

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 238/2018

OPF Officers Welfare Association (Regd.)

Versus

Federation of Pakistan, etc.

Petitioner by: Mr. Rashid Mehmood Ansari, Advocate.

Respondents by: Barrister M. Mumtaz Ali, AAG.
Mr. Ijaz Mahmood, Advocate for OPF.
Muhammad Fayyaz, Law Officer, OPF.
Laeeqa Ambreen, Director General (HR&A), OPF.
Abid Hussain, Director (HR) and Syed Amjad Hussain, Additional Director (HR) OPF.

Date of Decision: 16.09.2021.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the memorandum dated 13.08.2005, issued by Overseas Pakistanis Division, whereby equivalency of OPF pay scales with Federal Government employees pay scales has been notified.

2. Learned counsel for the petitioner contends that the Overseas Pakistanis Foundation (OPF) was set up by the Government of Pakistan in exercise of power conferred under Sub-section 2(n) of Section 16 of the Emigration Ordinance, 1979 and in terms of clause 2 (gg) of the Rules the Overseas Pakistanis Foundation has been defined as Foundation set up by the Federal Government to be managed by Board of Governors nominated from time to time by the Government; that OPF was incorporated on 08.07.1979 as a company and same has been placed under the administrative control of the Overseas Pakistanis and Human Resource Development Division in terms of clause 27(g) of Schedule-II of the Government of Pakistan's Rules of Business, 1973; that OPF has its own pay scales/grades for its employees, whereby respondent No.1

administrative division on the basis of advice received from Finance Division (Regulations Wing) through memorandum dated 21.07.1981 has given the OPF scales 01 to 08 equal to NPS-18 and below, however, subsequently, administrative division vide memorandum dated 13.08.2005 revised the equivalency of OPF pay scales viz. a viz. Government's Basic Pay Scales; that revision of pay scale is in violation of fundamental rights of the petitioner; that the revision of pay scales through impugned memorandum is in violation of fundamental rights of petitioner's association, who is looking-after the affairs of officials of OPF; that in the O.M the Joint Director (OPF Grade-9) has been given equivalence to BPS-18 (senior) and at the same time Deputy Director (OPF Grade-8) has also been given BPS-18, as such both the officers of BPS-18 have been given two different positions which are not covered under any scheme of law or in the Government hierarchy, in such scenario rights of individual officers have been violated, therefore, vested right which has already been available to the OPF officials could not be withdrawn as principle of *locus-poenitentiae* comes into play. Reliance is placed upon 2015 SCMR 43 and 2015 PLC(CS) 1519; that impugned memorandum is *coram non-judice* since respondent No.1 administrative division has unilaterally changed the Finance Division's equivalence policy between the OPF Grades and the Government basic scales without consultation/ concurrence of the Finance Division.

3. Conversely, learned counsel for respondents contends that instant writ petition is not competent as the rules governing the terms & conditions of OPF employees are non-statutory; that OPF is not performing any functions with relation to Federation of Pakistan, hence, the writ petition is not maintainable.

4. Arguments heard, record perused.

5. Before touching the merits of the case, it is necessary to dilate upon the objection raised by respondent's side at the first instance qua the maintainability of instant writ petition.

6. In view of above objection, I have gone through the reported judgment of this Court 2020 PLC 8 (Managing Director Overseas Pakistani Foundation and another vs. Federation of Pakistan), whereby it was held that service rules/regulations governing terms and conditions of service of OPF were not statutory and as such in the instant case OPF officers welfare association has agitated the matter purely relating to the terms & conditions of service though the question is only to the extent of equivalence of OPF grades versus basic pay scales notified through O.M dated 13.08.2005 but the question itself discloses that it relates to the terms & conditions of service of employees of OPF which is admittedly a company limited by guarantee registered under the companies law and its working is not considered to be as affairs of Federation of Pakistan, whereby Hon'ble Division Bench of this Court has relied upon reported judgment 1994 SCMR 958 (Tanvir Iqbal Siddiqi vs. Principal, OPF, Girls College, Islamabad), as well as upon some unreported judgments and held the following:-

In the case at hand, respondent No.2 in his writ petition was agitating a claim pertaining to the terms and conditions of his service with Overseas Pakistanis Foundation. The learned counsel for respondent No.2 did not dispute that the service rules/regulations governing the terms and conditions of respondent No.2's service were not statutory. Learned Counsel for respondent No.2 could also not come up with any judicial precedent in which a writ petition against the Overseas Pakistanis Foundation was held to be maintainable. In this view of the matter, we are left with no option but to set aside the impugned judgment dated 07.03.2011, passed by learned Single Judge-in-Chambers and dismiss respondent No.2's writ petition as not maintainable.

7. Another important aspect which has also been raised in this case by respondent's side is that instant writ petition has been filed against the memorandum dated 13.08.2005, which itself explains that the instant writ petition has been filed after 13 long years and the same is hit by *laches*. Even otherwise, OPF Officers Welfare Association does not fall within the concept of

aggrieved person which is mandatory requirement of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as it is the individual's right if any qua the inconsistency or dispute qua the OPF scales and BPS though no documentary evidence has been brought on record.

8. In view of above objections qua the maintainability this court is of the view that instant writ petition is not maintainable, hence the same is hereby *dismissed*.

(MOHSIN AKHTAR KAYANI)
JUDGE