

No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

WRIT PETITION No. 677 of 2011

Muhammad Tahir Masood and 5 others

Versus

Chairman, State Life Insurance Corporation of Pakistan, etc.

Petitioner by : Mr. Muhammad Umair Baloch, Advocate.

Respondents by : Mirza Anwar-ul-Haq, Advocate.
Mr. Saad Maqbool, Office Assistant, State Life
Insurance Corporation.

Date of Hearing : 19-02-2021.

BABAR SATTAR, J.- This is a petition against fixation of salary of the petitioners by respondent No.1 after their promotion to Grade-9 on 20.02.2009.

2. Learned counsel for the petitioners submits that their salary after promotion actually got reduced in real terms and that one increment to be paid immediately upon promotion under Regulation 9(I) of the State Life (Service) Regulations, 1973, has also not been paid to them. He further states that their case is one of discrimination and that respondent No.1 has treated the petitioners in breach of guarantees under Article 25 read together with Article 4 of the Constitution, as employees promoted from 2015 onward are getting higher salaries which have been determined pursuant to a different collective bargaining agreement (CBA) between respondent No.1 and the union of employees. The learned counsel contends that merely because through a subsequent CBA, the union has been able to negotiate a

better deal with the employer, the petitioner and his cohort of promotees cannot be subjected to a salary determination rooted in a less advantageous CBA concluded earlier as a contractual agreement between the union and respondent No.1. He states that a contract between a union and an employer cannot eclipse the constitutional guarantee under Article 25 of the Constitution, which mandates that similarly placed individuals are to be treated alike and CBAs cannot be the basis for creating different classes of employees for purposes of Article 25.

3. Learned counsel for the respondents states that the petition is not maintainable because neither the petitioners nor the respondents fall within the territorial jurisdiction of this Court and respondent No.2 is only a proforma respondent. He further states that the petitioners have impleaded Secretary, Ministry of Commerce as a party but they are not aggrieved by any order passed by him and just by impleading him as respondent jurisdiction cannot be vested in this Court. He also states that on merit while the basic pay on promotion increases when an employee is promoted to officer grade, the take home salary can possibly decrease because allowances afforded to officer and to the staff function differently as some allowances afforded to officers (such as medical entitlement etc.) are not monetized. In other words that because cash-in-hand for the petitioners was reduced upon their promotion, it does not mean that their salaries were reduced. He contends that upon promotion to officer grade initially salary for unionized staff is determined on the basis of CBA applicable to those employees. That the petitioners' salaries were

determined in accordance with the CBA applicable at the time of their promotion and they cannot claim the benefit of a subsequent CBA executed between the union and respondent No.1 in relation to promotions of employees at such subsequent time. That the Ministry of Commerce is not relevant to the subject matter of the instant petition as it is for respondent No.1 to determine the salary of its employees and not respondent No.2. Learned counsel for the respondent on the issue of maintainability relies on a judgment of this Court titled "*Muhammad Iqbal Gaba v. Chairman, State Life Insurance Corporation of Pakistan & 20 others*" [W.P No. 4116 of 2016] involving respondent No.1 which was dismissed for lack of territorial jurisdiction. He also relies on the judgment of this Court passed in ICAs No. 530 and 531 of 2016 on 01.12.2016, which dismissed appeals against orders of the learned Judge-in-Chambers dismissing petitions on the ground of lack of territorial jurisdiction.

4. In rebuttal, learned counsel for the petitioners relied on a judgment of this Court in the case titled *Irshad Ali, etc. v. State Life Insurance Corporation of Pakistan, etc.* (W.P No. 1253 of 2013) filed against the State Life Insurance Corporation of Pakistan wherein despite the objection of maintainability on the basis of territorial jurisdiction, the matter was adjudicated on merit and dismissed as opposed to being dismissed on the basis of territorial jurisdiction.

5. Before this Court can venture into the grievance that forms the subject-matter of this petition, it must confirm that it possesses the requisite jurisdiction under Article 199 of the

Constitution to enter into the controversy and adjudicate the same. In the instant case the memo of parties reflects that neither any of the petitioners nor the relevant respondents i.e. respondents No. 1 and 3, fall within the territorial jurisdiction of this Court. Respondent No.1 has been established under Article 11 of the Life Insurance (Nationalization) Order, 1972 (President's Order No. 10 of 1972). Respondent No.1 is a statutory corporation under the control of the Federal Government with its head office based at Karachi and regional offices spread all across Pakistan. The Regional Office North is located in Islamabad. The petitioners were promoted to Grade-9 pursuant to promotion order dated 20.02.2009 issued by the Regional Chief North, who is based in Islamabad. The petitioners are however not aggrieved by the promotion order. They are aggrieved by fixation of their salaries in the aftermath of their promotion and such fixation took place in respondent No.1's headquarters at Karachi. The prayer clause of the petition also seeks re-fixation of salary and does not seek any relief against respondent No.2 or even the Regional Chief North based in Islamabad. The Regional Chief North who passed the promotion order for the petitioners has also not been made a party of this petition.

6. Three questions that arise for purposes of determining whether this Court is vested with jurisdiction in the instant matter are the following:

- (i) *What is the dominant object of the petition and who is the person against whom the issuance of a writ is being sought?*

(ii) *Does the person against whom a writ is being sought fall within the territorial jurisdiction of this Court?*

(iii) *If the person against whom a writ is being sought does fall within the jurisdiction of this Court, has it passed any order that affects an aggrieved person within the territorial jurisdiction of this Court?*

7. Before seeking to address the aforesaid questions, it is essential to point out that it is a settled principle that determination of territorial jurisdiction of a High Court under Article 199 of the Constitution is neither contingent upon nor effected by section 20 of CPC, as provisions of CPC cannot be employed to interpret the Constitution and the scope of its provisions. Reliance is placed on Sheikh Abdul Sattar Lasi vs. Federation of Pakistan through Secretary Ministry of Law, etc. (2006 CLD 18), LPG Association of Pakistan through Chairman v. Federation of Pakistan, etc. (2009 CLD 1498) and Sethi and Sethi Sons through Humayun Khan vs. Federation of Pakistan through Secretary, Ministry of Finance. (2012 PTD 1869).

8. In order to determine the person against whom a writ is sought, this Court needs to identify the primary grievance stated in the petition. The need for determining the dominant object was explained by the learned Lahore High Court in Sethi and Sethi (2012 PTD 1869), while relying on Sandalbar Enterprises (PLD 1997 SC 334) in the following terms:

"The requirement to determine the "dominant object" or the primary grievance of the petitioner or the paramount purpose of the petition is essential for the purposes of identifying the actual PERSON against whom writ is being sought. Which in turn becomes relevant for carrying out circumferential determination whether the PERSON falls within the territorial jurisdiction of this Court. This methodology has already received pontifical approval by the august Supreme Court of

Pakistan in Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others, (PLD 1997 SC 334). Justice Ajmal Mian speaking for the august Court held:

"We may observe that it has become a common practice to file a writ petition either at Peshawar, or Lahore, or Rawalpindi or Multan etc. to challenge the order of assessment passed at Karachi by adding a ground for impugning the notification under which a particular levy is imposed. This practice is to be depreciated. The court is to see, what is the dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Customs official at Karachi."

9. In the instant case the dominant purpose of the petitioners is to have their pay refixed by respondent No.1, who is based in Karachi. The second question then is whether respondent No.1 falls within the territorial jurisdiction of this Court. The test for determination of whether or not a person falls within the territorial jurisdiction of a High Court for purposes of Article 199 was most recently reiterated by the august Supreme Court in Federal Government vs. Ms. Ayyan Ali (2017 SCMR 1179) where the test laid down by the Learned Lahore High Court in LPG Association of Pakistan in the following words:

"It is now well settled that the Federal Government, though may have exclusive residence or location at Islamabad, would still be deemed to function all over the country. In this regard the case of LPG Association of Pakistan through its Chairman v. Federation of Pakistan through Secretary Ministry of Petroleum and Natural Resources Islamabad and 8 others (2009 CLD 1498), may be referred to, whereby the Lahore High Court, after meticulously analyzing the judgments rendered by this Court, as well as of the High Courts on the question of territorial jurisdiction, with regard to the acts, deeds and the legislative instruments of/by the Federal Government, has deduced the jurisprudential principles as follows:-

"(A) The Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in any of the Province, shall still be deemed to function all over the country.

(B) If such Government, body or authority passes any order or initiates an action at Islamabad, but it affects the "aggrieved party" at the place other than the Federal capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him.

(C) This shall be more so in the cases where a party is aggrieved by a legislative instrument (including any rules, etc.) on the ground of it being ultra vires, because the cause to sue against that law shall accrue to a person at the place where his rights have been affected. For example, if a law is challenged on the ground that it is confiscatory in nature, violative of the fundamental rights to property; profession; association etc. and any curb has been placed upon such a right by a law enforced at Islamabad, besides there, it can also be challenged within the jurisdiction of the High Court, where the right is likely to be affected.

In this context, illustrations can be given, that if some duty/tax has been imposed upon the withdrawal of the amounts by the account holders from their bank account and the aggrieved party is, maintaining the account at Lahore though the Act/law has been passed at Islamabad, yet his right being affected where he maintained the account (Lahore), he also can competently initiate a writ petition in Lahore besides Islamabad; this shall also be true for the violation of any right to profession, if being conducted by a person at Lahore, obviously in the situation, he shall have a right to seek the enforcement of his right in any of the two High Courts."

10. In the LPG Association of Pakistan, the learned Lahore high Court had discussed the entire series of cases that impinge upon the question of territorial jurisdiction before laying down the aforementioned test. One such case was Al-Iblagh Ltd., Lahore vs.

Copy Right Board, Karachi (1985 SCMR 785), wherein the august Supreme Court held that Copy Right Board in Karachi was established for the whole of Pakistan and an order passed by it would give a High Court, in whose territory the order affects a person, the jurisdiction to hear the matter. In Sethi and Sethi, the learned Lahore High Court had also framed the test for determining the territorial jurisdiction of a High Court in relation to a person performing functions in connection with the affairs of the State as a two prong one, with the first prong focusing on the jurisdiction of the person issuing the order and second prong focusing on the person who is affected by the order. The learned Lahore High Court had framed the test as follows:

"A PERSON performing functions in connection with the affairs of the FEDERATION as compared to a Province or local authority, is a PERSON who besides carrying the attributes listed in Salahuddin Case is by law vested with a territorial jurisdiction that spans across the country i.e., possessing a national or country wide territorial jurisdiction as opposed to provincial or sub provincial jurisdiction. Federal Government or any person performing functions in connection with the affairs of the Federation enjoys ubiquitous presence everywhere across the country having territorial jurisdiction all over Pakistan or in other words, within the territorial jurisdiction of every High Court in the country. In this case it will be up to the aggrieved person to choose the High Court of his convenience. Similarly, the territorial jurisdiction of a person performing functions in connection with affairs of the Province or the Local Authority enjoys presence all over the Province and within the territorial jurisdiction of the local authority."

11. In the instant case an order has been issued by respondent No.1 that is owned and controlled by the Federal Government and is performing functions in connection with the affairs of the Federation and thus has ubiquitous presence across Pakistan.

To the extent that it passes an order from its Headquarters in Karachi that affects an individual within the territorial jurisdiction of this Court, who otherwise qualifies as an aggrieved person for purposes of Article 199 and has no other adequate remedy under the law, this Court would have jurisdiction to adjudicate the legality of such order.

12. This brings us to the third question of whether an order passed by respondent No.1 has affected the petitioners within the territorial control of this Court vesting jurisdiction in it to adjudicate such grievance. The petitioners are working in Rawalpindi and fall outside the territorial jurisdiction of this Court. Merely because they fall within the hierarchical control of Regional Chief North, which in turn is based in Islamabad and falls within the territorial jurisdiction of this Court, will not result in the petitioners' falling within the territorial jurisdiction of this Court insofar as they are not aggrieved by an act or order of the Regional Chief North. If the petitioners were aggrieved by an order passed by the Regional Chief North in Islamabad, the Court would have jurisdiction. Also, if the petitioners were aggrieved by an order of respondent No.1 who is performing functions in connection with the affairs of the Federation across Pakistan (and consequently falls within the jurisdiction of each High Court in which its orders have effect) and the petitioners were affected by such orders due to being based in Islamabad, this court would have jurisdiction. In the instant case as the effect of the order that aggrieves the petitioners is not within the territorial jurisdiction of this Court, it cannot assume jurisdiction to adjudicate this petition.

13. In view of the principles cited above the following conclusions can be drawn:

- (i) *The first step in an analysis regarding the territorial jurisdiction of this Court is a determination of the dominant purpose of the petition. It is the dominant purpose and not any ancillary purpose that will govern which act, order or proceeding forms the predominant grievance that needs to be adjudicated, which will then identify the person whose act, order or proceeding is under challenge to further ascertain whether such person falls within the territorial jurisdiction of this Court.*
- (ii) *When a person exercising jurisdiction in connection with the affairs of the Federation whether the government itself, or an attached department or corporation performing functions in connection with affairs of the state, whose act, order or proceeding can have legal effect across Pakistan or beyond the physical jurisdiction of the province or territory in which its primary office or headquarters is based, any high Court within whose jurisdiction such order creates a legal effect would have the jurisdiction to determine its legality.*
- (iii) *The question of jurisdiction in relation to a person performing functions in connection with the affairs of the Federation across Pakistan is two-pronged: the Court needs to first ascertain that the act or order or proceeding in question is that of a person whose acts or orders or proceedings have jurisdiction and thus legal force across Pakistan, including within the territorial jurisdiction of such Court in view of the law that vests jurisdiction in such person; and it further needs to verify that the act or order or proceeding in question causes a grievance to a person within the territorial jurisdiction of such Court.*
- (iv) *If the test of territorial jurisdiction is satisfied, the principle of choice takes hold and the doctrine of forum convenience is not applied by the High Court while regulating its own jurisdiction i.e. if two or more High Courts are vested with jurisdiction in relation to a certain matter it is then for the petitioner to determine which forum is most convenient for him to have his grievance adjudicated and where such choice is reasonable and not aimed at gaining an undue advantage against the respondent, the Court defers to the petitioner's decision. Such choice affords limited but legitimate discretion to the petitioner and the choice thus made is not regarded as forum shopping from a public policy perspective.*

14. In the instant case the petitioners are not based within the territorial jurisdiction of this Court and have not been affected by an order of respondent No.1 within the territorial jurisdiction of this Court. Given the lack of territorial jurisdiction, this court cannot engage with the merit of the controversy that forms the subject-matter of this petition, which is **dismissed** with no order as to costs.

(Babar Sattar)
Judge

Approved for reporting.

Saeed