

Form No: HCJD/C-121
ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Intra Court Appeal No. 350 of 2021

Captain (Rtd) Muhammad Ali Zulqarnain Kiani

Versus

Islamabad Electric Supply Company (IESCO), through its Chief Executive
Office and another

Sr. No. of order / proceeding	Date of order / proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(01)	23.08.2021	M/s. Asim Rauf and Mohammad Umer Khan Vardag, Advocates for the Appellant.

TARIQ MEHMOOD JAHANGIRI, J:

Through the instant Intra Court Appeal, the appellant has assailed order dated 06.07.2021, passed in writ petition No. 1787 of 2021, whereby, the learned Single Judge-in-Chambers has dismissed the writ petition filed by the appellant / petitioner.

02. Brief facts of the case are that the appellant / petitioner is an employee of Islamabad Electric Supply Company, an inquiry was conducted on the allegations that the appellant was illegally promoted from BPS-17 to 18 and BPS-18 to 19. After

completion of said inquiry, orders for promotion of the appellant from BPS 17 to 18 and BPS-18 to 19 were withdrawn vide order dated 22.04.2021 and subsequently the appellant was transferred and posted as Assistant Manager (HR/Admin) (BPS 17) under SE (Operation), IESCO City Circle, Rawalpindi, vide order dated 28.04.2021. The appellant vide writ petition has challenged both the impugned orders dated 22.04.2021 and 28.04.2021, the writ petition was dismissed by learned Single Judge-in-Chambers vide impugned order dated 06.07.2021, hence the instant Intra Court Appeal.

03. Learned counsel for the appellant *inter alia* contends that impugned order dated 06.07.2021 is patently illegal, void ab initio and ineffective; the respondents have violated the principle of *audi altrum partem* while passing orders impugned in the writ petition; the respondents have neither given any plausible reason for cancelling the promotion of the appellant nor provided an

opportunity of hearing to defend himself. He has further contended that after inclusion of Article 10-A in the Constitution of Islamic Republic of Pakistan, impugned order dated 06.07.2021 is also a violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 as no due process or fair trial has been given to the appellant. That the Hon'ble Single Judge-in-Chambers has failed to appreciate and apply the law reported in PLD 1975 SC 244; the laws stated in the impugned order are not at all attracted to facts and circumstances of the present case; the impugned order of learned Single Judge-in-Chambers suffers from non-reading and mis-reading of the record; the Hon'ble Single Judge-in-Chambers has not appreciated that the appellant could not be refused relief under Article 199 of the Constitution as this would frustrate the substance and purpose of Article 199(b)(ii) and has prayed for setting aside of the impugned order dated 06.07.2021 and has relied upon cases reported as **PLD 1965 SC 90, PLD 1975 SC 244 1994 SCMR**

2232, 2005 SCMR 774 and 2001 SCMR 934.

04. Arguments advanced by learned counsel for the petitioner have been heard and the documents, placed on record have been examined with his able assistance.

05. Islamabad Electric Supply Company IESCO is an entity incorporated under laws of Pakistan and the Apex Court in **Civil Petition No. 1591-2011 titled as "Chief Executive Officer PESCO, Peshawar Vs. Muhammad Aftab ur Rehman and others"**, vide order dated 21.06.2012, has already observed that Distribution Companies (DISCOS) which includes IESCO, are juridical persons against whom petition under Article 199 of the Constitution is not maintainable.

06. This Court while following the referred Judgment of the Apex Court vide order dated 30.11.2016 in a case titled as "**Miss Mehwish Zaheer Vs. The Secretary, M/o Water and Power, Government of Pakistan, Islamabad etc.**" (ICA No.

501-2016) dismissed the appeal and held that petition under Article 199 of the Constitution against IESCO is not maintainable.

07. The matter was agitated before Apex Court against Judgment of this Court and the Hon'ble Supreme Court of Pakistan in **Civil Petition Nos. 1016 etc. of 2017 in a case titled as "Jamal Shah and others Vs. The Secretary, M/o Water and Power, Government of Pakistan, Islamabad and others"**, vide judgment dated 07.03.2019, upheld the decision in Intra Court Appeal and observed that IESCO is neither a statutory body nor were its employees governed by statutory rules.

08. This Court, even subsequently, followed the said view in cases titled as **"Sardar Liaqat Ashraf and 7-others Vs. Federation of Pakistan through Secretary, Ministry of Water and Power, Islamabad and 4-others" (W.P No. 2167-2015)** and **"Syed Mohsin Raza Gillani and 3-others Vs. Federation of**

Pakistan through Secretary, Ministry of Water and Power, Islamabad and 4-others" (W.P No. 2216-2012), dismissed the said petitions on the same basis vide judgment dated 17.05.2018.

09. This Court in a case titled as **"Manzoor Ahmed Vs. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan and others" (W.P. No. 2346-2017)** refused to depart from the view taken by the Apex Court in **Civil Petition No. 1591-2011 titled as "Chief Executive Officer PESCO, Peshawar Vs. Muhammad Aftab ur Rehman and others"** vide order dated 21.06.2012.

10. Reference in this regard may be made to the laws laid down in 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). In the latter case, it has

been held as follows:-

“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”.

11. Furthermore, vide judgment dated 08.10.2015, passed by this Court in **Writ Petition No. 377/2012, titled as**

"Khizar Hayat Vs. Managing Director

PEPCO, WAPDA House, Lahore and

others", writ petition filed by an employee

of IESCO for the redressal of his grievances

in relation to the terms and conditions of his

service, was dismissed as not maintainable.

Paragraph 6 of the said judgment dated

08.10.2015, is reproduced herein below:-

"It is evident from record that petitioners are employees of IESCO which is a company established under the Companies Ordinance, 1984. It may be a public utility company performing functions in connection with the affairs of the federation yet matter under consideration does not relate to performance of the function of respondent company, thus the petition cannot be held maintainable merely on the basis of 'function test' and an employee of Company cannot be presumed to be governed by statutory rules merely through reference where his employment relationship is regulated by the non-statutory rules. Similarly, there is nothing on record to show that rules made under Section 18 of Pakistan Water & Power Development Authority, 1958 were prepared with the sanction of Government or were

published in the Official Gazette which is required to consider the same as statutory, therefore, the relationship of the petitioners with their employer is of 'Master and Servant' and in such situation constitutional petition is not competent".

12. Recently, this Court, vide order dated 11.01.2018, passed in **writ petition No. 296/2014, titled "Adnan Khan Vs. IESCO, etc"** dismissed the writ petition filed by an employee of IESCO. Paragraph 5 of the said order dated 11.01.2018, is reproduced herein below:-

"In order to attend to the question of maintainability, it is admitted position that the respondent IESCO is a company incorporated under companies' ordinance. Though involved in affairs of Federation relating to supply of electricity within a special region, yet the fact remains that the rules of IESCO have not been framed by the Government or under the Authority of the Statute. The logical consequence would be to observe that the relationship of employees with the company is of Master & Servant which takes away the constitutional jurisdiction of this Court".

13. As it is an admitted position that service rules governing the appellant's employment with IESCO are not statutory. It is trite that the writ petition is maintainable where the respondent authority violated any provision of law or statutory rules. IESCO is not statutory body / company incorporated under the laws of Pakistan.

14. Learned counsel for the appellant has also failed to point out any violation of fundamental rights, as the appellant was demoted from BPS-19 to 17 vide office order dated 22.04.2021 and was transferred vide order dated 28.04.2021. It is observed that transfer is exigency of service and no employee can claim as a fundamental right to be posted at a particular station. Likewise, demotion was made after inquiry and no violation of any law whatsoever could be discerned from the record.

15. Intra Court Appeal can be filed when the impugned order / judgment of the learned Single Judge-in-Chambers is shown to have been delivered against the

provisions of law and is the result of conclusions, which are contrary to any specific provision of law or is the result of misreading, non-reading or same has caused miscarriage of justice, or mistakes of like nature; liable to be corrected by the Division Bench, otherwise, the order / judgment could not be upset in the Intra Court Appeal.

16. In view of foregoing discussion, instant Intra Court Appeal is not maintainable, hence the same is **dismissed in limine** being meritless.

(MIANGUL HASSAN AURANGZEB) (TARIQ MEHMOOD JAHANGIRI)
JUDGE JUDGE

Bilal /-

Approved for reporting