

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

WRIT PETITION NO.4030 OF 2013

Raja Abdul Latif, etc

Vs.

Federation of Pakistan, etc

Petitioners by : Mr. Muhammad Anwar Mughal, Advocate.

Respondents by : Mr. Waqar ul Haq Sheikh, Advocate.

Date of hearing : 21.07.2020.

LUBNA SALEEM PERVEZ, J. Petitioner through instant petition has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan and has sought the following prayer:

"It is, therefore, most respectfully prayed that an appropriate writ may very kindly be issued directing the Respondents to perform their duties in accordance with law and the act of withholding the Gratuity and non payment of the same on the basis of "gross salary" is not in accordance with law and the Respondents may graciously be directed to make payment of gratuity on gross pay as submitted in para 4 of the petition with profit on schedule rate as per State Bank of Pakistan from the date of withholding and till the date of final payment accordingly."

2. Necessary facts of the case are that the petitioners are retired employees who were in regular service and confirmed employees of Utility Stores Corporation (*hereinafter referred to as USC*) and are aggrieved of reducing the amount of gross salary drawn at the time of retirement for the purpose of calculating gratuity. The petitioners also moved application to the Competent Authority of the Corporation for calculating the gratuity in accordance with Chapter-VIII (Employees Gratuity Rules), USC Service Rules, 1992. The said application of the petitioners when not replied by the respondents, the petitioners filed the present petition.

3. Learned counsel for the petitioner submitted that the respondent Corporation allows gratuity to the retiring employees as per their own rules namely Utility Stores Corporation Private Limited Employees Gratuity Rules. These Rules were amended in 2009 by the respondents after due approval of their Board of Directors

by entitling all the regular and confirmed employees of the USC for payment of gratuity at last drawn gross pay at the time of retirement. He submitted that the petitioners' gratuity has been calculated against their own approved sanction vide Office Orders dated 27.08.2009, 12.11.2009 and minutes of meeting dated 07.09.2009, of the 102nd meeting of the Board of Directors held on 27.08.2009. The action of the respondents depriving the petitioners from their due amount of gratuity is illegal, unjust and discriminatory. He submitted that the respondents have curtailed the amount of gross pay for calculating gratuity of Petitioners No. 1 & 3 to 9 but no amount has been paid, in terms of gratuity to Petitioner No. 2. Learned counsel submitted that the respondents have violated fundamental right of equal treatment of petitioners with other similarly placed persons, guaranteed under Article 25 of the Constitution of Pakistan, as other employees of the respondents were paid gratuity on the last drawn gross pay. He submitted that the withholding/non-payment of gratuity is against the respondents' own decision dated 27.08.2009 and, therefore, same is in violation of Article 4 of the Constitution of Pakistan.

4. Learned counsel for the respondents, at the outset, submitted that the petition is not maintainable as the Utility Stores Corporation is a body corporate registered under the Companies Ordinance, 1984, and has no statutory rules and regulations; that the petitioners have not impleaded the Utility Stores Corporation Private Limited as a party; that the petition involves disputed questions of fact; that no allowance have been excluded from the salary of the petitioners while calculating gratuity; that all the employees of the respondents USC have been given equal treatment and has calculated the gratuity of all the employees as per rules. Learned counsel also referred Office Memorandum bearing No. F.1(1) Imp/2010-622, dated 05.07.2010, issued by Finance Division, Regulations Wing, Government of Pakistan, whereby vide para 2 it has been directed as under:-

- "2. *The amount of this Adhoc allowance.*
- i)...
 - ii)...
 - iii) *will not be treated as part of emoluments for the purpose of calculation of pension/gratuity and recovery of house rent.*
 - iv)...

v)...”.

He, therefore, submitted that Adhoc allowance was granted, vide above Office Memorandum dated 05.07.2010, with the above directions and instructions from Finance Division, which cannot be included in the gross pay for computing gratuity of the petitioner. He prayed that in view of the established principle by the Apex as well as High Courts, the petition may be dismissed as non-maintainable as that the rules and regulations of the respondents are non-statutory.

5. Heard learned counsel for the parties and perused the record.

6. Learned counsel for the respondents has vehemently agitated the maintainability of the present petition on the ground that employees of the respondent corporation are not governed by the statutory rules of service. However, learned counsel for the petitioner relied on the judgment where USC was impleaded as a party before this Court in case of *Syed Tallah Shah vs. Federation of Pakistan [2017 PLC(CS) 973]*, whereby, it has been held regarding status of USC that *Respondent No.2 is a Public Service Corporation, amenable to the Constitutional Jurisdiction of this Court, in terms of Article 199 of the Constitution, as such Writ Petition is maintainable against it*. The learned counsel for the petitioners also relied on an unreported judgment of this Court in case of *Masood Alam Niazi vs. Federation of Pakistan, etc in W.P. No. 1862 of 2016*, whereby, it has been held as under:-

“As far as the objection raised by the learned counsel for respondent No. 2 & 3 regarding maintainability of constitutional petition in respect of rules being non statutory is concerned even if no statutory rules had been framed by the federal government it has been held in Pakistan International Airlines Corporation v. Nasir Jamal Malik and others 2001 SCMR 934 and Abdul Hafeez Abbasi and others v. Managing Director of Pakistan International Airlines Corporation and others 2002 SCMR 1034 that where a removal order of an employee of corporation even in the absence of statutory rules is made on the particular ground which are in the nature of charges the employee is a vested right of hearing before any order adverse to his interest was passed by virtue of principle of audi alteram partem which was the least requirement”.

7. However, it has been now well settled through different pronouncements of the Hon’ble Supreme Court of Pakistan that where the rules and regulations are non-statutory, the writ petition under Article 199 of the Constitution is not

maintainable. Reliance in this regard is placed on the case law reported as *Pakistan International Airline Corporation Vs. Tanweer-ur-Rehman (PLD 2010 SC 676)* and *Pakistan Telecommunication Co. Ltd. Vs. Iqbal Nasir (PLD 2011 SC 132)*.

8. Since, the rules and regulation of USC are non-statutory in nature, therefore, in view of what has been discussed above, present writ petition is hereby dismissed as being not maintainable.

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(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the Open Court on 29.07.2020.

JUDGE

M. Junaid Usman