

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P No.3369/2019  
Mr. Wali Muhammad Asim  
**Versus**

Ministry of Information & Technology and Others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**03.10.2019**

**Mr. Abid Hussain, advocate for the  
petitioner.**

Through the instant writ petition, the petitioner, Wali Muhammad Asim, seeks a direction to the Telephone Industries Pakistan (Pvt.) Ltd. ("T.I.P") to immediately release the arrears of C.P Fund and Security Deposit along with the accumulated profit from 2013 to the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner retired as Deputy General Manager, Stores Department, T.I.P; that even after three years of his retirement, the petitioner has not been paid the arrears of his C.P Fund and Security Deposit; that the petitioner issued notice dated 06.12.2018 to the T.I.P seeking the recoveries of the dues, but to no avail; that the petitioner has been paid his partial retirement benefits pursuant to the Court order; that on account of non-payment of the petitioner's C.P Fund and Security Deposit, his fundamental rights have been violated. Learned counsel for the petitioner prays for the writ petition to be allowed in terms of the relief sought therein.

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

4. In the first instance, I deem it appropriate to determine as to whether a writ petition against T.I.P, filed by the petitioner with respect to the terms and conditions of the service, is maintainable.

5. The question whether a writ petition can be filed against the T.I.P. by an employee aggrieved of T.I.P.'s decision with respect to his service, was considered and decided by the Hon'ble Supreme Court in the judgment dated 24.03.2011, passed in Civil Appeal No.424/2009, titled "Fakhar-ul-Islam Qureshi etc. Vs. Government of Pakistan through Ministry of Finance etc." T.I.P. was respondent No.2 in the said appeal. The appellants, who were retired employees of T.I.P., were seeking an increase in the pensionary benefits in the same way as were being paid to former government employees or employees of organizations owned and controlled by the Federal Government. The said appeal was filed by an employee of T.I.P. after his writ petition had been dismissed by this Court. Vide the said judgment dated 24.03.2011, the Hon'ble Supreme Court held that since T.I.P.'s service rules were not statutory, the writ petition filed by the employee of T.I.P. with respect to a matter concerning his service, was not maintainable. It is pertinent to reproduce herein below paragraphs 4 and 5 of the said judgment of the Hon'ble Supreme Court:-

*"4. Heard. While arguing the matter, learned counsel for the appellants has categorically admitted that the constitution petition filed by the appellants would only be competent, if the rules on which the appellants are basing their right are 'Statutory Rules' in nature. We are also of the view that notwithstanding the*

*company being a corporate body, having the control and management of the Government and also performing functions in relation to the State or not, no writ can be issued, if it does not have the 'statutory rules' of service, therefore, without in any way dilating upon the first two propositions, we are confining ourselves to this aspect of the case. To show that the rules are statutory, the learned counsel for the appellants has specifically referred to "Executive Pension Rules – 1986 of the respondent No.2", when asked, he has stated that these rules have been approved by the Federal Government and regarding this, mention is made to Rules 6 and 7 which read as under:-*

**"6. Amendment in Pension Rules**

*Amendment to these Pension Rules can only be made with the prior approval of the Board after with the prior approval/concurrence of the Federal Government.*

*"7. Where the TIP Executive Pension Rules 1986, are silent, the corresponding provision of Pension Rules/Regulations/Instructions applicable to Civil Servants of the Federal Government shall apply to the TIP Executive also."*

*He has also been made reference to letters dated 14.5.1986 and 29.1.1986 to urge that these rules were submitted for the approval of the Ministry of Finance, Government of Pakistan and were so finally approved.*

*"5. It is an admitted position that respondent No.2 has not been constituted by any Act of the Parliament/Statutes, rather it is a body corporate formed under the company law, obviously in such a situation there is no authority and mandate of law empowering anyone to make the rules, which could in terms of that specific law be approved by the Federal Government; it is only the Articles of Association perhaps, that the rule making mechanism is envisaged. These Articles cannot be considered to be the substitute of law, therefore, if any rules have been drawn under the articles and got approved even from the Federal Government, such rule do not attain the status of "Statutory Rules", for the purpose of which it is imperative that the rule making power and authority must originate, spring from and arise from a Statute. Thus, even assuming as argued by learned counsel for the appellants that respondent No.2 is a body corporate, controlled and managed by the Federal Government and some of its functions are in furtherance of the State activities, yet, when the rules do not qualify the test of being 'Statutory Rules', only for the reason that the Federal Government as a superfluous exercise and without the mandate of law has approved the rules; such cannot be held to be statutory. Therefore, on that account the constitution petition was untenable. As the said proposition has been resolved in the matter against the*

*appellants, therefore, in the light thereof, we do not find it appropriate to dilate upon the other question on which the leave was granted in this matter."*

6. In the case of Pir Imran Sajid Vs. Managing Director/General Manager (Manger Finance) Telephone Industries of Pakistan etc. (2015 SCMR 1257) the appellants were seeking the regularization of their services in T.I.P. on the basis of a decision of the Sub-Committee of the Cabinet on Regularization of contract/daily wages employees in T.I.P. The Hon'ble Supreme Court while allowing the said appeal against the judgment of the Hon'ble Peshawar High Court, whereby the writ petitions filed by T.I.P.'s employees seeking the regularization of their services, was cognizant of its earlier judgment dated 24.03.2011, passed in Civil Appeal No.424/2009, and distinguished the same in the following terms:-

*"5. .... The learned counsel for the respondents, in support of his second objection i.e. lack of statutory service rules, relied upon the judgment in the case of Fakhr-ur-Islam Qureshi (Civil Appeal No.424 of 2009), authored by one of us (Mian Saqib Nisar, J.), whereby the said appeal was dismissed on the ground that relationship between the appellant, retired employee and TIP is not governed by statutory rules. Such reliance, in our view, is wholly mis-placed for the reason, that unlike in the present case the appellants therein were seeking pensionary benefits on the basis of pensionary rules, which rules were non-statutory. Whereas in the present case, the appellants are seeking implementation of the directive of the Prime Minister of Pakistan and the decision of the cabinet sub-committee for their regularization sought to be enforced by the relevant ministry."*

7. Since the judgment dated 24.03.2011, passed by the Hon'ble Supreme Court in Civil Appeal No.424/2009 holds good, and has not

been over turned by the judgment reported as 2015 SCMR 1257, I am of the view that the instant petition is not maintainable on the ground that T.I.P.'s service rules are non-statutory. Resultantly, this petition is dismissed as not maintainable. I have refrained from touching the merits of the case.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

M.A.Baig.