

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

**W.P.No.182 of 2016**  
**Muhammad Iqbal Mehsood**  
**Versus.**

**Federation of Pakistan, through Secretary, M/o Petroleum &  
Natural Resources, Islamabad & others**

<b>Date of Hearing:</b>	15.04.2016
<b>Petitioner by:</b>	Mr. Muhammad Shabbir Nasir, Advocate,
<b>Respondents by:</b>	Raja Ahsan Mahmood Satti, learned Standing Counsel, Mr. Ghulam Mustafa Qureshi, Advocate for respondents No.2 & 3

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant Writ Petition, the petitioner, Muhammad Iqbal Mehsood, Deputy General Manager (Mining), Pakistan Mineral Development Corporation/ respondent No.3, impugns:

- (i) Office Memorandum dated 20.11.2015, issued by respondent No.3, whereby the petitioner was informed about the decision of the Board of Directors of respondent No.3 taken in its 161<sup>st</sup> Meeting held on 30.10.2015, wherein the promotion of Deputy General Managers (Mining) to the posts of General Manager (Mining) was considered; and
- (ii) Letter dated 06.01.2016 from respondent No.3 to the petitioner, through which the petitioner was informed *inter-alia*, that respondent No.3 would not be able to pay the petitioner his salary etc beyond 01.01.2016.

2. The facts leading to the filing of this writ petition were that vide office memorandum dated 07.01.2002, respondent No.3 proposed to send the petitioner on deputation to the Ministry of Petroleum & Natural Resources ("MP&NR"). During this period, the petitioner was working as Deputy Manager (Mining), PMDC Salt Mines at Warcha. Vide letter dated 18.05.2005, the MP&NR requested respondent No.3 for the services of the petitioner to be temporarily attached with the Directorate General of Gas (Policy Wing) MP&NR. The petitioner was to draw his salary,

allowances and other perks from respondent No.3. Vide transfer order dated 30.05.2005, the petitioner was transferred from PMDC Salt Mines at Warcha to respondent No.3's Head Office at Islamabad, for further posting/ attachment with the Directorate General of Gas, MP&NR. Vide office memorandum dated 03.06.2005, the petitioner was directed to report for duty to the Director General (Gas) MP&NR. The petitioner was to draw his salary etc, from respondent No.3. As per office memorandum dated 11.05.2011, issued by respondent No.3, the Managing Director of respondent No.3, is said to have restored the seniority of officers, including the petitioner, on proforma promotion basis.

3. On 19.01.2012, the MP&NR, on the subject of the repatriation of the petitioner, informed respondent No.3 that the petitioner *"will continue to work with DG (Gas) keeping in view the acute shortage of officers in Policy Wing as already requested, vide this Ministry's letter of even number dated 18th May, 2005 ..."*.

4. Vide letters dated 23.01.2014, 30.05.2014, 13.10.2014 and 04.02.2014, the petitioner requested respondent No.3 to consider the petitioner's case for promotion to the post of General Manager (Mining) at respondent No.3. The petitioner, in these letters, took the position that he was eligible and fit for promotion to the said post on the basis of his seniority, annual confidential reports and service record spanning over a period of twenty eight years. Vide office memorandum dated 20.11.2015, respondent No.3 informed the petitioner about the following decision of the Board of Directors of respondent No.3 taken in its meeting held on 30.10.2015:

*"Board took serious view that a senior officer of DGM level, Mr. Muhammad Iqbal Mehsud has been working outside the Company on informal basis and against an incompatible position for the last 10 years. He has also been getting emoluments from the Corporation without contributing to it. In order to earn his promotion, he must be instructed by the Management to join the company immediately and he will be considered for promotion only after his joining back to PMDC and earning of at least one ACR with requisite performance. If he fails to join PMDC, he should forego his promotion in future."*

5. On 02.12.2015, the petitioner submitted his representation / appeal to the Chairman of the Board of the respondent No.3. In this representation, the petitioner pleaded that on 03.06.2005, his services were attached on temporary basis with the MP&NR, and he was to draw his salary etc, from respondent No.3. He also pleaded that he had been promoted twice by respondent No.3 while working at the MP&NR. He questioned the decision taken by the Board of respondent No.3 not to promote him unless he rejoined respondent No.3 and earned at least one Annual Confidential Report. He sought the withdrawal of the office memorandum dated 20.11.2015. He stressed that he was not working at the MP&NR as a deputationist, but had remained on the working strength and pay roll of respondent No.3.

6. The said representation did not find favour with respondent No.3. Vide letter dated 06.01.2016, the petitioner was called upon to act in accordance with the said decision of the Board and to join respondent No.3, immediately. Respondent No.3 made reference to MP&NR's letter dated 22.10.2002, wherein it was clearly stated that the officer deputed will draw his pay and allowance from the Policy Wing of the MP&NR with deputation allowance as permissible under the rules. Furthermore, in this letter, respondent No.3 took the position that even though, the petitioner was temporarily attached with the Directorate General (Gas), Policy Wing, MP&NR with effect from 03.06.2005, he was drawing his salary etc, from respondent No.3 for more than ten years; that even though, the rules permit a maximum deputation period of five years, the petitioner had managed to stay away from respondent No.3 for more than 10 years; that respondent No.3 is a self-financing entity; that respondent No.3 had been paying the petitioner Rs.3,43,068/- per month besides other perks without any contribution from the petitioner; and that respondent No.3 would not be able to pay the petitioner beyond 01.01.2016. The said office memorandum dated 20.11.2015 and letter dated 06.01.2016, have been assailed by the petitioner in this writ petition.

7. Learned counsel for the petitioner submitted that the petitioner was not on deputation with the MP&NR, but that his services had been "attached" with the said Ministry; that he had been sent to the MP&NR with the consent and approval of respondent No.3; that on two earlier occasions, the petitioner had been promoted by respondent No.3, while working at the MP&NR; that the petitioner has the required credentials and seniority to be promoted as General Manager of respondent No.3; that the petitioner is ready and willing to go back to his parent department/ respondent No.3 and work there; that the relevant service rules do not pre-condition the promotion of the petitioner with earning one Annual Confidential Report while working at the MP&NR. Learned counsel for the petitioner prayed for the said impugned letters dated 20.11.2015 and 06.01.2016 to be set aside. Furthermore, the petitioner sought a direction to respondent No.3 to consider the petitioner for promotion to the post of General Manager.

8. On the other hand, the learned counsel for respondents No.2 & 3 has raised an objection to the maintainability of the writ petition. He submitted that respondent No.3 was a body corporate registered under the provisions of the Companies Ordinance, 1984; that the rules for the employees of respondent No.3 had been approved by the Board of Directors of respondent No.3, and were non-statutory; that the petitioner had no locus standi to file the writ petition; that the Board of Directors of respondent No.3 had considered the petitioner for promotion to the post of General Manager, but had decided not to promote him until he returned to respondent No.3 and earned one Annual Confidential Report so that his performance could be evaluated.

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

10. Now the petitioner has expressed his readiness to return and work at respondent No.3 Council. The learned counsel for respondent No.3, after taking instructions, submitted that respondent No.3 would pay the petitioner's salary provided he

returned and resumed work at respondent No.3. The representative of the MP&NR submitted that they would have no objection if the petitioner returns to his parent department. This is all very well. But the vital question that needs to be addressed first is whether this Court in its constitutional jurisdiction can interfere in the matter.

11. In the cases of Aamir Khurshid Mirza Vs. The State (2006 CLD 568) and Shabbir Jan Sarhandi Vs. Province of Sindh through Chief Secretary and three others (2006 PLC (C.S) 955), it has been, *inter-alia*, held that it is the duty of the court first to decide the question pertaining to its own jurisdiction and then consider the merits of the case. I propose, therefore, to first take-up respondent No.3's objection to the maintainability of this petition.

12. Respondent No.3 along with its written comments has brought on record the memorandum and articles of association ("the constitution") of respondent No.3. The object of respondent No.3 is to *inter-alia*, purchase, take on lease, or otherwise acquire any mines, mining rights and metaliferous land in Pakistan or else where and minerals therein and to explore, work, exercise, develop and turn to account the same. The management of the business of respondent No.3 vests in the Directors, all of whom are nominated by the Government of Pakistan. Article 110 read with Article 111(1)(p) of the Articles of Association of respondent No.3 authorize the Directors to make, vary and repeal bye-laws for the regulation of the business of respondent No.3 and its officers and servants. In exercise of this power, the Board of respondent No.3 have made the "PMDC Employees Service Rules, 2012". Rule 6(c) in Chapter-II of the said Rules, provides that posts of General Managers shall be filled through promotion on merit through the MP&NR subject to the recommendations of the Board of respondent No.3.

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.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2016

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan\*

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