

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.902 of 2019

Rehmat Wali

Versus

Federation of Pakistan through Secretary, Ministry of Energy, Petroleum
Division and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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20.01.2020

**Ch. Abdul Khaliq Thind, Advocate for the petitioner
Mr. Muhammad Nadeem Khan Khakwani, learned
Assistant Attorney-General
Mr. Ghulam Mustafa Qureshi, Advocate for
respondent No.2**

Through the instant writ petition, the petitioner, Rehmat Wali, seeks a direction to the respondents to promote him in the managerial cadre/class.

2. Learned counsel for the petitioner drew the attention of the Court to the Pakistan Mineral Development Corporation Employees' Service Rules, 2012, and submitted that the employees are classified in three categories, i.e. (i) managerial, (ii) supervisory, and (iii) staff/workers. He further submitted that the petitioner belongs to the supervisory class and was eligible for promotion, but was not considered for promotion by the respondents; and that the respondents unlawfully promoted the staff workers to managerial class by ignoring the supervisory class.

3. On the other hand, learned counsel for Pakistan Mineral Development Corporation ("P.M.D.C.") raised a preliminary objection to the maintainability of the instant writ petition on the ground that since the P.M.D.C. Employees' Service Rules, 2012 ("the P.M.D.C. Rules") are non-statutory in nature, the instant petition is liable to be dismissed. In support of his contention, learned counsel placed reliance on the judgment dated

03.05.2016 passed by this Court in writ petition No.182/2016. After referring to the law laid down by the Hon'ble Supreme Court in the judgments reported as 2017 SCMR 571 and 2014 SCMR 982, learned counsel for the P.M.D.C. submitted that where the service rules of an organization are non-statutory, a writ petition filed by an employee of such an organization raising a matter regarding the terms and conditions of his service is not maintainable. He also submitted that where an objection to the jurisdiction of a Court or a Tribunal is raised, it is imperative for such an objection to be decided first before proceeding with the matter on merits. In this regard, he placed reliance on the judgment report as 2006 CLD 568.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The record shows that on 25.10.2011, the petitioner was appointed as an Office Supervisor (G-II) on daily wages basis in the P.M.D.C. There is nothing on the record to show that the petitioner was appointed after a competitive process. Nevertheless, vide office order dated 18.07.2013, the petitioner's services were regularized. In the said office order, it is mentioned that the terms and conditions of the petitioner's employment will be in accordance with the P.M.D.C. Rules. Vide office memoranda dated 14.07.2014, 18.05.2016 and 07.05.2018, several employees in P.M.D.C. were promoted. The petitioner's grievance is that the petitioner was not considered for promotion. The petitioner was also aggrieved by the seniority list issued on 31.12.2018 wherein his name is mentioned at serial No.12. The petitioner's stance is that a separate seniority list should have been

prepared for the different classes of employees in P.M.D.C. The petitioner's request for upgradation/promotion was turned down by P.M.D.C. vide P.M.D.C.'s letter dated 25.08.2014 wherein it was observed that the petitioner would be considered for promotion to a higher scale on his turn as per the seniority list. On 31.12.2015, the petitioner was informed that his case for promotion will be considered along with others on seniority-cum-fitness basis on appropriate time. The petitioner has preferred yet another appeal before the Secretary, Ministry of Energy. The said appeal has till date not been decided.

6. Be that as it may, the first question that needs to be decided is whether or not the instant writ petition is maintainable. P.M.D.C. is not the creature of a statute. It is a company incorporated under the provisions of the erstwhile Companies Act, 1913. A certificate of incorporation was issued regarding P.M.D.C. by the Registrar of Joint Stock Companies on 17.06.1974. The P.M.D.C. Rules were prepared by Human Resource Committee in P.M.D.C. and approved by the Board of Directors of P.M.D.C. on 24.01.2012. The P.M.D.C. Rules have not been made in exercise of any statutory power, nor have they been published in the official Gazette. The P.M.D.C. Rules have admittedly not been made by the Federal Government. The said Rules were approved by the Board of Directors of P.M.D.C. in exercise of the powers conferred under Article 110 read with Article 111(1)(p) of the Articles of Association of P.M.D.C. which authorize the Directors to make, vary and repeal bye-laws for the regulation of the business of P.M.D.C. and its officers and servants.

7. The question as to whether a writ petition filed by an employee of P.M.D.C. raising a grievance regarding the terms and conditions of his service is maintainable or not came to be decided by this Court in judgment dated 03.05.2016 passed in writ petition No.182/2016 titled “Muhammad Iqbal Mahsud Vs. Federation of Pakistan, through Secretary, M/o Petroleum & Natural Resources and others”. In the said case, P.M.D.C. was respondent No.3. It was held that a writ petition by an employee of P.M.D.C. raising a dispute regarding the terms and conditions of his service, was not maintainable. It would be appropriate to reproduce herein below paragraphs 13 to 17 of the said judgment:-

“13. Now respondent No.3 is not the creature of a Statute. It is a company incorporated under the provisions of the Companies Ordinance, 1984. Under the constitution of respondent No.3, the only role that the Federal Government has is to nominate the members of the Board of respondent No.3. The Board of respondent No.3 has made the PMDC Employees Service Rules, 2012. These Rules have not been made in exercise of any statutory power. The constitution of respondent No.3 does not require these rules to be either vetted or approved by the Federal Government.

14. The controversy between the petitioner and respondent No.3 primarily centers around the petitioner's desire to be promoted as General Manager, and respondent No.3's refusal to consider him for promotion unless he returns to respondent No.3 and earns one Annual Confidential Report with respect to his performance. This controversy is, in-fact, a dispute between a Master and Servant regarding the petitioner's employment. As the rules governing the employment of the petitioner are not statutory, I am of the view that this writ petition is not maintainable.

15. In the case of Syed Nazir Gillani Vs. Pakistan Red Crescent Society (2014 SCMR 982), it has been held that where the rules of an organization were non-statutory, a constitutional petition filed by its employee before the High Court challenging his removal from service would not be maintainable. In this

case, the petitioner is not challenging his removal from service, but is seeking to be considered for promotion. As the service rules of respondent No.3 are not statutory, it does not make a difference whether the grievance of a writ petitioner is regarding his removal or non-consideration for promotion. Either way a writ petition by such an employee would not be maintainable.

16. In the case of Pakistan Defence Officers' Housing Authority Vs. Lt. Col. Syed Jawaid Ahmad (2013 SCMR 1707), it has been held as follows:-

"Where conditions of service of employees of the 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'."

17. In view of the aforementioned, I am of the view that as respondent No.3 has not been created by statute, and as the service rules governing the petitioner's employment at respondent No.3, are not statutory, therefore, the petitioner could not invoke the constitutional jurisdiction of the High Court under Article 199 of the Constitution for the redressal of his grievance. After holding so, I do not feel any to go into the merits of this case. Resultantly, this petition is dismissed as not maintainable."

8. Consistent with the law laid down by this Court in the said judgment dated 03.05.2016, the instant writ petition is dismissed as not maintainable. The dismissal of this petition shall have no bearing on a decision that the Secretary, Ministry of Energy may take on the petitioner's pending appeal.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Qamar Khan*