

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1119 of 2016

Mirza Tariq Mahmood
Vs
Federation of Pakistan, etc.

DATE OF HEARING: 24-01-2018.

PETITIONER BY: Mr Muhammad Umair Baloch Advocate.

RESPONDENTS BY: Mr Sultan Mazhar Sher Advocate.

ATHAR MINALLAH, J.- The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**") assailing order, dated 22-10-2015, and in addition is seeking his regularization in service.

2. The facts, in brief, are that the petitioner was appointed in the respondent Company as Manager (EG-VII) on contract basis vide letter, dated 22-10-2008. His contract was extended from time to time. However, after having served for almost seven years the contract was

not extended and he was accordingly informed vide the impugned Office Memorandum, dated 22-10-2015. It is pertinent to mention that the appointment letter, dated 22-10-2008, inter-alia, included a termination clause.

3. The learned counsel has contended on behalf of the petitioner that; the impugned order is illegal, arbitrary, without lawful authority and jurisdiction; the refusal on part of the respondents to extend the contract is illegal; the Cabinet had approved a policy for regularizing the services of employees who were appointed on contract basis in autonomous bodies and corporations; the contract of the petitioner was extended from time to time and, therefore, a vested right had accrued in his favour; The Board of Directors of the respondent Company in the 112th meeting held on 30-12-2009 had affirmed its earlier decision vide resolutions No. 892 and 416 passed in its meetings held on 25-10-2007 and 23-01-2008 respectively; in the light of the minutes of the said meetings right has accrued in favour of the petitioner to be considered for being regularized in service.

4. The learned counsel appearing on behalf of the respondent Company has contended that; the instant petition is not maintainable since the terms and conditions of service of the petitioner are non-statutory; the petitioner was not a transferred employee and, therefore, his terms and conditions are not protected; the policy of the respondent Company regarding absorption of employees appointed on contract basis was to the extent of those who were in grade 5; no employee appointed in a higher grade has been absorbed; the policy of the

Federal Government regarding regularization is not binding on the respondent Company; the respondent Company is a juridical person and its affairs and decisions are governed under its Memorandum and Articles of Association.

5. The learned counsels have been heard and the record perused with their able assistance.

6. *The respondent Company was established under Section 3 of the Oil & Gas Corporation Ordinance, 1961 (hereinafter referred to as the “**Ordinance of 1961**”) and the purpose thereof as described in the preamble was to provide for the establishment of a Corporation for the purposes of exploration and development of oil and gas resources, production, refining and sale of oil and gas, and for matters connected therewith. Section 29 of the Ordinance of 1961 empowers the Central Government to make rules whereas the power in the context of making regulations is vested under Section 30 in the Central Government. Pursuant to the powers vested under Section 30 the Service Regulations, 1991 and the Service Regulations, 1994 were framed and accordingly notified. The respondent Company was converted from a statutory corporation to a public limited company on 23-10-1997. In order to give effect to the conversion of the respondent Company from the Corporation established under the Ordinance of 1961 to a company incorporated under the Ordinance, the Oil & Gas Development Corporation (Re-Organization) Ordinance, 2001 (hereinafter referred to as the “**Re-Organization Ordinance**”) was promulgated. The Re-Organization Ordinance was deemed to have*

come into force and taken effect on 23-10-1997. The expressions "Company" and "Corporation" are defined in Section 2 (1)(a) & 2 (1)(b) respectively. Moreover, the effective date is defined in clause (c) of subsection (1) of Section 2 as meaning the date of incorporation of the respondent Company under the Ordinance. Section 3 (1) declares that the Corporation shall be deemed to have been converted into a Company limited by shares with effect from the date of incorporation of the Company i.e. 23-10-1997. For the purposes of the instant petition Section 5 is relevant and the same is reproduced as follows:-

"Transfer of employees from the Corporation to the Company.-"

(1) All officers, workmen or other employees of the Corporation (hereinafter referred to as the employees) shall, as on the date of incorporation of the Company, be deemed to be employees of the Company on the same remuneration and other conditions of service, rights and privileges including, but not limited to, provisions as to the pension, provident fund and gratuity, if any, and other matters as were applicable to them before the conversion of the Corporation into Company.

(2) Notwithstanding anything in any law, contract, terms and conditions of service or any other instrument, no person transferred to the Company under sub-section (1) shall be entitled to an compensation as a consequence of transfer to the Company."

7. It is obvious from the above, that the employees who were transferred from the Corporation to the Company on the date of incorporation thereof are deemed to be the employees of the Company

*on the same remuneration and other conditions of service, rights and privileges as were applicable before the said conversion. The legislature, therefore, protected the terms and conditions of those employees who were previously appointed by the Corporation and on its incorporation were transferred and deemed to have been given the status of the employees of the Company with effect from the date on which the said incorporation had taken effect. As a corollary, the employees appointed after the date of incorporation i.e. 23-10-1997 are not the transferred employees from the Corporation to the respondent Company. Section 5 of the Re-Organization Ordinance, therefore, does not extend the protection to such employees who were appointed after the date of incorporation or in other words the said provisions are not attracted to their extent. Moreover, pursuant to a resolution passed by the Board of Directors of the respondent Company for making provisions for the appointment of the servants and the employees and for matters incidental and ancillary thereto the Oil & Gas Development Company Limited Employees Service Rules, 2002 (hereinafter referred to as the **"Service Rules, 2002"**) were framed and notified. The latter rules, therefore, govern the terms and conditions of service of the employees who were appointed after the incorporation of the respondent Company. The said rules are non-statutory in nature since they have not been framed or enacted in exercise of powers conferred under an Act of the Parliament. The Service Regulations, 1991 or the Service Regulations 1994 are, therefore, not attracted in case of employees appointed after the incorporation of the respondent Company, particularly in the light of the provisions of the Re-Organization Ordinance. The employees,*

therefore, who do not fall within the preview of Section 5 of the Re-Organization Ordinance can neither claim protection of their terms and conditions under the Service Regulations, 1994 nor their grievances relating to the terms and conditions of service could be treated as being governed by statutory rules or regulations.

8. *This view is fortified by the judgment of the august Supreme Court dated 17-11-2009 titled "Nisar Muhammad vs. The O.G.D.C.L through its M.D" passed in C.P. Nos. 1359 to 1361 of 2009. The petitioners in the said case before the august Supreme Court were employees who were transferred from the Corporation to the respondent Company. The protection was acknowledged only to their extent. It would be relevant to refer to the principles and law elucidated by the august Supreme Court in the case of "Masood Ahmed Bhatti and others vs. Federation of Pakistan, through Secretary, M/o Information Technology and Telecommunication and others", **2012 SCMR 152**. The said judgment was rendered by the august Supreme Court in the context of the employees who were transferred from the Telephone and Telegraph Department to the Pakistan Telecommunication Company and their terms and conditions of service were protected under the proviso to section 35(2) of Pakistan Telecommunication (Reorganization) Act, 1996. The latter Statute has clearly extended the protection to only such employees who were previously employees of the Corporation and had been transferred*

after incorporation as a Company. The relevant portion is as follows:

“It is important, at this point, to draw a distinction between employees who stood transferred to PTCL by virtue of section 35 ibid and the Vesting Order, on the one hand and those employees, who joined PTCL after 01-01-1996. The protection under the Federal Government guarantee would not be available to the latter category whose terms and conditions of service would be contractual in nature and would, therefore, be non-statutory.”

9. *The august Supreme Court, therefore, unequivocally held that the protection was not available to the employees who had joined Pakistan Telecommunication Company Limited after its date of incorporation and thus their terms and conditions of service would, therefore, be non-statutory. The said principles and law enunciated in “Masood Ahmed Bhatti” case supra were reiterated and reaffirmed by the august Supreme Court while considering the effect of Section 6 of the Agricultural Development Bank of Pakistan (Re-Organization and Conversion) Ordinance, 2002 in the judgment titled “Zarai Taraqati Bank Limited and others vs. Said Rehman and others” [2013 SCMR 642].*

10. *Section 5 of the Re-Organization Ordinance, therefore, unambiguously protects only such employees who had been appointed previously by the Corporation and were later transferred to the Company pursuant to the conversion w.e.f from the date of incorporation. The employees not covered under Section 5 of the Re-*

Organization Ordinance, therefore, cannot be treated as protected under the Service Regulations 1994 for the purposes of determining the maintainability of a constitutional petition. As already noted above, the terms and conditions of the employees appointed after the date of incorporation or effective date of conversion under the Re-Organization Ordinance will be governed under the Service Regulations, 2002 and the same are admittedly non-statutory. In the instant petition, the petitioner was appointed after the effective date i.e. the date on which the Corporation was converted into a Company incorporated under the Ordinance. The relationship of the petitioner and the respondent Company is, therefore, in the nature of "Master and Servant" since the terms and conditions are not governed under statutory regulations or rules.

11. In the instant case the learned counsel for the petitioner despite his able assistance, could not show any material from the record so as to contradict the statement made on behalf of the respondent Company that pursuant to the policy of absorption approved by the Board of Directors, employees in pay scales higher than EG-V had been regularized. The impugned order by no stretch of the imagination can be treated as attaching a stigma so as to warrant interference. The respondent Company is a juridical person and, therefore, it is governed under its Memorandum and Articles of Association. A policy formulated by the Federal Government is not binding on the respondent Company unless it is so expressly provided under its Memorandum and Articles of Association. The competent authority i.e. the Board of Directors may consider a policy of the

Federal Government but is not bound to implement it. In the instant case the petitioner was appointed in the year 2008 and, therefore, his terms and conditions were neither protected nor governed under statutory rules and regulations.

12. For what has been discussed above, the instant petition is not maintainable and, therefore, accordingly dismissed.

(ATHAR MINALLAH)
JUDGE

Tanveer Ahmed

Announced in open Court on 01-04-18.

Judge.