

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No. 380/2017

Syed Abid Hussain

Versus

General Manger (HR and A), PTCL and others.

Petitioner by: Mr. Abdul Hafeez Amjad, learned ASC,
Respondents by: Mr. Saad Hassan, Advocate and Raheel
Zafar Law Officer,
Date of Hearing: 27.02.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- This Civil Revision Petition is directed against the Judgment & Decree dated 24.02.2014 wherein suit filed by the petitioner was dismissed by the learned Appellate Court while accepting the appeal of respondent-PTCL.

2. Precisely, facts necessary for disposal of instant civil revision petition are that petitioner filed a suit against the respondent-PTCL for recovery of Rs.1,440,000/- plus estimated amount of POL sealing, on the basis that during his service when he refused to accept Voluntary Separation Scheme, he was put on “compulsory waiting for posting”; that certain benefits which were granted to the petitioner in lieu of POL, vehicle, telephone, internet facility, etc were not paid during the said period. After his retirement, he applied for the said benefits but his request was turned down whereafter he filed suit which was decreed by the learned Trial Court vide Judgment & Decree dated 23.09.2013. Against the said Judgment & Decree, the respondent filed appeal which was allowed by the learned Additional District Judge, hence instant civil revision.

3. Learned counsel for the petitioner contends that appeal of the respondent before the learned Appellate Court was time barred; that the learned Appellate Court allowed the appeal on incorrect premises; that photocopies of the documents were admitted by the Trial

Court in lieu of original documents; that terms and conditions of the petitioner's employment were protected under the agreement of the respondent with the Government of Pakistan which could not be altered/modified to prejudice the rights of the petitioner even through any Office Order issued by the respondent; that as per policy, applicable to the petitioner, he is entitled for the benefits for which he filed the suit, therefore, well reasoned findings of the learned Trial Court are liable to be restored.

4. Learned counsel for respondent-PTCL contends that the appeal was filed within time; that vide letter dated 05.09.2006 (Ex.D4) certain facilities were withdrawn from the employees who were waiting for posting, therefore, suit was liable to be dismissed.

5. Heard the learned counsel for the parties and perused the record with their able assistance.

6. For deciding question of limitation, there was no certified copy of the judgment of the learned Trial Court with stamp of the learned Trial Court against which appeal was filed. Learned counsel for the petitioner during the course of arguments sought some time for production of the same. But on the next date of hearing, informed that Copying Agency had refused for issuing a certified copy of a certified copy. However, to resolve the controversy, notice was issued to the concerned Superintendant Sessions Division, who appeared alongwith record and submitted that the learned Trial Court had decreed the suit on 23.09.2013, while copy was applied on 25.09.2013, prepared on 21.11.2013 and delivered on 23.11.2013. Thereafter, appeal was filed before the learned Additional District Judge on the same day i.e. 23.11.2013, in that eventuality, appeal was within time before the learned Appellate Court, so this objection of the learned counsel for the petitioner is repelled.

7. Now as far as findings of the learned Appellate Court regarding admissibility of the Photostat copies which were placed on record by the petitioner by way of Mark-A to Mark-M are concerned, it needs to be mentioned that sole witness of the respondent i.e. DW-1 in his cross examination, placed at Page 42 of the file stated that:-

'میں Mark A کو درست تسلیم کرتا ہوں۔ میں مارک B کو درست تسلیم کرتا ہوں۔ میں مارک C کو درست تسلیم کرتا ہوں۔ میں مارک D کو درست تسلیم کرتا ہوں۔ میں مارک E کو بھی درست تسلیم کرتا ہوں۔ میں مارک F بھی درست تسلیم کرتا ہوں۔ میں مارک G کو اس لیے تسلیم نہ کرتا ہوں کہ اس پر کسی مجاز افسر کے دستخط نہ ہیں۔ البتہ جو initial ہیں انہیں میں نہ پہچانتا ہوں۔ میں مارک J, H کو درست تسلیم کرتا ہوں۔ میں مارک M کو بھی درست تسلیم کرتا ہوں۔'

8. All these documents were issued by the respondent company, and original thereof could not be in the possession of the petitioner. All these Marked documents except Mark-G (an agreement between respondent company and Government of Pakistan) are admitted by the respondent's witness during his cross examination, therefore, these documents which are expressly admitted by the respondent, could not have been questioned at appellate stage. This Court is not precluded/prevented from taking into account the admitted documents, which are available on record as Marked documents and most of these documents are part and parcel of official record of the respondent company.

9. It is also a matter of record that when these documents were presented by PW-1 during his examination in chief on 26.04.2012, which is available at Page 34, there is not a single objection from the other side i.e. the respondent upon presentation/placing of these documents on record. In this respect I am benefited by the case law reported as *Muhammad Akram and another Vs. Mst. Farida Bibi and others {2007 SCMR 1719}*. More pertinently during cross examination upon PW-1, no such objection had been tendered/advanced by the other side. The

statement of DW-1, who is sole witness of the respondent unequivocally suggests that he admitted said marked documents as correct. The question before the Court is that whether documents presented and placed on record without any objection from the other party, rather admitted by DW-1 in his statement as correct, could be questioned at appellate stage or even before this Court, the answer is surely in negative. It is therefore, held that 'photocopies placed on record by PW-1 as Marked documents, when admitted by the respondent's own witness DW-1 in his statement, as correct, could not be questioned/challenged afterwards merely on the ground of these being photocopies.

10. As far as the document i.e. Mark-G which is an agreement between the respondent company and Government of Pakistan executed at the time of transfer of certain shares to the respondent company by the Government of Pakistan is concerned, this document is of public nature which expressly provides that respondent company could not alter/modify/substitute any privilege/condition, facility of the erstwhile employees of the T&T department, adversely affecting their rights. The relevant clause i.e. clause 15.2 of the agreement reads as under:-

"15.2. The Purchaser and the Seller acknowledge and agree that the rights and benefits and terms and conditions of service granted to the 'Transferred Employees' under Section 36 of the Pakistan Telecommunication (Reorganization) Act 1996 will not be prejudiced or affected by this agreement."

Section 36 of the Pakistan Telecommunication (Reorganization) Act, 1996 referred in clause 15(2) *[supra]* provides that:-

"36. Terms and conditions of service of employees.

(1) No person transferred to the Company pursuant to sub-section (2) of section 35, hereinafter referred to as "Transferred Employee", shall be

entitled to any compensation as a consequence of transfer to the Company:

Provided that the Federal Government shall guarantee the existing terms and conditions of service and rights, including pensionary benefits of the Transferred Employees.

- (2) Subject to sub-section (3), the terms and conditions of service of any Transferred Employee shall not be altered adversely by the Company except in accordance with the laws of Pakistan or with the consent of the Transferred Employees and the award of appropriate compensation.
- (3)
- (4)
- (5)”

The above provisions clearly specify that erstwhile employees were protected for their terms and conditions and the facilities available to them at the time of joining respondent company. Therefore, any Office Order or document issued by the respondent company which adversely affect any privilege, facility for which he is entitled, has no force in the light of saving clause i.e. section 36 (2) of the Pakistan Telecommunication (Reorganization) Act, 1996.

11. As far as contention of the learned counsel for respondent that vide Ex.D4, internal Office Memo dated 05.09.2006, through which certain facilities were decided not to be extended to the employees who were waiting for positing is concerned, there is a document ‘Mark-D’, copy of service rules, wherein under clause-xiii, the definition of ‘Duty’ had been provided. Clause-xiii (f) provides that “*Duty includes time spent on compulsory waiting for posting*”, therefore, it cannot be said that by the time an employee had been placed on ‘compulsory waiting for posting’, he is to be treated as ‘not performing duties’.

12. Whether the respondent company i.e. PTCL is authorized or vested with the authority to rescind, withdraw, change any term and condition of service of its

employees disadvantageously, whose terms and conditions, facilities, privileges are determined and fixed before conversion of T&T Corporation in the company, obviously could not as discussed in supra paras and particularly in the light of law laid down by the Hon'ble Supreme Court of Pakistan in different cases of respondent company-PTCL. Ready reference is made to case law reported as "***PTCL and others Vs Masood Ahmad Bhatti and others {2016 SCMR 1362}***" wherein five member Bench of the Hon'ble Supreme Court of Pakistan held as under:-

"A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court. Though in the cases of Pakistan Telecommunication Corporation and another v. Riaz Ahmed and 6 others and Divisional Engineer Phones, Phones Division, Sukkur and another v. Muhammad Shahid and others (supra) it was held that the departmental employees on their transfer to the Corporation and then to the Company would continue to be the Civil Servants, but this interpretation does not appear to be correct as they on their transfer became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Retention of their status as civil servants is thus not supported by the words used in the aforesaid provisions."

Same view has been endorsed in the judgment of the Hon'ble Supreme Court of Pakistan reported as "*Iqbal Hussain Vs. General Manager, Southern Telecom Region-II and others {2017 SCMR 353}*".

13. In the light of what has been discussed above, findings of the learned Appellate Court are against the law and are not sustainable, therefore, require interference. Consequently, the instant civil revision petition is allowed, impugned Judgment & Decree of the learned Appellate Court dated 24.02.2014 is set aside and Judgment & Decree of the learned Trial Court dated 23.09.2013 is hereby restored.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Approved for reporting.