

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2752 of 2017
Sabir Hussain Malik and others

Versus

Ministry of Inter Provincial Coordination and others

Date of Hearing:	19.10.2020
Petitioners by:	Mr. Muhammad Akhtar Anjum, Advocate
Respondents by:	Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney General
	Mr. Muhammad Irfan Ullah, Advocate for respondent No.2
	Mr. Muhammad Waqar Ahmed, Superintendent (Lit), Pakistan Sports Board

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners seek for their service in National Institute of Sports and Culture (“N.I.S.&C.”) prior to their absorption in the Pakistan Sports Board (“P.S.B.”) to be counted while determining their pension and retirement benefits.

2. The petitioners were employees in N.I.S.&C. prior to its abolishing. Through letters dated 17.09.1999, the petitioners were absorbed in the P.S.B. with effect from 31.07.1999. Their services were to be governed by the P.S.B. Service Rules, 1981. The petitioners were absorbed in the P.S.B. pursuant to the decision taken in the 60th meeting of the Executive Committee of the P.S.B. held on 31.07.1999. The petitioners sent letters (annexed at pages 16 to 27 of this petition) requesting the P.S.B. for their services in N.I.S.&C. to be counted while determining their pension and pensionary benefits. No response to the said letters was received.

3. Petitioner No.1 retired prior to the filing of this petition, whereas two petitioners retired during the pendency of this petition. M.A. Qurban, an employee of P.S.B. similarly placed as the petitioners, filed writ petition No.2059/2011 before this Court seeking the same relief as is being sought by the petitioners in this petition. Vide judgment dated 11.06.2013, the said petition was allowed and the P.S.B. was directed to assess the service emoluments of the said petitioner in accordance with Regulation 371-A of the Civil Service Regulations after counting his previous

service in N.I.S.&C. and accordingly to pay his dues. Intra Court appeal No.937/2013 filed by the P.S.B. against the said judgment was dismissed as withdrawn vide order dated 19.05.2014. It is not disputed that M.A. Qurban has been granted pensionary benefits by treating his previous service in N.I.S.&C. as part of his pensionable service.

4. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that the petitioners would be satisfied if they are granted the same relief as was granted by this Court to a similarly placed employee of P.S.B. vide judgment dated 11.06.2013 passed in writ petition No.2059/2011. He further submitted that the Superior Courts had held in the judgments reported as 1996 SCMR 1185, 2005 SCMR 499, 2009 SCMR 1 and PLD 2013 S.C. 195 that employees who had not invoked the jurisdiction of the Court ought to be granted the same relief as the one granted by Courts to similarly placed litigants. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

5. On the other hand, learned counsel for respondent No.2 (P.S.B.) submitted that since the P.S.B. does not have any statutory rules, the instant writ petition is not maintainable; that in the judgment dated 11.06.2013 passed in writ petition No.2059/2011, this Court had not decided the question as to the maintainability of the writ petition; that the mere fact that such a question had not been decided in an earlier judgment would not prevent this Court from dismissing the instant writ petition if holds that the service rules which the petitioners were seeking to enforce were not statutory in nature; and that the mere fact that the Executive Committee of the P.S.B. had approved the pension scheme for employees of the P.S.B. in accordance with the pension rules admissible under the Civil Servants Act, 1973 and the rules made thereunder would not mean that such rules applicable to the petitioners were statutory in nature. In making his submissions, learned counsel for respondent No.2 placed reliance on the judgments reported as 2004 SCMR 35, PLD 2016 S.C. 534, 2017 SCMR 571 and PLJ 2008 S.C. 310. Learned counsel for respondent

No.2 prayed for the writ petition to be dismissed as not maintainable.

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

7. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 and 3 above and need not be recapitulated.

8. I deem it appropriate in the first instance to determine whether the rules which the petitioners were seeking to enforce through this petition were statutory in nature.

9. Section 3(1) of the Sports (Development and Control) Ordinance, 1962 provided *inter alia* that the Federal Government, by notification in the official gazette, constitute one or more Boards for the control of Sports in Pakistan. Section 5 of the said Ordinance provided that a Board may make rules and regulations for carrying its objects into effect. The objects for which a Board was to be established were also set out in Section 3(1) of the said Ordinance. Section 4 of the said Ordinance provided that the name, constitution, powers and functions of a Board shall be such as may be determined by the Federal Government.

10. In exercise of the powers conferred by Sections 3(1) and 4 of the said Ordinance, the Federal Government constituted the P.S.B. for the control of sports, excluding Cricket and made rules called the Pakistan Sports Board Rules, 1981. Under Rule 4(xix) of the said Rules, the P.S.B. was empowered to make rules and regulations to carry out its objectives.

11. Notification dated 26.07.2008 issued by the Ministry of Sports, Government of Pakistan shows that the Executive Committee of the P.S.B., in its 68th meeting held on 23.06.2008, considered and approved the pension scheme for the employees of P.S.B. with effect from 04.03.2006 in accordance with the pension rules admissible to civil servants under the Civil Servants Act, 1973 and the rules made thereunder.

12. For deciding the objection to the maintainability of the instant petition raised by learned counsel for P.S.B., the vital question that

needs to be decided is that whether (given the fact that the petitioners are seeking to be given the benefit under Civil Service Regulation No.371-A) the approval of the pension scheme in accordance with the pension rules admissible to civil servants would result in this Court holding that the petitioners were seeking to enforce statutory rules or that their services were governed by statutory rules.

13. Since the decision to approve a pension scheme for the employees of P.S.B. in accordance with the pension rules admissible to the civil servants under the Civil Servants Act, 1973 and the rules made thereunder would not *ipso facto* result in a finding that the petitioners were governed by statutory rules.

14. The decision to adopt the pension rules applicable to the civil servants had not been made by the Federal Government but by the P.S.B. Such adoption of the statutory pension rules applicable to the civil servants would not make the pension scheme for the employees of P.S.B. or the rules governing such scheme to be statutory in nature so as to give a right to employees of the P.S.B. to enforce such rules in the Constitutional jurisdiction of this Court.

15. The Pakistan Sports Board Rules, 1981 do not govern the terms and conditions of the petitioners' service with P.S.B. These rules empower the P.S.B. to make rules and regulations which would also include rules and regulations governing the terms and conditions of P.S.B.'s employees. Had the Federal Government, in exercise of the powers conferred by the provisions of Pakistan Sports Board Ordinance, 1962, made rules or regulations governing the terms and conditions of P.S.B.'s employees, the matter would have been different. Given the fact that the pension rules applicable to the civil servants have been adopted by the P.S.B., I hold that the petitioners are not seeking to enforce any statutory rule or regulation and therefore this petition is not maintainable. In holding so, reliance is placed on the law laid down by the Hon'ble Supreme Court in the judgment in the case of Zia Ghafoor Piracha Vs. Chairman, Board of Intermediate and Secondary Education (2004 SCMR 35), wherein it was held as follows:-

"7. The Service Regulations of the Employees of the Board were framed by the Board. However, as has been determined by the

learned Single Judge of the Lahore High Court, the Government, as required by the Act, has not given its formal approval to these Regulations. In these circumstances these Regulations may be termed as internal instructions or domestic rules having no status of statutory rules. Reference in this regard is made to the case of "The Principal Cadet College, Kohat and another v. Muhammad Shoaib Qureshi (PLD 1984 SC 170). In that case, the Government under the West Pakistan Government Educational and Training Institution Ordinance, 1960 was empowered to make Rules for carrying out the purposes of the Ordinance under section 17 thereof. Similarly, under section 18, the Board was also empowered to make Regulations subject to approval of the Government. There was identical situation in the aforesaid case as is now prevailing in the present case because the Regulations though made by the Board but the approval of the Government had not been secured. Similarly, the Government too had not made any Rules as mandated by section 17 ibid. This Court in such a situation in the aforementioned case held as under:--

"It is common ground that neither any rules, as contemplated by section 17 of the Ordinance nor any Regulations under section 18 thereof were framed. The Board of Governors did not frame some "rules" for governing the appointment, promotion, retirement, termination of service, and dismissal of staff employed by the Board of Governors of the College in its meeting held on 29th September, 1964, but these not having been made by the Government could not be regarded as "rules" under section 17, nor having been approved by the Government, be treated as Regulations under section 18 thereof. These "rules" therefore could only be regarded to be in the nature of mere instructions issued for the guidance of the Board of Governors and the Principal of the Cadet College, Kohat. "

8. The learned Single Judge of the High Court has also in his judgment dated 10-6-2002 (2002 P L C (C.S.) 1571) dilated upon the status of the Regulations framed by the Board and adaptation of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1975 which approval was accorded on 9-3-1980 to the respondent-Board. It would be appropriate to reproduce the same which is in the following terms:--

"The effect of adaptation of Punjab Civil Servants (Efficiency and Discipline) Rules, 1975 and the framing of Regulations and Rules under sections 20 and 21 of the Act XIII of 1976 came under consideration before a Division Bench of this Court in the case of "Muhammad Anwar Hussain v. Chairman, Board of Intermediate and Secondary Education, Gujranwala etc." (2000 PLC (C.S.) 678). It was observed as under:--

"It is clearly a residuary power of the Board. The purpose was to arm the Board to deal with the matters not provided for in the Act or Regulations. All such decisions of the Board have the status of domestic rules. The E&D Rules adopted by the Board through Resolution would be the rules framed under section 21 of Act, 1976, therefore, they will not have the status of statutory rules. These would be just domestic rules. Moreover, the Board is not competent to frame rules in respect of the terms and conditions of service. In this behalf,

we may be fortified in our view by clause (iii) section 20(1) of Act, 1976. "

In the instant case no prior approval of the Controlling Authority exists on the record giving life to the Service Regulations.

11. The approval for adoption of Punjab Civil Servants (Efficiency and Discipline) Rules, 1975 was accorded on 9-3-1980 to the respondent-Board. As observed by the Division Bench of this Court, the E&D Rules adopted by Board through resolution would be rules framed under section 21 of the Act of 1976 and will not have the status of statutory rules. These would be just internal rules.

As per letter No. SO(BOARDS) 1-14/82, Government of the Punjab, Education Department dated 4-4-1985, the approval was accorded to the Board of Intermediate and Secondary Education, Multan and not to the respondent Board of Intermediate and Secondary Education, Rawalpindi. The contention of the learned Assistant Advocate-General that the endorsement to Chairman of all the Boards at the bottom of the letter for information and necessary action amounts to granting approval to the other Boards as well has no force."

16. As regards the contention of the learned counsel for the petitioner that this Court had already, vide judgment dated 11.06.2013, allowed a writ petition by granting the same relief to a similarly placed employee of P.S.B. as the one sought by the petitioners, suffice it to say that in the said judgment, this Court had not determined as to whether the terms and conditions of the petitioner's service had been governed by any statutory rules or regulations. It is well settled that a writ petition is maintainable where the respondent authority violated any provision of law or statutory rules. Employees who are governed by statutory rules can avail the remedy of filing a writ petition before the High Court. It is also well settled that the principle of 'master and servant' was applicable to the employees whose services were not governed by any statutory rules. Employee of a company, owned by the government, in the absence of violation of law or any statutory rule, could not press into service the Constitutional jurisdiction of the High Court in order to seek relief with respect to his employment.

Law to the said effect has been laid down by the Hon'ble Supreme Court in several judgments including the judgments in the cases of Samiullah Narago Vs. Federation of Pakistan (2012 PLC (C.S.) 1205), Pakistan Telecommunication Company Limited Vs.

Iqbal Nasir (PLD 2013 SC 132) and Pakistan International Airline Corporation Vs. Tanveer-ur-Rehman and others, (PLD 2010 SC 676).

I am bound to follow the law laid down by the Hon'ble Supreme Court in the said cases. In the latter case, it has been held as follows:-

“19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction.”

17. Resultantly, this petition is dismissed as not maintainable. I refrain from touching the merits of the case, lest it may prejudice to the either party's case before the competent forum. There is catena of case law in support of the view that where a Court holds a petition not to be maintainable, it ought not to delve into or give findings or even observations on the merits of the case. Reference in this regard may be made to the judgments in the cases of S.M. Waseem Ashraf Vs. Federation of Pakistan through Secretary, Ministry of Housing & Works and others (2013 SCMR 338), Yousuf A. Haroon Vs. Custodian of the Karachi Hotel Project (2004 CLC 1967) and Messrs Voyage de Air, General Sales Agent, Shaheen Air International Vs. Shaheen Air International Pvt. Ltd. (2006 CLC 173). There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

*Qamar Khan**