

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

I.C.A No. 261 of 2016

Tariq Azhar Sheikh
Versus
Federation of Pakistan & others

Appellant by: Ch. Sajid Abdullah Sraa, Advocate
Respondents by: Ch. Sagheer Ahmad Advocate
Date of Decision: 22.10.2020

Ghulam Azam Qambrani, J: Through this Intra Court Appeal, the appellant seeks setting aside of the impugned judgment dated 27.04.2016, passed by the learned Single Judge in Chambers in W.P No.1511 of 2016, whereby writ petition filed by the appellant was dismissed.

2. Brief facts of the instant appeal are that the appellant was an employee in Utility Stores Corporation of Pakistan as Accounts Officer (BPS-17). He was terminated from service vide Utility Stores Corporation of Pakistan letter No.705-Estt., dated 31.03.1998. He was reinstated in service w.e.f 06.06.2009 vide Utility Stores Corporation of Pakistan vide letter No. 237-Estt./Sacked/Head Office/28, dated May 27, 2009 in pursuance of the Government of Pakistan Sacked Employees Reinstatement Ordinance, 2009 on one scale higher to the substantive scale of the post at the time of termination. The General Manager HR & A Utility Stores Corporation of Pakistan issued a Circular Order No.237-Estt/Sacked, dated April 04, 2009 describing manner and mode of payment of compensation on reinstatement by describing that first installment equal to twelve months emoluments on reinstatement, second installment equal to twelve months emoluments on the 1st day of January, 2010 and third installment equal to twelve months emoluments on the 1st day of January,

2011. The Utility Stores Corporation neither acted upon the Sacked Employees Ordinance nor their own Circular Order dated April 4, 2009 and also did not make payment of compensation to the sacked employees and the appellant. The appellant was retired after attaining the age of superannuation w.e.f 12th February, 2010. After the decision of Cabinet Sub Committee in its meetings dated 29.06.2011 and 13.09.2011 and in pursuance of the Sacked Employees Reinstatement Act, 2010, the pay of the sacked employees was re-fixed, but the pay of the appellant/appellant was not revised. According to Section 16 of Sacked Employees Act, 2010, Utility Stores Corporation is bound to pay compensation according to their resources equal to gross monthly emoluments of three years, at the rate of monthly pay and allowance at the time of disbursement of the instalment. The appellant applied to Senior General Manager, HR & A Utility Stores Corporation to pay the amount of compensation alongwith other sacked employees, but no action has been taken so far.

3. Learned counsel for the appellant has contended that Utility Stores Corporation is liable to pay compensation to the appellant out of their own resources equal to gross monthly emoluments, under Section 16 of the Sacked Employees Reinstatement Act, 2010, but the same has not been paid to the appellant after lapse of seven years; that the writ petition against Corporation was maintainable as according to Article 25 of the Constitution of Pakistan, if any discrimination committed by any organization or corporation governed under the supervision of Government of Pakistan that can be challenged before the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Lastly, prayed for acceptance of appeal.

4. Conversely, learned counsel for the respondents has opposed the contention of learned counsel for the appellant and has contended that the appellant was the employee of Utility Store Corporation of Pakistan and the relationship of the Corporation with its employees is of master and servant, therefore, the writ

petition filed by the appellant was rightly dismissed by the learned Single Judge in Chambers, hence, the instant appeal is also liable to be dismissed.

5. We have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

6. Perusal of the record depicts that the appellant was employee of Utility Store Corporation, which is a "Corporation". The August Supreme Court of Pakistan after examining the precedent law has summarized the scope of jurisdiction of this Court, in matters relating to terms and conditions of service of the employees in "Pakistan Defence Officers Housing Authority Vs. Lt. Col. Syed Jawaid Ahmed" (2013 SCMR 1707) wherein it was held as under:-

- (i) *"Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.*
- (ii) *Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.*
- (iii) *In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.*
- (iv) *Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.*
- (v) *That the Removal from Service (Special Powers)*

Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution."

In this regard, reliance is also placed upon the case of "Syed Nazir Gillani Vs. Pakistan Red Crescent Society and another" (2014 SCMR 982), wherein the above said aspect of law was also followed.

7. In view of the above, we are fully convinced that the impugned judgment passed by the learned Single Judge in Chambers, is just, lawful and calls for no interference. Hence, the instant Intra Court Appeal is **dismissed**.

(AAMER FAROOQ)
JUDGE

(GHULAM AZAM QAMBRANI)
JUDGE

S. Akhtar