

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO.2482 OF 2020

(On appeal against order dated 09.09.2020
passed by the Lahore High Court, Lahore in
Writ Petition No.39841 of 2020.)

Federation of Pakistan through the Secretary, ... **Petitioners**
Ministry of Energy (Power Division),
Islamabad and others

Versus

Shafiq ul Hassan and others ... **Respondents**

For the Petitioners : Mr. Aamir Rehman, Addl. AG Pak.

For the Respondents : Mr. Shohaib Shaheen, ASC.
Syed Khawar Ameer Bokhari, ASC.
Mr. Ahmed Nawaz Ch., AOR.

Date of Hearing : 02.10.2020

ORDER

Umar Ata Bandial, J. The learned Additional Attorney General has challenged an *interim* order dated 09.09.2020 passed in writ petition filed by the respondent No.1, a temporary stopgap appointee to the post of CEO, FESCO whereby his transfer order dated 28.08.2020 has been suspended. It appears this was done without obtaining the response of the Federal Government or the concerned authorities namely, FESCO and PEPCO. The said order also admitted the writ petition by the respondent No.1 to regular hearing. The first ground is the violation of FESCO's transfer policy. FESCO is a limited company and does not have any statutory rules governing the terms and conditions of service of its

employees. The learned Additional Attorney General accordingly states that the writ petition is not maintainable as the said transfer policy is non-statutory in character. The second ground noted in the impugned order is that respondent No.2, Federal Secretary, Ministry of Energy (Power) Division was incompetent to pass the order dated 28.08.2020. It is submitted by the Additional Attorney General that the FESCO is a wholly owned company of the Federal Government. That under sections 187 and 190(2) of the Companies Act, 2017 the Federal Government has power to remove the appointed Chief Executive of a company. In the present case the respondent was a temporary stopgap appointee without any legal entitlement to retain the office. As such the intervention by the Federal Government was perfectly valid. On the aforesaid two questions the writ petition was admitted to hearing and the impugned order was suspended *ad infinitum*. The learned Additional Attorney General submits that the impugned order suffers from legal defects on merits and even otherwise a writ petition filed at the instance of an employee of the company with non-statutory rules of service was not maintainable.

2. We notice that the suspension of the respondent's transfer order has created an anomalous situation because as shown by the learned Additional Attorney General, a successor temporary appointee to the post of CEO, FESCO was notified on 4.9.2020 and was approved by the Board of Directors of the Company on 5.9.2020. This aspect was not noticed by the learned Single Bench while suspending the impugned order.

3. Be that as it may, the grant of *interim* relief which has the effect of permanence is violative of the rule laid down by this

Court in the case of *Islamic Republic of Pakistan v. Muhammad Zaman Khan* (1997 SCMR 1508). The constitutional jurisdiction by Superior Courts must be exercised according to the settled principles of law. Granting longevity to a suspensory order without hearing the other side is, if at all, done exceptionally. These are words of caution that are necessary for ensuring the majesty of the law and preserving public trust in the courts of law. Having said that, it is also the policy of this Court to interfere with interim orders passed by the High Court only exceptionally. This would be in cases of serious violation of the law or wrongful exercise of jurisdiction.

4. Regardless of the weight of the objections by the petitioner, we consider that the learned Single Judge/the Honourable Chief Justice of the Lahore High Court would be gracious enough to take the aforementioned observation into consideration for deciding the pending petition finally in the week commencing 05.10.2020. If he is preoccupied with other matters then the writ petition shall be fixed for hearing before the Companies Bench of the Lahore High Court in the said week for decision of the matter. Disposed of.

Judge

Judge

Judge

Islamabad,
02.10.2020

Naveed/Irshad Hussain

NOT APPROVED FOR REPORTING.