

**2012 P L C (C.S.) 328**

**[Islamabad High Court]**

**Before Shaukat Aziz Siddiqui, J**

**MUHAMMAD NAWAZ**

**Versus**

**MINISTRY OF HEALTH through Secretary, Islamabad and another**

Writ Petition No.2410 of 2006, heard on 13th December, 2011.

**(a) Constitution of Pakistan---**

----Art. 199---Constitutional jurisdiction---Scope---Civil service---Termination of service---Claim for gratuity and pensionary benefits---Petitioner who was taken on the Pay Roll of Society, his services were terminated by giving him one month's advance notice---Petitioner made representation for grant of gratuity and payment of pensionary benefits, which representation having remained unattended, the petitioner had invoked the constitutional jurisdiction of High Court---Pakistan Red Crescent Society though was creation of a statute, but it had nothing to do with performance of functions in connection with the affairs of the Federation, a Province or a Local Authority---Society had its own constitution based on "Geneva Convention", to which the society was a party---Aims and objects of the society, appointment letter issued to petitioner, Society's Regulations of 1974 had clearly shown that for all practical intent and purpose, the status of the society was of an N.G.O., which was not only independent, but one of the primary objects was to receive donations/gifts to provide and facilitate charity---Grievance of petitioner, could not be addressed by High Court in exercise of constitutional jurisdiction as no writ could be issued against the society---Status of the employees of Pakistan Red Crescent Society was not of a civil servant and the society could not be treated as a person performing functions in connection with the affairs of the Province---High Court had no jurisdiction to entertain and issue writ against the society.

2008 PLC (C.S.) 715; 2000 PLC (C.S.) 796; 2005 PLC (C.S.) 1300 ref.

Zia Ullah Khan Niazi v. Chairman, Pakistan Red Crescent Society 2004 SCMR, 189; Pakistan Red Crescent Society v. Syed Nazir Gillani PLD 2005 SC 806 and Pakistan Red Crescent Society v. Zia Ullah Khan Niazi 2011 SCMR, 1901 rel.

**(b) Words and phrases---**

----"Society", meaning and connotation

Concise Oxford English Dictionary (11th edition, revised) and Black's Law Dictionary (8th edition) ref.

Muhammad Ramzan Khan for Petitioner.

Babar Bilal for Respondent No.2.

Date of hearing: 13th December, 2011.

**JUDGMENT**

**SHAUKAT AZIZ SIDDIQUI, J.**--- Petitioner Muhammad Nawaz, was taken on the Pay Roll of respondent No.2 i.e. Pakistan Hilal-e-Ahmer Society (hereinafter called as society) vide office memorandum dated 7-1-1985. His services were terminated by giving one month advance notice, vide office memorandum dated 25th November, 2004. He made representation for grant of gratuity and payment of pensionary benefits, which remain unattended, therefore, petitioner invoked the constitutional jurisdiction of this court with the following prayer:---

"Under the above said circumstances, it is most humbly prayed that the respondent No.2 may kindly be directed to pay the gratuity and other financial benefits as per Rules according to 20 years service of the petitioner along with consequential/back-benefits.

Any other relief with cost which this honourable Court deems fit and appropriate may also be granted."

2. In support of above prayer, learned counsel for the petitioner submits that society is creation of a statute i.e. Pakistan Red Crescent Society Act, 1920, amended in the year 1974, therefore, regulations framed i.e. Pakistan Red Crescent Society, Staff Service Regulations, 1974 are statutory in nature. The learned counsel further submits that act of the society is tainted with mala fide, therefore, this court has the jurisdiction to adjudicate upon the matter. The learned counsel added that since the President of Islamic Republic of Pakistan is the President of the society, therefore, status of the society is of governmental organization and this court is vested with powers to issue writ against it. Learned counsel for petitioner placed reliance on 2008 PLC (C.S.) 715, 2000 PLC (C.S.) 796, 2005 PLC (C.S.) 1300. The learned counsel for respondent submits that this court lacks jurisdiction, therefore, writ is not maintainable. He further submits that relationship of petitioner and the society is that of master and servant.

3. Before dilating upon the preposition, it seems appropriate to reproduce the contents of appointment letter/O.M. dated 7-1-1985 and termination notice/O. M. dated 25-11-2004:--

Appointment Letter/O.M. dated 7-1-1985:---

"With reference to your application dated 31-12-1984 and subsequent interview on 7th January, 1985, you are hereby informed that you have been selected for the appointment as Chowkidar on a salary of Rs.440 per month in the scale of Rs.440-10-640, plus usual allowances admissible under the rules of the Society with effect from 8th January 1985 on purely temporary basis on the following terms:--

(1) Your appointment is purely temporary. Your services are liable to termination without any notice.

(2) Your services will be utilized as deemed necessary in the interest of the society including field duty, if required.

(3) For leave, you will be governed by the service Rules of the Society in force.

(4) Your appointment is subject to medical fitment/verification.

If you accept these terms, please sign the duplicate copy in token of acceptance."

Termination Notice/O.M. dated.25-11-2004:---

"The Pakistan Red Crescent Society regrets to inform you that your services are no longer required. You are hereby served with one month notice prior to termination of your services as per Service Rules of the Society. Your services will be terminated with effect from 25th December, 2004 (FN).

You are required to submit no demand certificate to Admin Section to finalize your dues."

4. First aspect which this court examined is jurisdiction bestowed on it by the Constitution of the Islamic Republic of Pakistan, 1973. For this purpose, relevant provisions of Article 199 are reproduced herein below:---

"(1) Subject to the constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law:--

(a) On the application of any aggrieved party, make an order--

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or"

5. Although the society is creation of a statute but it has nothing to do with performance of functions in connection with the affairs of the federation, a province or a local authority. The

society has its own constitution based on the "Geneva Convention" to which the society is a party. Following are fundamental principles of the society:---

(i) Humanity.--- The Red Crescent born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours---in its international and national capacity to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

(ii) Impartiality.--- It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

(iii) Neutrality.--- In order to continue to enjoy the confidence of all, the Red Crescent may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

(iv) Independence.--- The Red Crescent is independent. The Society, while auxiliary in the humanitarian services of its government and subject to the laws of the country must always maintain its autonomy so that it may be able to all times to act in accordance with Red Crescent principles.

(v) Voluntary Service.--- The Red Crescent is a voluntary relief organization not promoted in any manner by desire for gain.

(vi) Unity.--- There can be only one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

(vii) Universality.--- The Red Crescent is a world-wide institution in which all Societies have equal status and share equal responsibilities and duties in helping each other.

To further understand the functions of the society its general object and principle aims are provided herein below:---

"The general object of the Society is to prevent and alleviate suffering with complete impartiality, making no discrimination as to the nationality, race, sex, religious beliefs, class or political opinions both at national and international level, and in particular for the furtherance of the following aims and objects:--

(i) To render voluntary aid to the sick and wounded of the Armed Forces in time of war in accordance with the spirit and conditions of the Conference of Geneva of October, 1863, and also the Treaties of the Red Cross or the Treaties of Geneva of August 1964, and subsequent Treaties or Conventions to which Pakistan has given its adhesion, and also any other Treaty or Convention similar in purpose to which Pakistan may hereafter give its adhesion.

(ii) In time of peace or war to carry out and assist in work for the improvement of health, the prevention of disease and the mitigation of suffering in Pakistan as well as in other countries of the world.

(iii) To act in a case of armed conflict, and in peace prepare to act, in all the fields covered by the Geneva Conventions and on behalf of all war victims, both civilian and military.

(iv) To contribute to the improvement of health, the prevention of disease and the mitigation of suffering by programmes of training and services for the benefit of the community, adapted to national and local needs and circumstances.

(v) To act as recognized auxiliary to Medical Service of the Pakistan Armed Forces under the Geneva Convention.

(vi) To train nurses and other personnel to render medical and other forms of supplementary assistance to the public both during war and peace.

(vii) In accordance with its Constitution and with the National Disaster Plan, to assume the following responsibilities in respect to emergency assistance:--

(a) At the preparatory phase:

(1) To build up stock of relief supplies and reserves in cash.

(2) To recruit and train the personnel who will be incharge of rescue and relief operations.

(3) To make other suitable preparation which may be relevant.

(b) At the disaster or execution phase:

(1) To extend first aid, medical and nursing care, food, clothing-shelter, services for the prevention of epidemics and other forms of emergency assistance to the disaster victims.

(2) To set up local stores for relief supplies.

(viii) To encourage the Junior Red Crescent movement amongst boys and girls with a view to promote the participation of children and young people in the work of the Society.

(ix) To disseminate the humanitarian principles of the Red Crescent in order to develop among the population and in particular among children and youth, the ideals of peace, mutual respect and understanding among all men and all peoples.

(x) To carry out in keeping with the spirit of the Red Crescent those humanitarian activities as it may find most useful according to the conditions prevailing in the country and such other cognate objects as may, from time to time, be approved by the Society.

(xi) To assist in tracing the missing.

(xii) To perform all other duties devolving upon a national Red Crescent Society by virtue of the various conventions and agreements to which Pakistan may be a signatory.

(xiii) To mobilize financial and other assistance for the purposes of the Society.

(xiv) To succeed to and take over all the monies and properties which may be allotted to Pakistan out of the assets of the Indian Red Cross Society held by it on the 14th August, 1947.

(xv) To affiliate to itself any other Society or body having similar object and purposes, and to seek and gain affiliation to other international Societies engaged in work similar to its own.

(xvi) To receive and hold gifts of whatsoever description either for the general purpose of the Society or for any particular purpose, and on receipt of such gifts may apply the same to such purposes, either directly or through Branch Committees or Bodies affiliated to the Society.

(xvii) To carry out such other functions as the Government of Pakistan may from time to time direct.

6. To appreciate the preposition, understanding meanings of word "society" is relevant. Concise Oxford English Dictionary (11th edition, revised) contains following meanings:---

(i) A particular community of people.

(ii) An organization or club formed for a particular purpose or activity.

According to Black's Law Dictionary (8th edition) society means:--

(i) A community of people, as of a state, nation or locality, with common cultures, traditions and interests.

(ii) Association or Company of persons united by mutual consent, to deliberate, determine, and act jointly for a common purpose.

7. Mandate under Article 199 of the constitution, aims and objects of the society, appointment letter dated 7-1-1985, Regulations of 1974 and meaning of the word society clearly show that, for



all practical intent and purpose, status of the society is of an NGO which is not only independent but one of the primary object is to receive donations/gifts to provide and facilitate charity. Therefore, grievance of petitioner cannot be addressed by this court in exercise of constitutional jurisdiction as no writ can be issued against the society. The Honourable Supreme Court of Pakistan has already held that status of the employees of Pakistan Red Crescent Society is not of a Civil Servant and the society cannot be treated as a person performing functions in connection with the affairs of the province. Reliance in this regard is made to "Zia Ullah Khan Niazi v. Chairman, Pakistan Red Crescent Society" (2004 SCMR, 189). Similarly in case "Pakistan Red Crescent Society v. Syed Nazir Gillani" (PLD 2005 SC 806) it has been held that relationship between employer and employee is that of "Master and Servant" and constitutional jurisdiction as conferred upon the High Court under Article 199 of the Constitution could not have been invoked by the employee of the society. Latest dictum of court of apex in case, "Pakistan Red Crescent Society v. Zia Ullah Khan Niazi" (2011 SCMR, 1901) which is essence of entire case law on the subject and is available to guide and provide wisdom on the issue brought before this court. Case-law relied upon by learned counsel for petitioner is distinguishable in the facts and circumstances of case. In all three cases cited by the learned counsel for petitioner, respondents before the Hon'ble Lahore High Court, were government departments and not the society.

8. In this view of the matter, instant writ petition is dismissed by holding that High Court has no jurisdiction to entertain and issue writ against the society i.e. respondent No.2.

H.B.T./63/Isl.

Petition dismissed.