

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.280 of 2020
Sultan Khan Naeem and others
Versus

Pakistan Television Corporation Limited and other

Date of Hearing: 08.10.2020
Appellants by: Raja Musqit Nawaz Khan, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal, the appellants impugn the judgment dated 17.09.2020, passed by the learned Judge-in-Chambers, only to the extent whereby writ petition No.476/2020 filed by the appellants, was dismissed as not maintainable on the ground that Pakistan Television Corporation Limited (“PTV”) did not have statutory service Rules.

2. Learned counsel for the appellants submitted that the appellants were employees of PTV and had unlawfully been sent on Leave Preparatory to Retirement; that the learned Judge-in-Chambers erred by not appreciating that vide notification dated 26.08.2020, the Federal Government declared all classes of employment in PTV to be the classes of employment to which the Pakistan Essential Services (Maintenance) Act, 1952 (“the 1952 Act”) shall apply for a period of six months; that vide notification dated 24.05.1978, the Chairman, National Industrial Relations Commission had given directions with respect to the dispute between PTV and the Trade Union; and that on account of such notification, PTV’s Service Rules and/or the PTVC Revised Leave Rules, 1984 would have the status of statutory Rules. Learned counsel for the appellants prayed for the appeal to be allowed in terms of the relief sought therein.

3. We have heard the contentions of the learned counsel for the appellants and perused the record with his able assistance.

4. The sole question that needs to be determined is whether on account of the notification dated 26.08.2020, whereby the Federal Government declared all classes of employment in PTV to be the

classes of employment to which the 1952 Act shall apply, would make the appellants' services to be governed by statutory Rules.

5. In the case of Pakistan Television Corporation Vs. M. Babar Zaman (1989 SCMR 1549), the question that came up for consideration was whether by virtue of the provisions of 1952 Act being applicable to services of employees in PTV, resort could be made by such employees to the labour Court. It was held *inter alia* that those who are excluded from the labour Court can also resort to Constitutional jurisdiction, if the Rules governing them happened to be statutory. The Hon'ble Supreme Court, after making reference to the law laid down in the case of Karachi Electric Supply Company Ltd. Vs. National Industrial Relations Commission (PLD 1982 SC 113), held as follows:-

"The provisions of the Act and their examination in K.E.S.C.'s case establish a distinction between the regulatory powers (exercisable by the Federal Government or an authority specified by it under section 6 of the Act) punitive powers (exercisable by a servant of the Government empowered to file a criminal complaint in writing under section 7 of the Act) and the adjudicatory powers in other respects left untouched by the Act. The regulatory power was held in that decision not to extend, encroach upon or affect in any manner the adjudicatory set up. When it is provided in section 7-A of the Act that "the provisions of this Act shall have effect, notwithstanding anything to the contrary contained in the Industrial Relations Ordinance, 1969 (XXIII of 1969) or any other law" the impact is created only to the extent of contrariety and not in the domain where there is no contrariety. Section 3 applies the Act to every employment under the Federal Government and in spite of the Act there is an established adjudicatory system of Service Tribunals for Civil Servants. Similarly, those who fall in the category of workmen and are not exempted from application of Industrial Relations Ordinance can have recourse to the Labour Courts. Those who are excluded from the Labour Courts also can resort to Constitutional jurisdiction if the rules governing them happen to be statutory as recognized in the case of the Principal, Cadet College Kohat and another v. Muhammad Shoaib Oureshi P L D 1984 S C 170."

6. Since the mere fact that all classes of employment in PTV had been declared by the Federal Government to be the classes of employment to which the 1952 Act applied would not *ipso facto* change the non-statutory nature of the Rules governing the terms and conditions of the appellants' services into statutory Rules. Additionally, the issuance of the said notification dated 26.08.2020 did not deprive the appellants to invoke the jurisdiction of the Court/Tribunal in order to voice their grievance against the office

order whereby they were “*spared to proceed on leave preparatory to retirement*”.

7. In view of the above, the instant appeal is dismissed in *limine*.

(LUBNA SALEEM PERVEZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*