

# **IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE GULZAR AHMED, CJ**

**MR. JUSTICE IJAZ UL AHSAN**

**MR. JUSTICE MUNIB AKHTAR**

*(A/R)*

**Civil Appeal No.749 of 2021**

*On appeal from order dated 16.07.2020 of  
High Court of Balochistan at Quetta, passed  
in C.P.No.1233 of 2017.*

*Pakistan Electric Power Company*

***...Appellant(s)***

**Versus**

*Syed Salahuddin & others*

***...Respondent(s)***

For the Appellant(s) : Mr. Munawar Iqbal Duggal, ASC  
Syed Rafaqat Hussain Shah, AOR

For Respondents# 1&2 : Mr. Kamran Murtaza, Sr.ASC  
*(via video link from Quetta)*

For Respondents# 3&4 : Nemo

Date of Hearing : 21.12.2021

## **JUDGMENT**

**IJAZ UL AHSAN, J.-** This appeal by leave of the Court arises out of a judgment of the High Court of Balochistan at Quetta dated 16.07.2020. Through the impugned judgment, a constitutional petition bearing No.1233 of 2017 filed by Respondents No.1 and 2 (*Syed Salahuddin Sahibzada Karim Jan*) was allowed and the Appellant-PEPCO was directed to notify their promotions as Superintending Engineers (BS-19) with effect from 13.10.2016 instead of 14.04.2017 and they were also

held entitled to pensionary and all other benefits as Superintending Engineers (BS-19) with effect from 13.10.2016.

2. Briefly stated the facts necessary for decision of this Appeal are that Respondents No.1 and 2 approached the High Court of Balochistan by way of a constitutional petition seeking a direction that action of the Appellant of notifying them in BS-19 on 14.04.2017 after their juniors were promoted in the next grade on 13.10.2016 was illegal with a further direction to the Appellant to notify them in BS-19 with effect from the date when their juniors were notified i.e. 13.10.2016. The petition was contested on various legal and factual plains. One of the main grounds urged by the Appellant was that the Respondents were admittedly employees of Quetta Electric Supply Company ("**QESCO**") which was a separate and distinct legal entity incorporated under the Companies Ordinance, 1984 which did not have any statutory rules. In the absence of any statutory rules, alleged violation of terms and conditions of QESCO would not attract the constitutional jurisdiction of the High Court as held by this Court, vide judgment dated 21.06.2012 passed in C.P.No.1591 of 2011 titled Chief Executive Officer PESCO, Peshawar v. Muhammad Aftab-ur-Rehman and others.

3. Leave to appeal was granted by this Court on 24.05.2021 in the following terms:

*"The learned ASC for the petitioner-PEPCO inter alia contends that there are no statutory rules of service governing the employees of the petitioner-PEPCO and the High Court has erred in law in observing that the employees of the petitioner are governed by the statutory rules of service and thereby allowed the constitutional petition filed by the Respondents.*

*2. Having heard the learned counsel and going through the impugned judgment, we are inclined to grant leave to appeal in this case to consider inter alia the reasons recorded in our last order dated 24.05.2021 as well as the submissions made before us today. Appeal stage paper books be prepared on the available record. However, the parties are at liberty to file additional documents, if any within a period of one month. As the matter relates to service, the Office is directed to fix the same for hearing in Court expeditiously, preferably after three months.*

*3. Since the impugned judgment has been rendered by a Division Bench of the High Court, the appeal arising out of the instant petition be fixed before a three member Bench of this Court."*

4. The learned counsel for the Appellant-PEPCO submits that the High Court failed to take into consideration the fact that Respondents No.1 and 2 were employees of QESCO which does not have statutory rules and any alleged violation of terms and conditions of service of the said Respondents would not attract the constitutional jurisdiction of the High Court. He further maintains that where terms and conditions of employees of a statutory body are not regulated by rules framed

under any Statute but under the rules and instructions issued for its internal use, the constitutional jurisdiction of the High Court cannot be invoked. He maintains that the impugned judgment of the High Court fails to take notice of the law laid down by this Court in the case of "Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed" (2013 SCMR 1707). He adds that the impugned judgment has not even considered a Division Bench's decision of the same Court reported as "Ali Gohar Mazar v. Federation of Pakistan through Chief Executive Officer, Quetta Electric Supply and others" (2010 PLC (CS) 353), where it was clearly and categorically held that employees of QESCO could not invoke the constitutional jurisdiction of the High Court.

5. The learned counsel for Respondents No.1 and 2 has however defended the impugned judgment. He maintains that the employees of QESCO and Pakistan Electric Power Company ("**PEPCO**") are governed by the statutory rules in view of the fact that Pakistan WAPDA Employees (Efficiency & Discipline) Rules, 1978 have been adopted by the Board of Directors of QESCO in its meeting dated 28.06.2005. Therefore, by reason of such adoption, the employees of QESCO and PEPCO are governed by the statutory rules.

6. We have heard the learned counsel for the parties and gone through the record. It appears that Respondents No.1 and 2 were Electrical Engineers and inducted into service of WAPDA on 23.11.1985 and 15.08.1984 respectively. Subsequently, when bifurcation of WAPDA as envisaged in Section 8(vii) of the WAPDA Act, 1958 took place whereby the Power Wing of WAPDA was restructured into generation, transmission and distribution of electrical power, different corporate entities/companies were established under the then Companies Ordinance, 1984. The Appellant had been given the mandate to take control and manage the process of transition of WAPDA Power Wing into aforementioned corporate entities. Consequently, services of the contesting Respondents were transferred by the Appellant to QESCO in the year 2003-04 after obtaining consent from them, as they were local residents of Balochistan and wished to serve in their Province. While serving at QESCO, the said Respondents were promoted as Executive Engineers on 23.06.2007 and 02.02.2007 respectively after observing all codal formalities. As per Manpower Transition Programme, a centralized seniority list of officers serving in BS-18 and onwards in different Energy related Corporations was being maintained by PEPCO and promotion was also the mandate of PEPCO.

7. The record also indicates that promotion cases of 145 senior Engineers, on the basis of integrated seniority list were considered by PEPCO Selection Board. In the said seniority list, Respondents No.1 and 2 were placed at Nos.118 and 119 respectively. In this respect, PEPCO Selection Board considered the question of promotions on the basis of parameters elaborated in PEPCO Promotion Policy (***“the Policy”***). Key Performance Indicators (“KPIs”) and Mobile Meter Reading Data (“MMR”) were evaluated/considered to determine the performance of every individual on the basis of data collected from respective Distribution Companies. After considering all material aspects, the Selection Board recommended promotion of 57 senior Engineers, including Respondents No.1 and 2, out of 145 senior Engineers to the rank of Superintending Engineers (non-generation) (BS-19). However, out of the said 57 senior Engineers, the Board recommended immediate promotions of 35 senior Engineers unconditionally whereas the remaining 22 senior Engineers, including Respondents No.1 and 2 were recommended for promotion subject to certain conditions. In the case of Respondents No.1 and 2, they were recommended for promotion with the condition that, *“their performance will be monitored for next three months and if found*

satisfactory, promotion orders will be issued accordingly”.

Following the recommendations of the Board conditional promotion letters were issued clearly stating as under:

*“The performance of the officers after their promotion will be evaluated on the basis of defined KPIs for a period of six months, extendable for further three months. In case of failure to perform in accordance with the prescribed KPIs for the post, the promotion of the officers will be reviewed. It was also categorically stated that promotion of officers at Serial Nos.1 to 34, will be purely on temporary basis and they will not claim seniority/promotion over those who may otherwise be senior to them.”*

8. It appears from the record that performance evaluation of a number of senior Engineers including Respondents No.1 and 2 as per KPIs was requested from QESCO after completion of three months vide letter dated 04.11.2016 by the Appellant. The requisite performance evaluation of the said officers was provided and after examination of the same, reports were compiled and summarized and cases of 17 officers including Respondents No.1 and 2 were sent for approval of promotion by the competent authority. Out of the said 17 officers, promotion orders of 10 officers having satisfactory performance were issued on 26.12.2016. However, the performance of remaining officers including Respondents No.1 and 2 having not been found satisfactory were recommended to be observed for further

three months. On expiry of such period of three months, the competent authority after being satisfied to some extent with their performance issued their promotion orders and they were accordingly promoted with effect from 14.04.2017. Respondents No.1 and 2 were aggrieved of their promotion with effect from 14.04.2017 and sought promotion from the date on which their juniors were promoted i.e. 13.10.2016. The High Court allowed their petition by observing that lawful justification for issuing promotion orders of different senior officers on different dates had not been provided. It was further observed that there was no justification available on the record as to why the recommendations dated 12.08.2016 were not given effect across the board. The High Court therefore recorded a finding that General Manager (HR) PEPCO/the Appellant had acted with malice in issuing promotion orders of the Respondents on 14.04.2017 instead of 13.10.2016. The aforementioned narration of the procedure adopted by the Appellant-PEPCO makes it abundantly clear that it had placed on record all material documents showing fulfilment of procedural formalities on the basis of which some Engineers were promoted immediately and the others conditionally for which valid reasons which fell within the purview of PEPCO Selection Board were furnished.



9. We also find that there was no justification or basis for the High Court to come to the conclusion that GM (HR), PEPCO had acted with malice. We have scanned through the record and do not find any material that may even remotely point towards mala fide or malice on the part of the functionaries of the Appellant. We therefore find that the finding recorded by the High Court relating to malice and absence of lawful reasons or justification for promoting different officers on different dates was not based on the record and arose out of misinterpretation and misconception of proceedings of the Selection Board as reflected in the Minutes. We are also of the view that the PEPCO Selection Board was competent in the matter and imposition of conditions including evaluation of officials in view of their performance on the basis of defined KPIs for a period of three months extendable by another three months was neither unlawful nor unreasonable and squarely fell within the parameters of the Policy and directives of the competent authorities.

10. There is yet another aspect of the matter. A specific objection regarding jurisdiction of the High Court to entertain the petition was raised which was dealt with in the following manner:

*"The petitioners being employees of QESCO/PEPCO are governed by statutory rules and as such the constitutional petition filed by the Respondents under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is maintainable.*

We find that in the first place, there was no ground to hold that the Respondents were governed by the statutory rules. Admittedly, the Respondents by their own choice had joined QESCO which is a distinct and separate legal entity having been incorporated in the erstwhile Companies Ordinance, 1984 and has its own Board of Directors. Just by reason of the fact that QESCO had adopted existing rules of WAPDA for its internal use does not make such rules statutory in the context of QESCO. It was clearly and categorically held by this Court in Pakistan Defence Officers Housing Authority (ibid), Pakistan Telecommunication Company Ltd through its Chairman v. Iqbal Nasir and others (PLD 2011 SC 132) as well as Pakistan International Airlines Corporation and others v. Tanveer ur Rehman and others (PLD 2010 SC 676) that where conditions of service of employees of a statutory body are not regulated by rules/regulations framed under the Statute but only by rules or instructions issued for its internal use, any violation thereof could not normally be enforced through constitutional jurisdiction and they would be governed by the principle of "master and servant". The learned High

Court appears to have not been assisted properly in the matter and therefore omitted to notice the said principle of law laid down in the aforementioned case and reiterated repeatedly in a number of subsequent judgments of this Court.

11. Further, while assuming jurisdiction in the matter, the learned High Court omitted to appreciate that in case of an employee of a Corporation where protection cannot be sought under any statutory instrument or enactment, the relationship between the employer and the employee is governed by the principle of "master and servant" and in such case the constitutional jurisdiction of the High Court under Article 199 of the Constitution cannot be invoked. We also find that although a judgment of this Court dated 07.03.2019 in the case of employees of IESCO was brought to the notice of the High Court in which a similar finding was recorded regarding non-availability of constitutional jurisdiction to the employees of IESCO, the Court appears to have misinterpreted and misconstrued the ratio of the same and therefore arrived at a conclusion which appears to be contrary to the settled law on the subject. We also notice that a judgment of a Division Bench of the same High Court escaped the notice of the High Court of Balochistan whereby it had clearly held that employees of

QESCO could not invoke its constitutional jurisdiction. Further, a judgment of this Court rendered in the case of Chief Executive Officer PESCO, Peshawar (*ibid*) examined the question of jurisdiction of the High Court under Article 199 of the Constitution in matters relating to employees of PEPCO which is identically placed insofar as it was also incorporated under the Companies Ordinance, 1984 pursuant to bifurcation of various Wings of WAPDA into separate corporate entities and it came to the conclusion that since PEPCO did not have statutory rules, the High Court lacked jurisdiction to interfere in matters involving employment disputes between PEPCO and its employees. The ratio of the said judgment was clearly attracted to the facts and circumstances of this case, which appears to have escaped the notice of the High Court. We are therefore in no manner of doubt that in view of the fact that QESCO does not have statutory rules governing the terms and conditions of service of its employees, the relationship between the Appellant-PEPCO and Respondents No.1 and 2 was governed by the principle of "master and servant" and the Respondents could not have invoked the constitutional jurisdiction of the High Court for redressal of their grievances.

12. For the foregoing reasons, we find that the impugned judgment of the High Court dated 16.07.2020 rendered in C.P.No.1233 of 2017 is unsustainable and is accordingly set aside. Consequently, the appeal is allowed.

**ISLAMABAD, THE**

**21.12.2021**

**ZR/\***

**NOT APPROVED FOR REPORTING**