

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1986 of 2009

Asim Rizwan Talib

Vs

Secretary, Information & Broadcasting/Chairman PTC, etc.

DATE OF HEARING: 18-11-2014.

PETITIONER BY: Mr Muhammad Shoaib Shaheen Advocate.

RESPONDENTS BY: Mr Shahid Mehmood Khokhar Advocate.

ATHAR MINALLAH, J.- The petitioner in this case was appointed as *Trainee Producer News and Current Affairs* on 13-2-2006. He was a contract employee and his services were terminated vide order dated 06-2-2007. The termination order was assailed through W.P. No. 518/2007, which was dismissed by this Court vide order dated 28-3-2008. However, the august Supreme Court of Pakistan vide order dated 09-9-2008, converting the civil petition into appeal, set aside the order dated 28-3-2008 of this Court and consequently the petitioner was reinstated vide order dated 02-12-2008. The petitioner has assailed his reinstatement order dated 02-12-2008 through the instant petition to the extent, that the period during which the petitioner remained out of service of the respondent Corporation could not have been treated as being on *Leave without Pay* and that he should have been given all the benefits including his salary w.e.f. 06-2-2007 till 19-9-2008.

2. Learned counsel for the petitioner contends that denying the salary and benefits for the period when the petitioner remained out of service is illegal and contrary to the settled law. He has placed reliance on the judgments of august Supreme Court of Pakistan in cases of *Ali Nawaz Versus Pakistan Railway through Chairman/Secretary and others* [2000 PLC (C.S.) 304], *House Building Finance Corporation and others Versus Syed Muhammad Ali Gohar Zaidi* [2004 SCMR 1811], *Abdul Hafeez Abbasi and others Versus Managing Director, Pakistan International Airlines Corporation, Karachi and others* [2002 SCMR 1034], *Muhammad Tariq Badar and another Versus National Bank of Pakistan and others* [2013 SCMR 314] and *Muhammad Dawood and others Versus Federation of Pakistan and others* [2007 PLC (C.S.) 1046]. The case of the petitioner, as argued by the learned counsel, is that when an order has been declared as illegal then the person cannot be deprived of his back benefits. It is further stated that the only exception is that when the person has been gainfully employed during the period when he remained out of service.

3. On the other hand, learned counsel for the respondent Corporation has raised a preliminary objection regarding the maintainability of the present petition. It is contended that the Corporation is not a statutory body, rather it is a public company duly registered under the *Companies Ordinance, 1984*. It is further contended that the terms and conditions of the employees are governed by the *Pakistan Television Employees Service Regulations, 1978*, which are non-statutory. In this regard the learned counsel has drawn attention of this Court to the orders dated 05-8-2009 and 26-8-2009, passed by the august Supreme Court of Pakistan in *CP No. 331/2009* and *CP No. 1362/2009* respectively, which upheld the judgments of this Court, holding the Regulations of the respondent corporation as non-statutory and

therefore, the petitions not being maintainable in exercise of jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973(hereinafter referred to as the “Constitution”).

4. The learned counsels have been heard at length and the record perused with their able assistance; therefore, the opinion of this Court is as follows:

5. It is an admitted fact that the respondent Corporation is a juristic person incorporated under the provisions of the Companies Ordinance, 1984 and therefore, its Regulations are non-statutory. It is a settled law by now, inter alia, as expounded by the august Supreme Court of Pakistan in the cases of *Muhammad Mubeen-Us-Salam and others Versus Federation of Pakistan through Secretary, Ministry of Defence and others* [PLD 2006 Supreme Court 602] and *Muhammad Idrees Versus Agricultural Development Bank of Pakistan and others* [PLD 2007 Supreme Court 68] that where the regulations are non-statutory the relationship between the employer and the employees is that of Master and Servant. Undoubtedly, the jurisdiction of this Court under Article 199 of the Constitution can neither be invoked nor extended when the terms and conditions of the employees, whose Service Regulations or Rules are non-statutory, are involved.

6. I have not been able to persuade myself and find force in the argument raised by the learned counsel for the petitioner that the august Supreme Court of Pakistan in its judgment re:*Muhammad Tariq Badar and another Versus National Bank of Pakistan and others* [2013 SCMR 314] has made a departure from the earlier view taken in cases of *Muhammad Mubeen-Us-Salam* and *Muhammad Idrees*. The judgment of the august

Supreme Court of Pakistan reported as 2013 SCMR 314 is distinguishable from the present case and has, by no stretch of imagination over ruled or made departure from the law laid down in the cases referred to above.

7. For what has been discussed above, the present petition is not maintainable under Article 199 of the Constitution and therefore, it is hereby dismissed.

(ATHAR MINALLAH)
JUDGE

Tanveer Ahmed.

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