

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.1623/2019

Saifullah Jan

versus

Market 786 through its CEO and 3 others.

Petitioner by: Mr. Anwar Zeb Khan, Advocate.

Respondents by: Ch. Abdul Rehman Hur Bajwa, Advocate
for Respondent No.1.
Mr. Adnan-ul-Haq, Advocate for
Respondent No.3.

Date of Decision: 11.11.2019.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has prayed for direction to be issued to Respondent No.1 to release the salary of petitioner along with issuance of NOC in favour of the petitioner.

2. Brief facts referred in the instant writ petition are that petitioner joined office of Market 786/Respondent No.1 on 11.08.2017 against monthly salary of Rs.130,000/-, however respondent No.1 failed to pay salary to the petitioner together with issuance of an NOC in favour of the petitioner, rather suspended the petitioner, which constrained the petitioner to send a legal notice to Respondent No.1 for release of his salary and issuance of NOC, which was replied by Respondent No.1 highlighting therein misconducts on the part of petitioner. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that it is the right of petitioner to be paid for the work he had done for Respondent No.1; that non-issuance of the NOC by Respondent No.1 in favour of the petitioner is the violation of fundamental rights as envisaged in the Constitution; that the suspension of the petitioner is based on malafide as no inquiry has been conducted till date to probe into the allegations leveled against the petitioner and the act of instant suspension of the petitioner from the job together with stoppage of salary is

illegal, therefore, Respondent No.1 may be directed to release the salaries of petitioner along with the NOC.

4. Conversely, learned counsel for respondents No.1 & 3 opposed the instant writ petition mainly on the question of maintainability of the instant writ petition and contended that writ is not maintainable against a private person/company.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner is mainly aggrieved with his employer i.e. Market 786 (Pvt.) Ltd./Respondent No.1, with whom the petitioner was serving as contract employee on the basis of agreement dated 11.08.2017. As per the stance taken by the petitioner that he was not paid salary by respondent No.1 and he has issued legal notice in this regard, and even approached the Payment of Wages Authority for release of his salary, whereby his case was disposed of with direction to approach the competent forum vide order dated 18.02.2019, passed by Director, Labour & Industries/Magistrate, 1st Class, ICT, Islamabad, whereafter the petitioner has filed the instant writ petition.

7. The facts referred above reveal that the entire matter revolves around a private dispute qua enforcement of the terms of contract, even otherwise, petitioner is seeking a writ against a private person and as such, it is a trite law that constitutional petition against a private person or institution is not maintainable. Reliance is placed upon 2014 PLC (CS) 393 SC (Abdul Wahab vs. HBL).

8. In view of above, the instant writ petition is not competent and the same is hereby DISMISSED. However, the petitioner may approach the court of competent jurisdiction qua the dispute of enforcement of contract, if so advised.

MOHSIN AKHTAR KAYANI
JUDGE

 Khalid Z.