

**JUDGEMENT SHEET.**

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

**Writ Petition No. 1955 of 2016**

**Khawar Mushtaq**  
**VS**  
**Federation of Pakistan through Secretary, Ministry of Petroleum and**  
**Natural Resources & three others**

**Date of decision. 16.12.2016**

**Petitioner by. Mir Aurangzaib, Advocate.**

**Respondents by. Ch. Shafiq ur Rehman, Advocate, Syed**  
**Hasnain Raza Kazmi, Advocate and Ch.**  
**Abdul Khaliq Thind, Standing Counsel.**

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**Aamer Farooq J** : Through the instant petition, under Article 199 of the Constitution of Pakistan, the petitioner, *inter alia*, seeks declaration that the appointment letter dated 08.1.2016 issued by respondent No. 2 be declared illegal alongwith action of respondents for not taking him on duty.

2. The facts in brief are that respondent No. 2 advertised various posts and invited the applications for jobs including Assistant Engineer having qualification of BE/BSC Mechanical/Petroleum/Electrical/Electronics. The petitioner made an application for the position of Assistant Engineer (Mechanical/Petroleum/Electrical/Electronics (EG-II). He was called for interview on 18.12.2015 and thereafter was issued letter dated 08.01.2016. The referred letter offered job to the petitioner on contract for a period of 02 years which was to be extended with mutual consent. The contract was also subject to the medical and providing valid and authentic documents.

3. Learned counsel for the petitioner, *inter alia*, submits that position was advertised in the news paper for the post of Assistant Engineer (Mechanical / Petroleum / Electrical /

Electronics (EG-II) and the persons possessing B.Sc. Engineering in Mechanical/Petroleum/Electrical/Electronics, were eligible for the post; that the petitioner is B.Sc. Mechatronics and applied for the post on the basis thereof, the applicant was interviewed and issued letter dated 08.01.2016. It was further contended that since the respondents never questioned the eligibility of the petitioner for the post, therefore, at this belated stage the said question cannot be raised. It was also contended that the offer made by the respondent company has been duly accepted by the petitioner as he is ready to show all the original documents and undergo the medical fitness test.

4. In response of the objection regarding maintainability of the petition the learned counsel for the petitioner submitted that in light of case law titled "*Syed Tahir Abbas Shah Vs. OGDCL*" (2012 PLC (C.S.) 885) the employees of Oil and Gas Development Corporation are governed by statutory rules of service; hence, the instant petition is maintainable.

5. The learned counsel for the respondents, *inter alia*, submitted that the appointment letter 08.01.2016, does not confer any right on the petitioner. In this behalf reliance was placed on unreported judgment of the Honourable Supreme Court of Pakistan titled "*Samiullah Khan and others Vs. FOP* (C.P. No. 2152 of 2011, dated 16.02.2012)"; it was also contended that the instant petition is not maintainable in as much as the service regulations of the respondent company are non statutory, reliance was placed on case titled "*Muhammad Azhar Khattak Vs. OGDCL, etc dated 30.06.2016, W.P. No. 1407/2015*". It was also submitted that the petitioner was offered employment on contract and no

direction can be issued under Article 199 for performance of the contract. The learned counsel further contended that the petitioner does not possess the requisite qualification, therefore, is not eligible for the post in question which fact inadvertently was overlooked by the respondent company.

6. The petitioner in response to the advertisement made by respondent No. 2 applied for the post of Assistant Engineer (Mechanical/Petroleum/Electrical/Electronics (EG-II)). The eligibility criteria for the said post was B.E. / B.Sc. Engineering (Mechanical/Petroleum/Electrical/Electronics) with minimum 02 years of relevant job experience with Coil Tubing Unit and Nitrogen Pumper. The petitioner possesses the degree of Bachelor of Science in Mechatronics Engineering. He was called for the interview and thereafter was issued letter dated 08.01.2016 for the position of Assistant Engineer (Stimulation) on contract basis; the referred appointment was subject to passing the medical fitness examination and submission of valid and authentic documents. The respondent company upon realizing that the petitioner does not possess the requisite qualification is refusing to allow the petitioner to join the service.

7. At the outset the learned counsel for the respondent raised the issue of maintainability of the instant petition on the grounds that the service regulations of respondent No. 2 are non-statutory. The learned counsel for the petitioner in defending the maintainability of the petition reliance on case titled "*Syed Tahir Abbas Shah Versus OGDCL through M.D. Head Office, Islamabad and another (2012 PLC (C.C.) 885)*" wherein it was held that employees of OGDCL are governed by statutory rules, therefore, petition under Article 199 is

maintainable. This Court in judgment dated 30.06.2016, in case titled "*Muhammad Azhar Khattak Vs. OGDCL, etc, (W.P. No. 1407/2015)*" traced conversion of Respondent No. 2 from corporation to company and likewise the change in service regulations. In this behalf it was observed that the recent regulations of Respondent No. 2 which are termed as Oil and Gas Development Company Limited employees Service Rules, 2002, are non-statutory. Moreover, following observations were made in the referred judgment:-

***As already noted above, the terms and conditions of the employees appointed after the date of incorporation or effective date of conversion under the Re-Organization Ordinance will be governed under the Service Regulations, 2002 and the same are admittedly non-statutory. In the instant petitions, all the petitioners were appointed after the effective date i.e. the date on which the Corporation was converted into a Company incorporated under the Ordinance. The relationship of the petitioners and the respondent Company is, therefore, in the nature of "Master and Servant" since they are not governed under statutory regulations or rules.***

8. In light of the above position of law the service regulations of Respondent No. 2 are non-statutory and the relationship between the employees of respondent No. 2 of the employer is that of "Master and Servant"; hence the petition is not maintainable.

9. Even otherwise the petitioner was offered job on contract. The petitioner is seeking a direction to Respondent No. 2 to take the petitioner in employment, therefore, the petition is in the nature of mandamus, the pre requisite of which is that there should to be a statutory obligation to perform duty which the authority/respondent No. 2 is refusing to perform. In the instant case since the service rules of respondent No. 2 are non-statutory and appointment of the

petitioner was being made on contract hence, no direction can be issued for the enforcement of contract.

9. For the reasons given above the petition is without merit and is accordingly dismissed.

**(AAMER FAROOQ)**  
**JUDGE**

M. Junaid Usman

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