

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.766/2020

Majeed ur Rehman

versus

Ministry of Inter Provincial Coordination through its Secretary, etc.

Petitioner by: Mr. Taufiq Asif, Advocate.

Respondents by: Mr. Habib Ahmed Bhatti, Advocate for
Respondent No.3
Ch. Muhammad Nawaz, Advocate for Respondent
No.4
Raja Muhammad Aftab Ahmad, AAG.
Muhammad Nadir, Superintendent, on behalf of
Respondents No.1 & 2

Date of Decision: 03.07.2020.

MOHSIN AKHTAR KAYANI, J: Through this writ petition the petitioner has assailed letter dated 13.02.2019 of the Department of Tourist Services (Respondent No.2), Ministry of Inter Provincial Coordination, declining the request of petitioner to join the said department.

2. Brief facts referred in the instant writ petition are that the petitioner was initially employed as Assistant (BPS-11) in FIA in the year 1987 followed by his appointment as Inspector (BPS-16) in Department of Tourists Services (Respondent No.2) and thereafter he joined Associated Press of Pakistan (Respondent No.4) on deputation as Assistant Manager (Grade-II), wherein he was absorbed in the year 1996. Later on, in the year 2002, the petitioner joined PTCL as Public Relation Officer (BPS-16) on deputation basis and in February, 2002 the petitioner was absorbed in the same scale. That pursuant to direction of the apex Court, the PTCL, vide its letter dated 14.01.2019, ordered to repatriate the petitioner to APP, who further directed the petitioner to report to Department of Tourist Services. Accordingly, the appellant submitted joining report in the said department, though the same was not accepted vide the

impugned letter dated 13.02.2019, against which the appellant appealed to Secretary, M/o IPC on 19.02.2019, but to no avail. Resultantly, the petitioner filed appeal before the Service Tribunal, which was dismissed on 20.01.2020. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that Respondent No.2 by turning down the request of petitioner has acted erroneously and against the dictum laid down by the apex Court, which otherwise caused grave injustice and infringement of constitutional rights; that pursuant to declaration of apex Court in holding absorption as instrument of appointment/recruitment illegal and unlawful, such employees, including the petitioner, were repatriated to their parent departments, though the petitioner was denied to his legitimate right to join his parent department i.e. Department of Tourist Services, which is sheer violation of the dicta laid down by the apex Court; that despite the petitioner having been made a rolling stone between the departments, he has not been paid any salary or fringe benefits, therefore, by accepting the instant writ petition, the respondents may kindly be directed to implement the judgment of the apex Court in its true perspective.

4. Conversely, learned AAG as well as learned counsel for respondents No.3 and 4 opposed the filing of instant writ petition and contend that the petitioner having been permanently absorbed and regularly appointed in APP on 09.03.1996 has lost his lien with Department of Tourist Services in the year 1996, though the petitioner with malafide intention did not inform this Hon'ble Court with these facts; that petitioner's services are not regulated by any statutory rules of service, as such the petitioner cannot invoke the constitutional jurisdiction of this Hon'ble Court; that the petitioner had invoked the jurisdiction of the Federal Service Tribunal, though his petition was dismissed on 20.01.2020 for the reason that the petitioner had lost his status of civil servant the time he joined the APP

on 14.11.1995, however the said order of FST has attained finality as the petitioner has not challenged the same before any forum, therefore, petitioner's case after having surrendered his status of civil servant does not fall within the parameters of judgment passed by the apex Court reported as 2013 SCMR 1752 (Contempt Proceedings against Chief Secretary, Sind, etc.), as such, petitioner has not approached this Hon'ble Court with clean hands and suppressed material facts, hence, he is not entitled for any discretionary relief.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner Majeed ur Rehman has prayed for implementation of judgment of the apex Court passed in Criminal Original No.89/2011, reported as 2013 SCMR 1752 (Contempt Proceedings against Chief Secretary, Sind, etc.), and claims that Controller Department of Tourist Services (Respondent No.2) is the original department from where he started his career and in compliance of above noted judgment of the apex Court he was not allowed to be repatriated in the said department vide order dated 13.02.2019, which has been impugned before this Court. However, he has also filed an appeal against the said order before the Ministry of Inter Provincial Coordination and same was rejected vide order dated 21.05.2019 by declaring that the case of petitioner does not cover under the judgment of the apex Court.

7. The history as referred by the petitioner in this case reflects that the petitioner was appointed in Department of Tourist Services as Inspector BPS-16 on 05.05.1992. He joined Associated Press of Pakistan (Respondent No.4) as Assistant Manager (Grade-II) on 14.05.1995 on deputation basis, wherein he was permanently absorbed at his own request being a regular employee on 09.03.1996. As a result of same, his appointment in the Department of Tourist Services stood terminated and he lost his lien in the Department of Tourist Services (Respondent No.2), even the post on which he was initially appointed as Inspector was later on filled up.

8. The services of petitioner after his absorption in Associated Press of Pakistan as Assistant Manager (Grade-II/BPS-17) w.e.f. 11.06.1996 on permanent basis, were hired by Pakistan Telecommunication Limited Company (Respondent No.3) on deputation basis for period of 3 years w.e.f. 17.07.1998 which was initially extended by the PTCL, however he was absorbed in PTCL on permanent basis w.e.f. 20.02.2002 with the approval of the Ministry of Information, Broadcasting and National Heritage vide letter dated 15.03.2002 and after his absorption he was paid all applicable dues by Associated Press of Pakistan vide letter dated 15.03.2002.

9. As per the comments referred by the PTCL (Respondent No.3), the petitioner was hired by the PTCL as Public Relation Officer (BPS-16) on deputation basis and was permanently absorbed in PTCL on same position on 20.02.2002. However, his services were hired by Ministry of Education and he was lastly hired by National Book Foundation on deputation basis for 3 years w.e.f. 04.01.2017 to 03.01.2020. Later on, his services were repatriated/relieved from PTCL after the pronouncement of the judgment passed by the apex Court in C.R.O. No.18/2015 in Crl. O. P.89/2011, whereby the petitioner himself applied to the PTCL authorities that his services may be relieved to his previous department i.e. Associated Press of Pakistan and subsequently the initial department i.e. Department of Tourist Services has refused to entertain the joining request of the petitioner.

10. It is important to mention here that during this entire process the petitioner has reached to age of superannuation on 27.03.2020. The petitioner has also filed an appeal before the Federal Services Tribunal vide Appeal No.1050(R)CS/2019 with M.P. No.862/2019, which was dismissed vide order dated 20.01.2020 with the observation that the appellant is no more a civil servant as he surrendered his status of civil servant at his volition and become a company employee.

11. In view of above position, the record reflects that petitioner was absorbed in PTCL at the end and if the judgment passed by the apex Court be applied in letter and spirit in the case of petitioner he will be considered an employee of PTCL by all means. However, at this stage, another important question came in limelight as to whether he shall be considered as a transferred employee or not, for which his date of absorption will play the primary role, which has been confirmed from the record as 20.02.2002, therefore, for all legal intent and purposes the terms and conditions of services of the petitioner could only be regulated in terms of Pakistan Telecommunication Re-organization Act, 1996.

12. There is no cavil to the proposition that when any person willfully surrenders his status of civil servant, especially when the lien has not been given protection he could not claim his status being of a civil servant as held in 2013 SCMR 1752 (Contempt Proceedings against Chief Secretary, Sindh) and 2015 SCMR 456 (Ali Azhar Khan Baloch v. Province of Sindh), even he is not able to justify the implementation of the judgment passed by the apex Court in this regard as his case does not fall under the framework of those judgments.

13. On the other hand, the terms and conditions of services of the petitioner in PTCL are governed under the master and servant relationship, therefore, instant writ petition is not competent. However, petitioner, if is entitled to any of his financial benefits, he may claim the same from the PTCL (Respondent No.3) under their rules and regulations and as such, he could not be reverted to Department of Tourist Services in any manner nor he has any right with Associated Press of Pakistan, hence, instant writ petition is DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.