

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.3435/2017
Muhammad Ishaq & 141 others
versus
Federation of Pakistan & another

and

Writ Petition No.2689/2017
Imtiaz Ahmed & 27 others
versus
Federation of Pakistan & 2 others

Petitioners by:	Mr. Muhammad Asif Gujjar, Advocate for petitioners in W.P. No.3435/2017. Mr. Khurram Mehmood Qureshi and Mr. Usama Bin Salam, Advocate for petitioners in W.P. No.2689/2017.
Respondents by:	Mr. Ali Nawaz Kharal and Rana Rashid Javid, Advocates for PTCL in W.P. No.3435/2017. Mr. Habib Ahmed Bhatti, Advocate for PTCL in W.P. No.2689/2017. Mr. Arsal Hashmi, Legal Advisor, M/o I.T.
Date of Hearing:	29.06.2020.

MOHSIN AKHTAR KAYANI, J: Both these writ petitions are being decided by this common judgment as having involved common facts and questions of law.

2. In captioned W.P. No.3435/2017, the petitioners have prayed for the following relief:

“In the premise, it is very humbly prayed that by allowing instant writ petition the respondents may kindly be directed to treat the petitioners at par with other Government servants under the laws governing the Federal Government/Respondent No.1 (i.e. Section 3 to 22 of Civil Servants Act, 1973 etc.) for regulating and release of the pay and pension of the petitioners under revised pay scales announced from time to time by the Government, and the benefit of the above mentioned judgments and beneficial provisions of above mentioned agreements may also be given to the petitioners especially as given in case of similarly placed employee Muhammad Riaz in Crl. Org. P. No.63 of 2015 in C.P. No.797 of 2015 & CRP No.482 of 2015 to meet the ends of justice.

It is further prayed that the respondent No.2 may kindly be restrained permanently from varying the terms and conditions of the service of petitioners to their disadvantage at their own will and whims unilaterally and the terms and conditions of petitioners protected under Section 35 & 36 of the Act of 1996 may kindly be enforced in their true letter and spirit and the agreed terms and conditions of service of the petitioners who were appointed after 1.1.1996 may kindly be enforced in terms of above mentioned agreements and approval of the Board of Directors of respondent No.2 communicated vide above mentioned letter dated 29.09.2008 in pursuance of Agreement 2008 ibid and the respondents may kindly be restrained from taking departure from such agreed terms and conditions of service of petitioners.

It is also prayed that the unilaterally introduced/enforced new pay packages by the respondent No.2 in violation of the settled and agreed terms and conditions of service of petitioners may kindly be declared as illegal and void ab initio and in consequent thereto, the respondent No.2 may kindly be directed allow fixation of pay and allowances of petitioners on point to point basis as per revision of Pay Scales introduced by the Government of Pakistan on 1.7.2005, 1.7.2006, 1.7.2009, 1.7.2010, 1.7.2011, 1.7.2012, 1.7.2013, 1.7.2014, 1.7.2015, 1.7.2016, 1.7.2017 etc. accordingly and the petitioners appointed after 1.1.1996 may also be given increase in pay at the same rate of the Government."

3. In W.P. No.2689/2017, the petitioners have prayed for the following relief:

- A. *Set-aside the email/notification dated 15.06.2017 and emails dated 05.07.2017 and 06.07.2017 whereby the respondent PTCL has made yet another attempt to adversely alter the terms and conditions of service of the petitioners who joined PTCL prior to 01.01.1996 and accordingly enjoy complete statutory protection.*
- B. *Declare that the act of respondent No.2 whereby it is not extending the benefits of revision in Basic Pay Scales along with all arrears as approved and notified by the Federal Government between 2011 to 2017 to the petitioners and denial to grant adhoc relief allowance @ 20% of basic pay (as granted by the Federal Government through Office Memorandum F.No.1(3)IMP/2012 dated 02.07.2012) is unconstitutional, discriminatory, unlawful and based on sheer malafide;*
- C. *Direct the respondent PTCL to extend the benefits of revision in Basic Pay Scales (along with all arrears) revised between the year 2011 to 2017 to the petitioners as approved and notified by the Federal Government;*
- D. *Direct the respondent PTCL to grant adhoc relief allowance @ 20% of basic pay to the petitioners as granted by the Federal Government vide Office Memorandum F.No.1(3)Imp/2012 dated 02.07.2012;*

- E. *Direct the respondent PTCL to grant all other benefits Exh.g. 12 months leave encashment, casual leaves, earned leaves to the petitioners as is given to the he Federal Government employees;*
- F. *Grant any other relief this Honourable Court deemds fit and just in the eh circumstances of the case;*
- G. *Grant costs of the case.*

4. Learned counsel for petitioners have mainly argued that the PTCL (respondent No.2) has violated the settled rights of the petitioners granted to them in terms of PTC Act, 1991 as well as under the Pakistan Telecommunication (Re-organization) Act, 1996 despite the fact that they are entitled for the revision of their basic pay scales (2011 to 2017) along with arrears, approved and notified by the Finance Division, Government of Pakistan; that the ad-hoc relief in basic pay approved and notified by the Federal Government vide Office Memorandum dated 10.09.2013 has also been denied to the PTCL employees which was guaranteed under the laws of Pakistan and endorsed by the apex Court in various judgments and as such, terms and conditions of the petitioners have been changed adverse to their settled rights; that respondent No.2 PTCL is bound to follow the mandate of judgment reported as 2012 SCMR 152 (Masood Ahmed Bhatti vs. Federation of Pakistan) as well as of Clauses 15 & 16 of the Share Purchase Agreement dated 12.04.2006 and even the rights of the petitioners could not be altered in violation of the said terms of the agreement; that petitioners No.1 to 51 in captioned W.P. No.3435/2017 were regular employees of T&T department, who joined the service under the Civil Servants Act, 1973 and after promulgation of the PTC Act, 1991 they were transferred from T&T to PTCL declaring them to be departmental employees; that petitioners No.52 to 96 were regular employees of PTC as they were directly appointed in PTC under the provisions of PTC Act, 1991, they were termed as corporation employees and these two categories of petitioners were further transferred to PTCL under the provisions of the Pakistan Telecommunication

(Re-Organization) Act, 1996 and their terms and conditions were given protection in terms of Sections 35(2) and 36(1) of the said Act; that respondents have entered into Share Purchase Agreement, dated 12.04.2006, with the employees of PTCL, who are petitioners No.97 to 142 and in terms of Section 15, it has been agreed that the Company shall not change, vary or discontinue any of the benefit given to employees under the law nor the employees will be terminated/laid off and their services will only be transferred subject to mutual consent or their right to scheme of voluntary retirement will not be withdrawn, etc; that despite protection given in the law as well as referred in the Share Purchase Agreement referred above, the same have been violated and all the revision of pay scales introduced by the Government of Pakistan on different occasions i.e. from 01.07.2005 to 01.07.2017, have not been extended to them and as such, their right to life in terms of Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 has been violated.

5. Conversely, learned counsel for respondent No.2 contends that the petitioners initially employed by the PTC and later on transferred to PTCL are not departmental employees as defined under Section 2(e) of the PTC Act, 1991, rather they are governed by non-statutory rules under the principle of master and servant and as such, the captioned writs are not maintainable; that in Office Memorandum dated 15.06.2017, under the caption of "*other terms and conditions*" including pensionary benefits of transferred employees shall remain protected as provided under the Pakistan Telecommunication (Re-Organization) Act, 1996, hence the introduction of PTCL pay scales is not a defiance of the apex Court's order, which have been introduced on 15.06.2017 only for betterment of employees without change in the existing terms and conditions of the employment; that the T&T employees have lost their status of civil servant and all changes and revisions in rules relating to civil servants or in their terms and

conditions are not applicable to T&T employees nor it is referred in the Act that any changes made by the Federal Government in the terms and conditions of employment of civil servants would be applicable *ipso facto* to the departmental and Telecommunication employees; that respondent Company after its establishment as public limited company is no more controlled by the Federal Government; that the Pay Scales of 2007 are for all employees of the respondent Company including the petitioners by giving an option to employees to opt out with their free consent and if they opt out, they were not forced for the same as when any employee does not want to opt out for pay scale he can do so by submitting opt off form by respective HR Business Partner / HR Operations; that the writ petitions are hit by *laches* as having been filed in the year 2017 with the claim of previous 12 years and as such, the petitioners remain silent for a long period which could not be condoned under the law.

6. On the other hand, learned AAG in attendance contends that instant writ petitions are not maintainable as certain contractual matters were highlighted, which do not fall within the mandate of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and even the PTC Act, 1991 and Pakistan Telecommunication (Re-Organization) Act, 1996 give substantial protection to the employees and they are no more civil servants, rather they are company's employees, which was privatized in the year 2006 to M/s Etisalat of UAE and all issues of employees are dealt with by the PTCL, whereas this question has already been settled in different pronouncements of the apex Court.

7. Arguments heard, record perused.

8. Perusal of record reveals that some of the petitioners are the ex-employees of T&T, who are called transferred employees after promulgation of the PTC Act, 1991 and subsequently the employees, who were hired after said law, were again merged into PTCL (Respondent No.2) under Pakistan Telecommunication (Re-

Organization) Act, 1996 and as such, all the employees/petitioners are now the employees of Respondent No.2/PTCL i.e. company employees, who are aggrieved with the inactions on the part of Respondent No.2 with the claim that Respondent No.2 has varied the terms and conditions of their services despite the fact that the same were given protection under Section 9 of the PTC Act, 1991 read with Sections 35 & 36 of the Pakistan Telecommunication (Re-Organization) Act, 1996, whereby the said legislation has given protection qua their existing rights including their terms and conditions and guaranteed by the Federal Government, which could not be varied to their disadvantage, including the pensionary benefits.

9. In both the captioned writ petitions, there are two different sets of rights claimed by the petitioners i.e. in W.P. No.2689/2017, the petitioners are aggrieved with notification dated 15.06.2017, referred through e-mail of Respondent No.2, introducing new salary structure. In order to understand the proposition, the relevant extract of the e-mail appended with the writ petition is reproduced as under:

"It has been explained that the new Salary Structure has been introduced for the betterment of employees. However, option has been given to the employees that they can opt out of the new structure. For the convenience of employees, a simple form has been designed for this purpose which is to be submitted to the concerned HR Business/HR Operations.

Few Employees have submitted the Opt Out form with copies to a large number of people including CEO which is a violation of governing company rules.

Employees who don't want to avail this opportunity are hereby directed to send the Opt Out form only to their respective HR Business partner however if required it can be copied to their immediate line supervisor. It will not be addressed or copied to any other authority.

Violation of these instructions will expose them to strict administrative action.

*Regards,
Mazhar.*

10. The above referred instructions for new salary structure is clear in its wordings and it is optional to all employees of the PTCL and as such, there is no coercive or compulsive direction in the above referred e-mails as well as in the appended office memorandum, which is optional in its nature and is applicable to those employees who are willing to opt out for new structure, therefore, claim of petitioners is not justified under the law nor it is in violation of the statutory guarantees given in Section 9 of the PTC Act, 1991 or in Sections 35/36 of the Pakistan Telecommunication (Re-organization) Act, 1996.

11. The petitioners are also claiming the extension of benefits or revision of basic pay scale along with arrears as approved and notified by the Federal Government between 2011 and 2017 along with ad-hoc relief allowance & 20% of basic pay (as granted by the Federal Government through Office Memorandum dated 02.07.2012). They are also claiming revision of their basic pay scales which were given to civil servants and notified by the Federal Government.

12. In the other captioned writ petition i.e. W.P. No.3435/2017, similar relief has been claimed except that the petitioners in said writ petition are also claiming revision of basic pay scales introduced by Federal Government w.e.f. 01.07.2005 to 01.07.2017 in 12 years.

13. While considering the above prayers, the respondents have taken serious objection on maintainability of instant writ petitions on the ground that the employees of PTC with specific reference to the employees/petitioners, who were employed after 1990, are not departmental employees as defined under Section 2(e) of the Act, 1991, there is no cavil to this proposition that those petitioners who fall under said category are governed by non-statutory rules and principle of master and servant is applicable and as such, their writ petition is not competent and maintainable. Reliance is placed upon 1999 SCMR 1526 (Divisional Engineer Phones, Phones Division, Sukkur v. Muhammad Shahid).

14. It is also settled by now that employees of T&T have lost their status as of civil servant w.e.f. 01.01.1991 in the light of apex Court's judgment reported as 2016 SCMR 1362 (PTCL v. Masood Ahmad Bhatti), and as such, any changes or revisions in rules relating to civil servants or terms and conditions of employment of civil servants made after 01.01.1991 are not applicable to T&T employees and they are not entitled to claim any of their right, which were available to civil servants under the Civil Servants Act, 1973, hence any change made by the Federal Government in the terms and conditions of the civil servants would not be *ipso facto* applicable to present petitioners under any circumstance.

15. I have gone through the entire record with able assistance of learned counsel for petitioners, who are unable to justify any violation made by Respondent No.2 in their existing terms and conditions of service, which were given protection in terms of Section 9 of the PTC Act, 1991 as well as under Sections 35 & 36 of the Pakistan Telecommunication (Re-organization) Act, 1996.

16. Mr. Asif Gujjar, Advocate, learned counsel for petitioners, has put much emphasis on the Share Purchase Agreement, dated 12.04.2006, and prayed for enforcement of contractual obligation, although those terms and conditions of Share Purchase Agreement have ready been settled in the aforesaid two Acts and clauses 15 & 16 referred by him have already been made part of the law, which has not been seen to be violated. However, it is settled that contractual obligation could not be enforced through writ petition. Reliance is placed upon 2012 PLC (CS) 681 Islamabad (Rizwan Ahmad Bhatti v. Federation of Pakistan), PLD 2018 Sindh 657 (Muhammad Arif Akhtar vs. Federation of Pakistan), PLD 2011 SC 44 (Pak Com Limited v. Federation of Pakistan) and 1999 SCMR 467 (Nizam-ud-Din v. Civil Aviation Authority).

17. Keeping in view the above discussion, the petitioners have failed to make out their case qua their rights, although certain questions raised in the captioned writ petitions are based upon disputed facts, which could not be resolved in writ proceedings and even writ petitions filed by those petitioners are not maintainable, who are governed under the principle of master and servant. However, to the extent of employees of T&T (transferred employees) i.e. petitioners No.1 to 51 of W.P. No.3435/2017, no violation has been highlighted or justified on record.

18. Since there is no violation of law or principle of natural justice, nor any fundamental rights of the petitioners have been violated in any manner, therefore, instant writ petitions are not maintainable in the light of law laid down by the apex Court in 2013 SCMR 1707 (Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed).

19. In view of above, both the captioned writ petitions are not maintainable and same are hereby DISMISSED as all these questions have already been settled in cases reported as 2016 SCMR 1362 (PTCL v. Masood Ahmed Bhatti), 2015 SCMR 1472 (Pakistan Telecommunication Employees Trust (PTET) v. Muhammad Arif) and 2015 SCMR 1783 (Muhammad Riaz v. Federation of Pakistan, etc.).

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: _____.

JUDGE

Khalid Z.