

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

I.C.A. No.68 of 2011

Managing Director, Overseas Pakistani Foundation and another
Versus.

Federation of Pakistan through Secretary, M/o Labour,
Manpower and Overseas Pakistanis and another

Date of Hearing: 24.11.2016

Appellants by: Mr. Salim-ur-Rehman, Advocate, Mr. Irfan
Farooq (Additional Director Law, OPF)

Respondent No.2 by: Malik Abdul Latif Khokhar, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant the intra court appeal, the appellants (Managing Director, Overseas Pakistanis Foundation, etc.), impugn the judgment dated 07.03.2011, passed by the learned Single Judge-in-Chambers, whereby Writ Petition No.196/2010, titled “Mirza Abdul Aziz Vs. Federation of Pakistan and another”, was disposed of with the direction to the appellants to finalize the inquiry against respondent No.2 within a period of one month failing which respondent No.2’s retirement benefits were to be released to him.

2. Learned counsel for the appellants submitted that the Superior Courts have consistently held that a writ petition was not maintainable against the Overseas Pakistanis Foundation (appellant No.1), which was a company established under the provisions of the Companies Ordinance, 1984, and was functioning on “no profit no loss basis”; that appellant No.1 is neither a statutory corporation established by the Federal Government, nor is it performing functions in connection with the affairs of the Federation; and that appellant No.1’s service rules are non-statutory. He further submitted that appellant No.1 was the principal of the OPF College and was, therefore, not amenable to writ jurisdiction. Learned counsel for the appellants prayed for the appeal to be allowed, and the impugned judgment dated 07.03.2011, to be set-aside.

3. Learned counsel for the appellants further submitted that respondent No.2 was in the service of Overseas Pakistanis Foundation for a period of 23 years until his retirement on 01.05.2009; that respondent No.2 served as P.A. to the Principal OPF Girls College, Islamabad for 13 years; that as per the audit reports of the said College, respondent No.2 was involved in financial irregularities; that the allegations against respondent No.2 included (1) manipulation of cash received on account of fees, (2) payment of ghost teachers, and (3) misappropriation in boarding fees; and that there were also allegations of concealing official records against respondent No.2. Learned counsel further submitted that as soon as the Public Accounts Committee clears the audit paras regarding respondent No.2, his dues shall be cleared.

4. On the other hand, learned counsel for respondent No.2 defended the impugned judgment by submitting that the same was strictly in accordance with the law and facts of the case. It was further submitted that appellant No.1 had been established by the Federal Government under the provisions of the Emigration Ordinance, 1979 read with the Emigration Rules, 1979; that the board of appellant No.1 is nominated and appointed by the Federal Government; that the appellant is under the administrative control of the Overseas Pakistanis Division of the Government of Pakistan; that the appellant is amenable to the writ jurisdiction of this Court under Article 199 of the Constitution; that respondent No.2 had not committed any financial irregularities during his service at the OPF College; that since the past many years, no proceedings have been taken against respondent No.2. The learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

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

6. The appellants had taken a serious objection to the issuance of a writ against appellant No.1 in exercise of the constitutional jurisdiction of this Court under Article 199 of the

Constitution. Learned counsel for the appellants is correct in his submission that the Superior Courts have consistently held that a writ petition against the Overseas Pakistanis Foundation/appellant No.1 is not maintainable. Reference in this regard may be made to the following case law:-

- (i) In the case of Tanvir Iqbal Siddiqi Vs. Principal, Overseas Pakistanis Foundation (OPF), Girls College, Islamabad (1994 SCMR 958), it has been held as follows:-

“2. ...We have heard the petitioner in person. The O.P.F. is decidedly not a department of the Federal Government. The fact that it has not been created by virtue of any Statute has also not been disputed before us. It is not shown that the Foundation performs the functions in connection with the affairs of the “Federation” within the meaning of Article 199 of the Constitution. The High Court, therefore, rightly came to the conclusion that the writ petition is not competent. We have not been persuaded to differ with the view expressed by the learned Single Judge.”

- (ii) In the judgment dated 28.09.2006, passed by the Hon'ble Lahore High Court in Writ Petition No.2355/2006, titled “Sohail Asif Vs. Board of Governors, etc” it has *inter alia* been held as follows:-

“Since Overseas Pakistanis Foundation is not the creation of any Statute, but is a company having no statutory rules, therefore, category of its employees, whose terms and conditions of service have not been determined by the Federal Legislature and by a deeming clause, they cannot be treated civil servants as defined in section 2 (1) (b) of the Civil Servants Act, 1973 and they are not engaged in the affairs of the Federation, principle of master and servant is attracted in this case, therefore, Constitutional petition is not maintainable.”

- (iii) In the judgment dated 19.01.2012, passed by the learned Single Bench of this Court in Writ Petition No.592/2011, titled “Lakhmir Vs. Federation of Pakistan and six others”, it was *inter-alia* held that a writ petition against the Overseas Pakistanis Foundation, which was a company incorporated under the provisions of the Companies Ordinance, 1984, was not maintainable. The same view was taken by this Court in the judgment dated 21.04.2011 passed in Writ Petition No.38847/2009, titled, “Muhammad

Saeed Vs. The Director General, Overseas Pakistanis Foundation, etc.”.

- (iv) Vide judgment dated 24.12.2009, passed by the Hon'ble Lahore High Court in Writ Petition No.2423/2008, titled “Anjum Siddique Nagra Vs. Board of Governors, etc.” it was held that since the service rules of the Overseas Pakistanis Foundation were not statutory, a writ petition by an employee of Overseas Pakistanis Foundation regarding the terms and conditions of his service, was not maintainable. Similarly, vide order dated 06.12.2010, the Division Bench of the Hon'ble High Court of Sindh, dismissed Constitution Petition No.D-1113/2010, titled “Imtaiz Ali Bhagat Vs. The Ministry of Overseas Pakistanis, etc.” by inter-alia holding that since the service rules of the Overseas Pakistanis Foundation were not statutory, a writ petition filed a person seeking employment in the said foundation was not maintainable.

7. In the case at hand, respondent No.2 in his writ petition was agitating a claim pertaining to the terms and conditions of his service with Overseas Pakistanis Foundation. The learned counsel for respondent No.2 did not dispute that the service rules/regulations governing the terms and conditions of respondent No.2's service were not statutory. Learned Counsel for respondent No.2 could also not come up with any judicial precedent in which a writ petition against the Overseas Pakistanis Foundation was held to be maintainable. In this view of the matter, we are left with no option but to set aside the impugned judgment dated 07.03.2011, passed by the learned Single Judge-in-Chambers and dismiss respondent No.2's writ petition as not maintainable.

8. Before parting with this judgment, it may be observed that it is stark injustice to keep a person waiting for his pensionary benefits for more than nine long years after this retirement. It is highly improper for the Overseas Pakistanis Foundation to deny respondent No.2 his pensionary benefits simply because the audit paras had not been considered in a meeting of the Public

Accounts Committee. It is not understandable as to why the Overseas Pakistanis Foundation did not proceed against respondent No.2 prior to his retirement or inquire into the allegations leveled against him. It was not disputed that the allegations against respondent No.2 have not been adjudicated upon or proved against him. Had the writ petition instituted by respondent No.2 been maintainable, we would have dismissed this appeal with costs throughout. We expect that the Overseas Pakistanis Foundation would consider respondent No.2's grievance regarding the non-payment of his pensionary benefits and make a decision at the earliest.

9. In view of the above, the appeal in hand is allowed with no order as to costs.

**(ATHAR MINALLAH)
JUDGE**

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2017.

(JUDGE)

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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