

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR**

AFR

CIVIL APPEAL NO.616 OF 2020

Against judgment dated 10.04.2019 of Peshawar High Court, DI Khan Bench, passed in Writ Petition No.1141-D/2018 with C.M.Nos.1301-D/2018 & 454-D/2019)

Pakistan Telecommunication Company Ltd

...Appellant(s)

VERSUS

Muhammad Samiullah

...Respondent(s)

For the Appellants:

Mr. Shahid Anwar Bajwa, ASC
(via video link from Lahore)

Mr. Raheel Zafar, S.M. Legal

For the Respondents:

Mr. Ahmed Ali, ASC

Date of Hearing:

02.11.2020

JUDGMENT

IJAZ UL AHSAN, J-. Through the instant Appeal, the Appellants have challenged the judgment of the Peshawar High Court dated 10.04.2019 (hereinafter referred to as the "**Impugned Judgment**") whereby the petition of the Respondent was accepted, and the Appellant was ordered to reinstate the respondent.

2. The necessary facts giving rise to this *lis* are that the respondent was appointed as Lineman on daily wages at the appellant's branch in D.I. Khan in 1992. His services were regularized on 18.11.1998 in pursuance of an order of the Director (PR-11) PTCL dated 17.09.1997. Subsequently, his

services were terminated, and he assailed his termination through constitutional petition No.19-D/2012 before the Peshawar High Court. The petition was allowed vide judgment dated 21.03.2012 with a direction to reinstate the respondent on his post with all back benefits. Aggrieved, the Appellant filed C.P. No.613 & 614 of 2012 before the apex court which were dismissed as withdrawn on 19.11.2012. Subsequently, the respondent was reinstated in service on 10.07.2017 as a result of contempt of Court proceedings initiated by him before the Peshawar High Court. Subsequently, he was served with a Show Cause Notice alleging absence from duty without approval of the competent authority and awarded major penalty of dismissal from service on 28.11.2018. The Respondent filed a constitutional petition before the Peshawar High Court challenging his dismissal which was allowed vide the Impugned Judgment with a direction to reinstate the Respondent on his post. The High Court held that the Respondent was a public servant as envisaged in section 11 of the Pakistan Telecommunications (Reorganization) Act 1996, and that the terms and conditions of his employment were protected by Sections 35(2) and 36(2) of the Act, which are statutory in nature. Aggrieved, the appellant approached this Court and sought leave to appeal.

3. Leave to appeal was granted by this Court vide order dated 08.07.2020 which is reproduced below for ease of reference:

"Learned ASC for the petitioners contends that the Respondent was not an employee of the erstwhile T & T

Department rather was employed by the petitioners in the year 1998 and the terms and conditions of his service were not statutory, nor the petitioner is a statutory company and thus the very writ petition filed before the High Court was not maintainable. He further contends that the law relied upon in the impugned judgment was not applicable to the facts and circumstances of the instant case and thus the impugned judgment is not sustainable in law.

2. *The submissions made by the learned ASC for the petitioners require consideration. Leave to appeal is therefore granted to consider, inter alia, the same.*

4. The main argument advanced by the learned counsel for the Petitioner is that in the Impugned Judgment the High Court has relied upon the case of Masood Ahmed Bhatti and others Vs. Federation of Pakistan (2012 SCMR 152) to reinstate the Respondent. However, the reliance is not apt because that case concerned former civil servants of the T&T Department whereas the respondent has never been an employee of the T&T Department. Learned ASC further contends that the Respondent is a workman employed by the Pakistan Telecommunications Corporation in 1992, therefore the terms & conditions of his employment are governed by the rules of the Company which are non-statutory. Any violation of non-statutory rules is not amenable to the jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan and the appropriate remedy for the Respondent was before the *fora* constituted under the Labour Laws, which he did not avail. The Learned counsel further contends that Pakistan Telecommunications Company Limited is a private limited company registered under the Companies Ordinance 1984 and is not a person within the

meaning of Article 199 (5) of the Constitution of the Islamic Republic of Pakistan, 1973. Therefore, a constitutional petition against it is not maintainable.

5. The Learned counsel for the Respondent on the other hand has argued that the absence of the Respondent from duty did not warrant major penalty of dismissal from service as his wife was suffering from serious health issues which required constant attention. He further contended that there is nothing on the record to show that he was inefficient and the letter of his dismissal from service is illegal and without lawful authority.

6. We have heard the learned counsels for the parties at length and gone through the case record with their assistance. The following questions fall for the determination of this Court:

- i. *Whether the terms and conditions of the Respondent's employment were statutorily protected; and*
- ii. *Whether PTCL is a person within the meaning of Article 199(5) of the Constitution.*

Before dilating upon the crux of the matter, the legal position must be laid out clearly. In this regard, reference may be made to Section 9 of the Pakistan Telecommunications Corporation Act 1991 (hereinafter "the 1991 Act") and Sections 35 and 36 of Pakistan Telecommunications (Reorganization) Act 1996 (hereinafter "the 1996 Act") which read as follows: -

"9. Transfer of departmental employees to the Corporation. --
(1) Notwithstanding anything contained in any law, contract or agreement, or in the conditions of services, all departmental employees shall, on the establishment of the Corporation, stand transferred to, and become employees of the Corporation, on the same terms and conditions to which they were entitled immediately before such transfer, provided that the Corporation shall be competent to take disciplinary action against any such employee.

(2) The terms and conditions of service of any such person as is referred to in sub-section (1) shall not be varied by the Corporation to his disadvantage.

(3) Notwithstanding anything contained in any law for time being in force, no person who stands transferred to the Corporation by virtue of sub-section (1) shall be entitled to any compensation because of such transfer."

"35. Vesting of the rights, property and liabilities of the Corporation.—

(2) An order issued under sub-section (1) shall specify the employees of the Corporation who shall, as from the effective date of the order, be transferred to and become employees of the entity referred to in the order: Provided that such order shall not vary the terms and conditions of service of such employees to their disadvantage.

36. Terms and Conditions of service of employees.—

(1) No person transferred to the Company pursuant to sub-section (2) of section 35, hereinafter referred to as "Transferred Employee", shall be entitled to any compensation as a consequence of transfer to the Company:

Provided that the Federal Government shall guarantee the existing terms and conditions of service and rights, including Pensionary benefits of the Transferred Employees.

(2) Subject to sub-section (3), the terms and conditions of service of any Transferred Employee shall not be altered adversely by the Company except in accordance with the laws of Pakistan or with the consent of the transferred Employees and the award of appropriate compensation.

(3) At any time within one year from the effective date of order vesting property of the Corporation in the Company, the Federal Government may, with the prior written agreement of a Transferred Employee, require him to be transferred to or revert him back and be employed by the Authority, National Telecommunication Corporation, Trust or the Federal Government on the same terms and conditions to which he was entitled immediately before such transfer.

(4) Subject to proviso to sub-section (1) of section 45 on transfer of a Transferred Employee under sub- section (3),

the Federal Government shall assume responsibility for his Pensionary benefits without recourse to be Pension Fund referred to in that section.

(5) Under the order vesting property of, the Corporation in the Company, the Federal Government shall require the Company to assume the responsibility of Pensionary benefits of the telecommunication employees and the Company shall not alter such Pensionary benefits without the consent of the individuals concerned and the award of appropriate compensation."

7. A bare perusal of the above provisions makes it abundantly clear that departmental employees of T&T on their transfer to the Corporation became employees of the Corporation under Section 9 of the Act of 1991 and then of the Company under Section 35 of the Act of 1996. The terms and conditions of their service remained fully protected under Section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. Furthermore, none of the terms and conditions could be varied to their detriment and under Section 36 of the 1996 Act the Federal Government was bound to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. This matter has been elaborately addressed by this Court in the case of **Masood Ahmad Bhatti & Others v Federation of Pakistan and Others**(SCMR 2012 152)and **PTCL & Other vs. Masood Ahmad Bhatti and others**(2016 SCMR 1362).The relevant parts from the same are reproduced below for ease of reference:

"(2016 SCMR 1362)

Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by Sections 3 to 22 of the Civil Servants Act and protected by

Section 9(2) of the Act of 1991 and Sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court."

AND

"(SCMR 2012 152)

15. Thus, it is evident that at the moment of transition when the appellants ceased to remain employees of the Corporation and became employees of PTCL, they admittedly were governed by rules and regulations which had been protected by the PTC Act. The said rules, therefore by definition were statutory rules as has been discussed above. PTCL, no doubt, could make beneficial rules in relation to its employees which were in addition to the rules of employment prevailing on 1-1-1996. However, by virtue of the aforesaid proviso, PTCL had no power to "vary the terms and conditions of service" of its employees who were previously employees of the Corporation, "to their disadvantage". Even the Federal Government was debarred by virtue of section 35 ibid, from varying such terms and condition to the disadvantage of the appellants."

8. Now coming to the principal question in the present case, whether the terms & conditions of the Respondent's employment enjoy statutory protection? The answer is in the negative because neither the record nor the relevant law contains anything to support such a conclusion. The Respondent was employed as a workman on daily wages by Pakistan Telecommunications Corporation in 1992 whereafter his services were regularized in 1998 and subsequently terminated. At no point in time was he working in the T&T department. In this regard, it is essential to draw a distinction between departmental employees of the T&T Department whose terms and conditions of service on their transfer to the Corporation and Company were protected by law and those who were employed by the Company on

contract or work-charge basis whose terms & conditions of service were governed by the rules of the Company that are clearly non-statutory. The case of the Respondent falls squarely in the latter category. Therefore, any alleged violation of non-statutory rules was not amenable to writ jurisdiction of the High Court. In this regard reference must be made to the case of Pakistan Telecommunication Company Ltd. through Chairman Vs. Iqbal Nasir and others (PLD 2011 SC 132) wherein it was categorically held that employees of Pakistan Telecommunication Corporation Limited were governed by principle of "Master and servant" and in the absence of statutory rules, constitutional petitions filed by employees were not maintainable.

9. Even otherwise, an adequate and efficacious remedy of filing a grievance petition before the Labour *Fora* was available to the Respondent. There is no denial of the fact that the said alternate remedy has not been availed by the Respondent. Hence, we are not persuaded by the argument of the learned counsel for the respondent that the non-maintainability of the constitutional petition before the High Court under Article 199 of the Constitution would render the Respondent remediless.

10. In the impugned judgement, the High Court has relied on the judgement of this Court in the case of PTCL & Other vs. Masood Ahmad Bhatti etc *ibid* in concluding that the terms & conditions of the Respondent's employment were statutory in nature. Such conclusion is *ex facie*

erroneous and based upon misinterpretation of the ratio of Masood Ahmed Bhatti's judgment. It is pertinent to note that in the aforementioned case, this Court unequivocally held that only departmental employees who stood transferred to the Corporation and then to the Company will be guaranteed statutory protection. Therefore, those employees, such as the Respondent, who were employed by the Corporation or the Company on ad hoc or temporary basis were not afforded statutory protection. Accordingly, the employment of such persons shall be governed by the principle of master & servant. The relevant part of the aforementioned judgement is reproduced below for ease of reference:

"7. The argument of Mr. Khalid Anwar, learned Sr. ASC for the petitioners that where a three-Member Bench of this Court in the case of Pakistan Telecommunication Company Ltd. Vs. Iqbal Nasir and others (supra) held that the employees of PTCL being governed by the principle of master and servant could not invoke jurisdiction of the High Court under Article 199 of the Constitution, another Bench with equal number of Judges could not deviate therefrom, is based on misconception when the employees in the aforesaid case, were not those whose terms and conditions of service on their transfer to the Corporation and the Company were protected and guaranteed under Section 9 of the Act of 1991 and Sections 35(2) and 36(1) and (2) of the Act of 1996, but those who were employed on contract or on work-charge basis."

11. In light of what has been discussed above, we are in no manner of doubt that the High Court has erred in law by concluding that the terms & conditions of the Respondent's employment enjoyed statutory protection.

Accordingly, the Impugned Judgment is not sustainable in law and is a departure from the dicta of this Court rendered in cases of Masood Ahmad Bhatti & Others v. Federation of Pakistan and Others (SCMR 2012 152), PTCL & Other v. Masood Ahmad Bhatti and others (2016 SCMR 1362) and Pakistan Telecommunication Company Ltd. through Chairman v. Iqbal Nasir and others (PLD 2011 SC 132).

12. With regards to the argument of the learned counsel for the Petitioner that PTCL is not under federal control and is therefore not a person within the meaning of Article 199 (5)of Constitution, the same is misconceived. This question has been adequately put to rest by this Court in *Pakistan Telecommunication Company Ltd. through Chairman Vs. Iqbal Nasir and others (PLD 2011 SC 132)*. The relevant part is reproduced below for ease of reference:

"22. The question whether the PTCL was a 'person' performing functions in connection with the affairs of the Federation within the contemplation of Article 199(5) of the Constitution was first dilated upon by this Court at great length in Muhammad Zahid's case in which the plethora of case law was gone into and it was held that the employees of the erstwhile T&T Department transferred to the Corporation [PTC] under the relevant provisions of the Act of 1991 and later/on succeeded by the PTCL, discharging their functions and duties in the International Gateway Exchange as Operators were inducted permanently or regularized subsequently under the rules necessarily related to one of the affairs of the Federation within the purview of provisions of Article 199 of the Constitution; hence similar duties and functions in the International Gateway Exchange being discharged by the private respondents as Operators could not be distinguished to say that the same did not relate to the affairs of the Federation though conferred upon the Corporation [PTC], and finally

upon the PTCL. It was further held that the Telecommunication undisputedly was the subject which pertained to one of the important affairs of the Federation dischargeable now through the PTCL; hence such entity involved in the same exercise of the sovereign powers, essentially fell within the connotations of the word 'person' as defined in clause (5) of the Article 199 of the Constitution; accordingly, the grievance of the private respondents was amenable to the writ jurisdiction of the High Court."

13. Another distinction that we would like to draw through this judgement for the purposes of clarity is between an "ad hoc" or temporary employee, a contract employee and a permanent employee. The term temporary suggests a post which has been temporarily created for a definite period of time or for a certain purpose/project, and upon the completion of that project, services of the temporary employee appointed in it are accordingly terminated. On the other hand, an ad hoc employee is also a temporary employee who is appointed for an existing post for a short period of time, or for a specific purpose, in lieu of the person eligible for that post and upon the appointment of that eligible regular appointee, or with the lapse of time, the ad hoc employee is automatically relieved. It is pertinent to note that an ad hoc, temporary or contractual appointment does not create any vested right of regularization in favour of the appointee. With regard to the terms of contract workman and permanent workman, these have been adequately addressed by this Court in *Pakistan Telecommunication Company Ltd. Vs. Iqbal Nasir and others (PLD 2011 SC 132)*. The relevant part is reproduced below for ease of reference:

"26. It may be observed that as provided in clause (g) of Order 1 of the Schedule to the W.P. (Standing Orders) Ordinance, 1968, a contract worker is a workman who works on contract basis for a specific period of remuneration to be calculated on piece rate basis, while clause (b) of Order 1 of the Schedule to the W.P. (Standing Orders) Ordinance, 1968,' provides that a 'permanent' workman is a workman who has been engaged on work of permanent basis likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment, and includes badli who has been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months."

14. In light of what has been discussed above, this appeal is allowed. The Impugned Judgment dated 10.04.2019 passed by the Peshawar High Court is accordingly set aside.

Sd/- H.C.J

Sd/- J

Sd/- J

Announced in open Court on 20.04.21
At Islamabad.

Approved for Reporting