

JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No. 2907/2013

AKHTAR ALI.

Versus

M.D. UTILITY STORES CORPORATION & ANOTHER.

Petitioner by: Ch. Bilal Ahmed, Advocate.

Respondents by: Mr. Waqar ul Haq Sheikh, Advocate.

Date of Hearing: 04.06.2020.

LUBNA SALEEM PERVEZ, J: Petitioner has filed present petition under Article 199 of the Constitution of Islamic Republic of Pakistan seeking following prayer:

“In the circumstances above, it is, therefore respectfully prayed that the instant petition may kindly be accepted and the respondents may very graciously be directed to pay all the dues alongwith the profit according to the prevailing bank rates to the Petitioner in the interest of justice.”

2. Necessary facts of the case are that the Petitioner joined services of the Utility Stores Corporation (*hereinafter referred to as “the Corporation”*) as Assistant Salesman (BS-5), in the year 1977, as regular employee and retired as Senior Store Manager (BS-14) in 2012. Petitioner was retrenched from the Corporation, vide letter dated 25.11.2000 as the Corporation was facing financial losses and was at the verge to collapse. The employees who were retrenched from the services of the Corporation filed Petitions before the Labour Court, under Section 46 of the Industrial Relations Ordinance, 2002, challenging the validity of retrenchment order dated 25.11.2000. The Presiding Officer of the Labour Court, Islamabad, vide judgment dated 31.05.2010, ordered for re-instatement of all the petitioners in service with immediate effect. This judgment was challenged by the Corporation before this Court, whereas, the Court was pleased to dismiss all the

appeals through judgment **dated 07.04.2011**, passed in Labour Appeal No. 03 of 2010. It appears that judgment of the Hon'ble High Court was assailed before the Hon'ble Supreme Court of Pakistan as the petitioner was allowed to join the duty on 18.11.2011 i.e. after the judgment of the High Court. The case of the petitioner is that the Corporation has not issued him salary for the period starting from the date of judgment of the Labour Court till finalization of the matter by the High Court i.e. from 31.05.2010 to 17.11.2011. Petitioner's further grievance is that his contribution to the Provident Fund and Gratuity has also not been settled by the Corporation. Hence, this writ petition praying directions to the Respondents for payment of dues.

3. Learned Counsel for the Petitioner submitted that the petitioner was a regular employee of the Corporation; that he has served the Corporation for more than 35 years honestly and has an unblemished service record; that after the judgment of the Labour Court dated 31.05.2010 he was legally entitled to join the duty for which he also made an attempt but since the judgment was assailed before the Hon'ble High Court, the petitioner was estopped from joining the duty, but was allowed to join his duties on 18.11.2011 after the judgment of the High Court, therefore, the Petitioner could not be deprived of his lawful salary for the period from 31.05.2010 to 17.11.2011 as it was not the petitioner's fault but, Corporation had prevented him from joining the duty; that he is also legally entitled for his retirement dues such as Provident Fund which was deducted from the pay of the Petitioner during the period of employment and the Gratuity which has not been cleared by the Corporation. Learned counsel contended that an amount of Rs. 3,208,109/- is due on the Corporation on account of pay and allowances for the period 31.05.2010 to 17.11.2011, Contributory Provident Fund, Gratuity and House Rent till his retirement as per rules and regulation; that the petitioner is also entitled for the interest at the prevailing bank rate till the date of payment of his dues as the Corporation has unlawfully and illegally withheld the lawful dues of the petitioner.

4. Conversely, learned Counsel for the Respondent argued that the Petition is not maintainable as the Corporation is registered under the Companies Ordinance 1984; hence, neither it is a statutory body nor its rules and regulations are statutory in nature and relied on the unreported judgment of the Hon'ble Lahore High Court in case titled as ***Muhammad Arslan vs. Government of Pakistan & four others in Writ Petition No. 32908 of 2013 dated 12.05.2014***; that the grievance of the

petitioner involves disputed questions of facts; that the Utility Stores Corporation, being a necessary party has not been impleaded as a party; that an alternate remedy under the Industrial Relations Act, 2012 was available to the Petitioner, hence, the petition is liable to be dismissed being not maintainable; that after the expiry of IRA 2008, the Hon'ble Islamabad High Court in the capacity of Labour Appellate Tribunal has no Jurisdiction to decide the appeals; that the judgment of the High Court dated 07.04.2011 is *coram non-judice* and have no effect as these orders were passed when neither the Labour Courts nor Appellate Court existed after the expiry of IRA 2008 on 30.04.2010 in terms of its section 87(3). Learned Counsel relied on judgment of Hon'ble Supreme Court in case titled *Air League of PIAC Employees vs. Fed of Pakistan, M/O Labour & Manpower (2011 SCMR 1254)* and also on unreported consolidated judgment of Hon'ble Supreme Court in case titled *State bank of Pakistan vs. Presiding Officer Labour Court (District & Sessions Judge), Islamabad & others (Civil Appeal No. 1150 of 2012 etc).* dated 13.02.2013.

5. The arguments of the Learned Counsel for the parties have been heard and the record and judgments relied upon have also been perused.

6. The present petition has been filed by the petitioner after his retirement on 14.09.2012 on the ground that he has not been issued pay & allowances for the period 31.05.2010 and 17.11.2011 i.e. from the date of his re-instatement by the Labour Court and date of judgment of the High Court when he was allowed to join the duty, and that the dues after his retirement have not been cleared by the Corporation. As per contention of the petitioner, he has been retired on 14.09.2012, however, it is apparent from the record that the petitioner from the date of joining the duty till his retirement has not made any request for the payment of arrears of salary for the period from 31.05.2010 to 17.11.2011, as no documentary evidence in this regard has appended with the petition. This petition has been filed on 27.06.2013 after 9 months of his retirement and even during this period the petitioner has not communicated to the Corporation for release of his arrears as well as retirement dues. The claim of Rs. 3,208,109/- by the petitioner under various heads was neither confronted nor verified by the respondent, thus involve factual questions for determination of retirement & other dues of the Petitioner, whereas, Article 199(1)(a)(c) of the Constitution cannot be invoked for issuance of directions from the Court for recovery of un-verified and disputed claims from the

resolved in the writ petitions under Article 199 of the Constitution. Moreover, Full Bench of the Hon'ble Lahore High Court in a judgment re: **Noor Badshah Vs. United Bank Limited & Others (2019 PLC (C.S.) 1433)**, wherein after taking into consideration all the case law cited for maintainability of writ petition on the subject of service benefit from an organization having non-statutory rules, has held as under:-

“13. Undoubtedly, directions under Article 199(1)(c) of the Constitution can be made to any person, which in appropriate circumstances can include a private person, for enforcement of Fundamental Rights conferred by Chapter 1 of Part II of the Constitution in cases involving (i) Bonded or forced labour; (ii) Wrongful detention; (iii) Restoration of liberty and freedom of movement; (iv) Likelihood of any hazard to life by pollution; but enforcement of any right qua service benefits arising out of non-statutory rules or contract is not amenable to writ jurisdiction as rightly held by the learned Single Bench in the impugned judgment.”

7. Accordingly, for the reasons mentioned, hereinabove, the petition is hereby **dismissed** as being not maintainable.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the Open Court on 08.07.2020.

JUDGE