

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 900 OF 2020

(On appeal against the judgment dated 23.10.2019 passed by the Peshawar High Court, Peshawar in Writ Petition No. 618-P/2019)

PESCO, Wapda House through its Chief Executive

...Appellant(s)

VERSUS

Ishfaq Khan and others

...Respondent(s)

For the Appellant(s): Mr. Asad Jan, ASC

For Respondent(1-10): Mr. Abdul Hafeez Amjad, ASC
Mr. Mehmood A. Sheikh, AOR

Date of Hearing: 01.02.2021

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JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this appeal by leave of the Court, the appellant has called in question the vires of the impugned judgment dated 23.10.2019 passed by the Peshawar High Court, Peshawar, whereby the Writ Petition filed by the appellant was dismissed and the judgment dated 07.01.2019 passed by the Labour Appellate Tribunal, KPK, Peshawar was upheld.

2. Briefly stated the facts of the matter are that the respondent Nos. 1-10 are working as regular Upper Technical Subordinate (UTS) in the appellant department. They filed appeal before the appellant PESCO for their promotion to the post of Junior Engineers/Assistant Managers (BPS-17) against 5% quota reserved for UTS graduate engineers. The said appeal was turned down vide order dated 21.12.2015 on the ground of non-availability of the vacancy with further clarification that the said quota is meant for induction/direct recruitment and not promotion. This led to filing of a Grievance Petition by the respondents before the Labour Court, Peshawar. The learned Labour Court allowed the Grievance Petition

vide judgment dated 09.04.2018 by holding that since there is 5% quota for promotion according to the policy issued by the WAPDA and since all other similar electric companies are following the policy of WAPDA, the appellant PESCO is also bound to follow instructions and policies of WAPDA. Being aggrieved, the appellant department filed Labour Appeal before the Labour Appellate Tribunal, Peshawar, which was dismissed vide judgment dated 07.01.2019. The appellant challenged the judgment of the Labour Appellate Tribunal before the Peshawar High Court by filing Writ Petition No. 618-P/2019 but it also met the same fate vide impugned judgment dated 23.10.2019. Hence, this appeal by leave of the Court.

3. *Learned counsel for the appellant inter alia contended that the learned High Court has failed to take into consideration that though PESCO is a constituent company of parent department WAPDA but being an autonomous body it has its own statutory rules and as such it has been separated from WAPDA in this regard; that while drawing analogy from the rules framed by the parent department, the appellant cannot be asked to adopt its rules; that this very aspect was totally ignored by the High Court and without giving any definite finding regarding the maintainability of the grievance petition before the Labour Court, the impugned judgment resulted into grave miscarriage of justice; that the judgment passed by the Labour Court directing the appellant to grant promotion to the respondents in lieu of the 5% quota reserved for UTS graduate engineers is without any legal justification, which aspect was altogether ignored by the learned High Court while handing down the impugned judgment.*

4. *On the other hand, learned counsel for the respondents has candidly defended the impugned judgment. The main stay of the arguments advanced by the learned counsel was that 5% quota was reserved for Upper Technical Subordinates for promotion to the post of Assistant Manager/Junior Engineers (BPS-17) pursuant to the letter issued by WAPDA dated 16.09.2005, which was declined to the respondents by the appellant department, therefore, the grievance petition was competent and in accordance with law.*

5. *We have heard learned counsel for the parties and have gone through the record. During the course of arguments, learned*

counsel for the respondents was specifically asked to show any provision of law which empowers the Labour Court to strike down a policy or notification or it can direct a statutory body to adopt the rules/policies of another statutory body. Learned counsel failed to substantiate any legal justification and candidly conceded that the Labour Court has no jurisdiction to do so. It is now established without any reservation that for striking down a policy, notification or an executive order if it infringes the rights of an individual or group of individuals or if it is found to be arbitrary, unreasonable or violative of law or Constitution, the power exclusively rests with the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, and a challenge could be thrown to such a policy, notification or the executive order by way of filing a Constitutional Petition. The Labour Court is not seized with such jurisdiction, therefore, the jurisdiction exercised by it while directing the appellant to constitute a committee to grant promotion to the respondents against 5% quota while drawing analogy with other similar electric companies is beyond its scope.

6. *There is yet another question i.e. whether the respondents could have claimed promotion instead of induction against 5% quota by way of filing grievance petition. For this it would be in order to reproduce Section 37(1) of the KPK Industrial Relations Act, 2010, which reads as under:-*

***"37(1)** A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within three months of the day on which the cause of such grievance arises"*

7. *A close reading of the above-quoted provision of law would show that the grievance petition would only be competent if the grievance is with regard to a 'right guaranteed under law, settlement, or award'. We do not want to delve into the question whether the respondents are 'workmen' or not but even for the sake of arguments, if it is admitted that the respondents are 'workmen'*

within the purview of the aforesaid KPK Industrial Relations Act, 2010, even then the claim of the respondents for which they filed grievance petition does not fall within the ambit of 'right guaranteed or secured to them by any law'. When we confronted learned counsel for the respondents with this aspect of the matter, he contended that the word 'law' means policy of the organization. However, we are not convinced with the contention of the learned counsel. The word 'law' in Section 37 of the Act means that it has to be a legal right guaranteed by the statute.

8. *The respondents were basically seeking 'promotion' to the post of Junior Engineers/Assistant Manager (BPS-17). The learned courts below have held that all the similar electric companies like the appellant have adopted the WAPDA rules for promotion of the similarly placed employees, therefore, the clog of departmental promotion and fresh induction by the PESCO will make their previous service tenure redundant/forfeited. Admittedly, PESCO is a distinct entity, which has its own statutory rules. The law does not permit that a statutory body, who has its own rules, be compelled to adopt the rules of another separate entity. The Labour Court only had the authority to interpret and deal with the respondents under the policy of PESCO, which clearly says that the 5% quota is for induction/direct recruitment and not for promotion. Learned counsel could not controvert that pursuant to the clarification issued by the PEPCO dated 08.03.2010, the posts in question in the appellant department were to be filled in by way of induction and not promotion, which means that there would be fresh appointment and not the continuation of the earlier job. Departmental induction means that the employer takes competitive examination from among the serving eligible candidates for the higher post and the candidates who rank on top according to merit are appointed afresh whereas the remaining continue to perform their job on the previous posts. In these circumstances, we are of the view that the learned Labour Court had no power to direct the appellant company to adopt the rules of WAPDA or similar constituent companies and has wrongly assumed jurisdiction. There can be no doubt that if an order is void, without jurisdiction, ultra vires and passed in disregard of the law, any superstructure raised*

over it would automatically fall to the ground and it cannot sustain in the eyes of law.

9. *For what has been discussed above, we allow this appeal and set aside the impugned judgment of the Peshawar High Court, Peshawar dated 23.10.2019.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
1st of February, 2021
Approved For Reporting
Khurram