissible under the Rules until his re-instatement and regular posting as Chief Engineer (BS-20); that vide office order dated 25.01.2017, the disciplinary case against the petitioner was closed due to the withdrawal of his promotion order on 20.10.2016; that the petitioner's promotion order dated 02.03.2016 had been arbitrarily withdrawn on 20.10.2016; that the petitioner's departmental appeal to the Chairman PEPCO was rejected, vide impugned letter dated 17.05.2017; and that the rejection of the petitioner's departmental appeal is also arbitrary.

4. Furthermore, learned counsel for the petitioner submitted that the petitioner's adjustment against a vacant post in QESCO is in violation of the petitioner's terms and conditions of service contained in letter dated 11.01.2003; that the petitioner could not be transferred out of IESCO after 31.12.2004; that since the disciplinary case against the petitioner was closed, he stood re-instated for all intents and purposes with effect from 20.10.2016; that even though IESCO's or PEPCO's Service Rules are not statutory, the instant petition is maintainable because the said entities are forming functions in connection with the affairs of the Federation; and that there are several judgments holding that writ petitions against PEPCO and other distribution companies are maintainable. Learned counsel for the petitioner prayed for the writ petition to be allowed and for a direction to be issued to PEPCO and IESCO to promote the petitioner with effect from 02.03.2016 as Chief Engineer (BS-20) in IESCO.

5. On the other hand, learned counsel for the PEPCO and IESCO raised preliminary objection to the maintainability of the instant writ petition. They submitted that since PEPCO and IESCO do not have any statutory service Rules, the instant writ petition is not maintainable; and that the relationship between IESCO and the petitioner is that of master and servant. Hardly any submissions were made by the learned counsel for the PEPCO and IESCO on the merits of the case, but 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 IESCO and PEPCO as to the maintainability of the instant writ petition.

8. IESCO was formed in order to take over a part of the power wing of WAPDA. After its formation, IESCO made offers of regular appointment to the regular employees of WAPDA, who were already serving in the IESCO. Vide letter dated 11.01.2003, IESCO made an offer of employment in IESCO subject to the terms and conditions mentioned in the said letter. On 14.01.2003, the petitioner accepted the said offer. Clause 4.1 of the petitioner's terms and conditions of service provided that the petitioner would be governed by IESCO's rules and regulations relating to service, discipline and other matters, after such rules and regulations are notified by IESCO. Such rules and regulations were to be based on the corresponding rules in force in WAPDA. IESCO was to adopt WAPDA's rules to the maximum extent possible after the approval by IESCO's Board of Directors. It is an admitted position that the service rules governing the petitioner's employment with IESCO are not statutory.

9. It is well settled that a writ petition is maintainable where the respondent authority violated any provision of law or statutory rules. Employees who are governed by statutory rules can avail the remedy of filing a writ petition before the High Court. It is also well settled that the 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 Peshawar Electric Supply Company (Pvt.) Ltd. (“PESCO”) filed by its employee, was not maintainable due to 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. Tanveer-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. Furthermore, vide judgment dated 08.10.2015, passed by this Court in writ petition No.377/2012, titled “Khizar Hayat Vs. Managing Director PEPCO, WAPDA House, Lahore and others” a writ petition filed by an employee of IESCO for the redressal of his grievances in relation to the terms and conditions of his service, was dismissed as not maintainable. Paragraph 6 of the said judgment dated 08.10.2015, is reproduced herein below:-

*“6. It is evident from record that petitioners are employees of IESCO which is a company established under the Companies Ordinance, 1984. It may be a public utility company performing functions in connection with the affairs of the federation yet matter under consideration does not relate to performance of the function of respondent Company, thus the petition cannot be held maintainable merely on the basis of ‘function test’ and an employee of Company cannot be presumed to be governed by statutory rules merely through reference where his employment relationship is regulated by the non-statutory rules. Similarly, there is nothing on record to show that rules made under Section 18 of Pakistan Water & Power Development Authority, 1958 were prepared with the sanction of Government or were published in the Official Gazzatte which is required to consider the same as statutory, therefore the relationship of the petitioners with their employer is of ‘Master & Servant’ and in such situation constitutional petition is not competent.”*

12. Recently, this Court, vide order dated 11.01.2018, passed in writ petition No.296/2014, titled “Adnan Khan Vs. IESCO, etc.” dismissed a writ petition filed by an employee of IESCO. Paragraph 5 of the said order dated 11.01.2018, is reproduced herein below:-

*“5. In order to attend to the question of maintainability, it is admitted position that the respondent IESCO is a company incorporated under companies’ ordinance. Though involved in affairs of Federation relating to supply of electricity within a special region, yet the fact remains that the rules of IESCO have not been framed by the Government or under the Authority of the Statute. The logical consequence would be to observe that the relationship of employees with the company is of Master & Servant which takes away the constitutional jurisdiction of this Court.*

13. The petitioner through the instant writ petition has raised a two-pronged grievance regarding the terms and conditions of his employment with IESCO. The first being against the placement of the petitioner’s services at the disposal of QESCO, after his promotion as Chief Engineer (BS-20) purely on temporary basis, and second being the dismissal of his appeal against the withdrawal of his promotion as Chief Engineer (BS-20). Learned counsel for the petitioner did not refer to any service rule applicable to the petitioner, which had been violated by IESCO or PEPCO in taking the impugned decisions against the petitioner. Since I cannot take a view different to the one taken by the Hon'ble Supreme Court in the abovementioned judgment dated 21.06.2012 and I am not inclined to depart from the view taken by this Court in the abovementioned orders dated 08.10.2015 and 11.01.2018, 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**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2018.**

**APPROVE FOR REPORTING**

**(JUDGE)**

*Qamar Khan\**

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