

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN  
MR. JUSTICE MUNIB AKHTAR

*(A/R)*

**Civil Petitions No.4963 & 5021 of 2018**

(Against the judgments of the Islamabad High Court both dated 04.10.2018 passed in Writ Petitions No.1015/2018 & 2132/2018)

Chief Executive Officer, Peshawar Electric  
and Power Company (PEPCO)  
(in CP No.4963/2018)

WAPDA thr. its Chairman & others  
(in CP No.5021/2018)

**...Petitioner(s)**

**VERSUS**

Sajeeda Begum & others  
(in CP No.4963/2018)

Gul Farah Jaan & others  
(in CP No.5021/2018)

**...Respondent(s)**

For PESCO:/P:

Mr. Asad Jan, ASC *in CP.4963/18.*  
(via video link from Peshawar)  
Mir Adam Khan, AOR/*Absent*

For WAPDA:/P:

Syed Moazam Ali Rizvi, ASC *in CP.5021/18*  
Mr. Mehr Khan Malik, AOR/*Absent*

For the Respondents:

Ms. Farhana Naz Marwat, ASC  
(via video link from Peshawar)

Date of Hearing:

17.05.2022

**JUDGMENT**

**IJAZ UL AHSAN, J.** Through the instant Petitions, the Petitioners have challenged two judgments of the Islamabad High Court both dated 04.10.2018 (hereinafter referred to as the "**Impugned Judgments**"). Through the Impugned Judgements, the Peshawar Electric and Power Company (hereinafter referred as "**PESCO**") as well as the Water and Power Development Authority (hereinafter referred

as "**WAPDA**") were directed to extend the Prime Minister's Assistance Package of 2014 to the private Respondents in their respective Civil Petitions (CPLA No.4963 of 2018 having been filed by PESCO and CPLA No.5021 of 2018 filed by WAPDA).

2. The brief facts leading to both these petitions are that two writ petitions were filed by Mst. Sajeeda Begum and Mst. Gul Farah Jaan (hereinafter referred to as the "**Respondents**") against PESCO and WAPDA respectively before the Islamabad High Court. Both of them prayed for directions to PESCO and WAPDA respectively to compensate them in accordance with the 2014 Prime Minister's Assistance Package. Mst. Sajeeda Begum contended that she was the widow of the deceased Ghani-ur-Rehman who, while employed as a "Lineman-2" with PESCO, died in-service on 20.07.2013. Mst. Gul Farah Jaan, on the other hand, is the widow of the deceased Rasheed Ahmed, who was employed as a Chowkidar (BPS-2) with WAPDA. Rasheed Ahmed died on 24.06.2016. Instead of the Prime Minister's Assistance Package, Mst. Gul Farah Jaan received WAPDA's own Assistance Package as recompense. These writ petitions were allowed by the Islamabad High Court vide the impugned judgements and both PESCO and WAPDA were directed to compensate the Respondents in accordance with the 2014 Prime Minister's Assistance Package in terms of office memorandum dated 20.10.2014. The impugned judgements have now been challenged before us by PESCO and WAPDA.

3. The Learned Counsel for PESCO contends that PESCO is a public limited company incorporated under the Companies Ordinance, 1984. While PESCO may be a government-owned company, its employees cannot be treated as government employees in the absence of any statutory law or rules expressly classifying PESCO's employees as government employees. Without any such statutory backing, the employees of PESCO could not have been considered as government employees. As a result, the Respondents were barred from approaching the Islamabad High Court in its constitutional jurisdiction for the enforcement of the 2014 Package. It is argued that, even otherwise, Respondent Sajeeda Begum was not eligible to be granted the benefit of the said package because her husband died before the 2014 Prime Minister's Assistance Package was granted. Finally, the Learned Counsel contends that PESCO did not fall within the territorial jurisdiction of the Islamabad High Court having no office or presence in territories falling within the jurisdiction of the Islamabad High Court. He maintains that the High Court lacked territorial jurisdiction to entertain and decide the matter.

4. The Learned Counsel for the WAPDA has raised similar as well as other grounds. The Learned ASC contends that WAPDA's case had been clubbed with the cases of other government departments by the High Court. While other respondents before the High Court may have been government departments, WAPDA is a body corporate which

is regulated by its own Act and Rules i.e. the Pakistan Water And Power Development Authority Act of 1958. He contends that in the normal course of business, WAPDA exercises independent authority and WAPDA's Competent Authority had already devised its own Assistance Package for the benefit of its employees. He contends that the Respondent, Gul Farah Jaan had submitted an application for grant of WAPDA's assistance package after the death of her husband. WAPDA had processed her application and had already compensated her according to WAPDA's assistance package. Therefore, she could not have approached the High Court with a prayer seeking a direction for WAPDA to grant her an additional package to pay additional compensation according to the Prime Minister's Assistance Package which in any event was neither applicable to nor had been adopted by WAPDA.

5. The Learned Counsel for the Respondents, on the other hand, has defended the impugned judgements of the Islamabad High Court. She contends that beneficial legislation and/or policies apply retrospectively and that the High Court had rightly extended the benefit of the 2014 Assistance Package to the Respondents. She has relied on two judgements of this Court passed in Mst. Basharat Jehan vs. Director General, Federal Government Education, FGEI (C/O) Rawalpindi (2015 SCMR 1418) and Director, Social Welfare NWFP vs. Saadullah Khan (1996 SCMR 350).

6. We have heard the learned counsel for the parties at length and gone through the case record with their assistance.

7. We have noticed that the basic question of law on which the structure of both the Learned Counsel for PESCO and WAPDA's arguments rests on is whether PESCO and WAPDA are authorities against which the Islamabad High Court could exercise jurisdiction under Article 199 of the Constitution of Pakistan, 1973. Before we proceed to discuss the merits of the case, we consider it appropriate to first examine the relevant constitutional articles and laws that regulate the High Court's jurisdiction, the laws that regulate PESCO and the laws that regulate WAPDA.

8. Article 199(1) of the Constitution of Pakistan, 1973 lays down the jurisdiction of the High Courts of Pakistan. It is reproduced below for reference:-

**Article 199: Jurisdiction of the High Court**

1. Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law-

a. on the application of any aggrieved party, make an order-

i. directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

b. on the application of any person, make an order-

i. directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

ii. requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

c. on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II. (Underlining is ours)

As was correctly pointed out by the ASC for PESCO, PESCO is a body corporate that had been incorporated under the Companies Ordinance of 1984. Therefore, for the purposes of this instant petition, Section 7(1) of the Companies Ordinance, 1984 is relevant. It is reproduced below for reference:-

#### **7. Jurisdiction of the Court**

(1) The Court having jurisdiction under this Ordinance shall be the High Court having jurisdiction in the place at which the registered office of the company is situate:

Provided that the Federal Government may, by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any civil Court to exercise all or any of the jurisdiction by this Ordinance conferred upon the Court, and in that case such Court shall, as regards the jurisdiction so conferred, be the Court in respect of companies having their registered office within the territorial jurisdiction of such Court. **(Underlining and highlighting is ours)**

WAPDA, as was contended by the Learned ASC for WAPDA, is governed and regulated by the Pakistan Water And Power Development Authority Act of 1958 (hereinafter referred to as the "**WAPDA Act**"). The relevant sections of the WAPDA Act need to be examined before we can come to the merits of the case. Section 1 of the WAPDA Act is reproduced below for reference:-

#### **Section 1. Short title and extent**

(1) This Act may be called the [Pakistan Water and Power Development Authority Act, 1958];

(2) It extends to the whole of [Pakistan] except the [Districts] of Karachi.]

Section 3 of the WAPDA Act concerns the constitution of the WAPDA. It is reproduced below for reference:-

### **Section 3. Constitution of the Authority**

(1) There shall be established an Authority to be known as the [Pakistan Water and Power Development Authority] for carrying out the purposes of this Act.

(2) **The Authority shall be a body corporate**, shall be entitled to acquire, hold and dispose of] property, shall have perpetual succession and a common seal and shall by the said name sue and be sued. **(Underlining and highlighting is ours)**

Section 17 of the WAPDA Act deals with the employees of WAPDA and their employment. The relevant portions of Section 17 are reproduced below for reference:-

### **17. Employment of officers and servants**

(1) The Authority may from time to time employ such officers and servants, or appoint such experts or consultants, as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit:

[Provided that all persons serving in connection with the affairs of [a Province] in the Electricity and Irrigation Department shall be liable to serve under the Authority, if required to do so by the [Provincial Government] on such terms and conditions as the [Provincial Government] may, in consultation with the Authority, determine but shall not be entitled to any deputation allowance:

Provided further that the [Provincial Government] may, in relation to any such person as aforesaid, delegate such administrative, disciplinary and financial powers to the Authority as the [Provincial Government] may deem fit:

Provided also that the terms and conditions of service of any such person as aforesaid shall not be varied by the Authority to his disadvantage.]

[(1-A) ...

[(1-B) Service under the Authority is hereby declared to be service of Pakistan and every person holding a post under the Authority, not being a

person who is on deputation to the Authority from any Province, shall be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1973 (LXX of 1973).]

[(1-C) ...

[(1-D) ...

(2) ...

Section 29 of the WAPDA Act deals with the Regulations of WAPDA. It is reproduced below for reference:-

### **29. Regulations**

For the purpose of carrying into effect the provisions of this Act, the Authority may, with the approval of the Government, frame such Regulations as it may consider necessary or expedient.

9. Having gone over the relevant laws, we will now go over the Prime Minister's Assistance Package. According to the record, the 2006 Prime Minister's Package, passed by the Cabinet Office vide office memorandum dated 13.06.2006, was a package meant to compensate the families of those government employees [**underlining is ours**] who died during their employment as government employees. The said assistance package took effect from 01.07.2005 and there was a bifurcation between the beneficiaries of the Assistance Package. One class of beneficiaries were those whose relative(s) died in-service and the other class were those whose relative(s) died in security-related deaths. Going over the 2006 memorandum, we have noted that the 2006 Assistance Package was meant expressly and exclusively for government employees only. A perusal of the 2014 Assistance Package office memorandum (dated 20.10.2014) shows that the intent of the memorandum is similar to its 2006



counterpart inasmuch as it pertains to the beneficiaries of such a package. The 2014 package as well as the 2006 packages were both meant for families of Government employees who died in-service or security-related deaths.

10. Having gone over all the relevant laws and policies on record, we will now go over the merits of each petition.

11. As far as the merits of PESCO's petition are concerned, PESCO is regulated by the Companies Ordinance of 1984 and therefore, the relevant High Court for the purposes of issuance of any directions under Article 199 of the Constitution is the High Court where the main office of PESCO is situated. PESCO's headquarters are situated in Peshawar, KPK and none of its activities are undertaken within the territorial jurisdiction of the Islamabad High Court. It has no place of business, branch office or presence in any of the territories that fall within the jurisdiction of the Islamabad High Court. Therefore, in the absence of anything to the contrary, reading Article 199 of the Constitution with Section 7 of the Companies Ordinance of 1984, brings us to the un-escapable conclusion that the relevant High Court for the purposes of issuing any directions (if at all any High Court could assume jurisdiction) would have been the Peshawar High Court and not the Islamabad High Court.

12. The next question requiring determination is whether the employees of PESCO are government employees for the purposes of 2014 PM's Assistance Package. The

Learned Counsel for the Respondents could not point out any law or rule that would lead us to the conclusion that despite being incorporated under the Companies Ordinance, 1984, PESCO's employees were governed by any law making them government servants. They are employees of a statutory corporation and the terms and conditions of the service of their employees are determined by their own rules and regulations. We therefore conclude that the Islamabad High Court could not have directed PESCO to release funds in terms of the 2014 Prime Minister's Assistance Package in light of the fact that PESCO's employees were not government employees and that PESCO did not fall within the territorial jurisdiction of the Islamabad High Court for the purposes of Article 199 of the Constitution of Pakistan, 1973.

13. As far as the merits of WAPDA's case are concerned, the Learned ASC for WAPDA has not denied that WAPDA was amenable to the jurisdiction of the Islamabad High Court. Instead, he has argued that the Learned High Court could not have directed WAPDA to release the funds in the presence of WAPDA's own assistance package, which the Respondent Gul Farah Jaan had already availed. Adverting to the WAPDA Act, we have noticed that WAPDA, for the purposes of conducting its affairs, acts as a body corporate. Adverting to a 3-member bench's order dated 13.09.2012 passed in Muhammad Yusuf Khan vs. WAPDA thr. its Chairman etc., it was held by this Court that it would be appropriate for WAPDA itself to decide whether granting or

declining such financial relief to its employees would be in its interests or not. We have gone over WAPDA's office memorandums annexed by the Learned Counsel for WAPDA and note that WAPDA had, of its own volition, and according to its own rules which have a different genesis, granted its employees an assistance package similar in spirit to the Prime Minister's Assistance package. The said package had been granted by WAPDA vide its office memorandum dated 05.07.2007 and has periodically been updated by WAPDA in order to cater to changing conditions and circumstances. WAPDA had internally assessed the compensation the Respondent Gul Farah Jaan was entitled to and had compensated her accordingly. This assessment was never challenged by Gul Farah Jaan before WAPDA or any competent forum. The matter had, for all intents and purposes, attained finality. Even if Respondent Gul Farah Jaan were to challenge the matter, the relevant forum would have been the relevant Service Tribunal since the Assistance Package would have formed part of the terms and conditions of service. Therefore, adjudication of the matter by the High Court would have been subject to the constitutional bar under Article 212 of the Constitution of Pakistan, 1973. Even otherwise, while WAPDA may have been amenable to the jurisdiction of the Learned High Court, the Learned High Court in passing the impugned judgement has not appreciated the fact that WAPDA is an independent Authority, with its own Rules, and that while the Federal Government may appoint WAPDA's Chairman and Members, WAPDA has

the authority to frame independent Regulations under Section 29 of the WAPDA Act (with approval from the Federal Government). WAPDA had granted its employees its own Assistance Package, keeping into consideration its own financial considerations and interests. This Assistance package had been approved by Competent Authority in WAPDA and then passed on the Federal Government which accorded its approval before the funds were disbursed. Therefore, in principle, it would be unconscionable for an employee of any department to benefit from two Assistance Packages if, after availing a department's indigenous Assistance Package (which had already been sanctioned and approved by the Competent Authority and the Federal Government), they subsequently sought a direction for grant of another (better) Federal Assistance Package. Further, as noted above, employees of WAPDA are not government servants and the 2014 Assistance Package was announced for the benefit of government servants only. There was no bar on the board of WAPDA against adopting the package of 2014. But the fact remains that it was not adopted and the High Court had no legal basis to foist the said package on WAPDA. For these reasons, we find that whilst WAPDA was amenable to the High Court's jurisdiction, the Learned High Court failed to appreciate this aspect of the case and could not have imposed another Assistance Package on WAPDA without allowing WAPDA to deliberate on it both financially and logistically.

14. We have gone over the cases relied on by the Learned Counsel for the Respondents in support of her contentions and find that law settled in the said judgements is not applicable to the cases of the Respondents and is of no help to them. The cases relied on were concerning matters pertaining to government departments and their employees as opposed to dealing with either PESCO's or WAPDA's employees. The same are therefore distinguishable on law as well as facts. The question of whether or not PESCO's or WAPDA's employees were government servants was not examined by the High Court. We therefore find that the Impugned Judgement of the High Court proceeded on erroneous grounds and the reasoning is not in consonance with the relevant provisions of law and principles settled by this Court. Hence, the said Judgements are unsustainable.

15. In light of our aforementioned reasons, we convert both these petitions into appeals and allow the same. Both Impugned Judgements dated 04.10.2018 passed by the Islamabad High Court which are the subject matter of these Petitions are accordingly set aside.

**ISLAMABAD, THE**

17<sup>th</sup> of May, 2022

Khalid Sahibzada, LC1926/\*

***Not Approved for Reporting\****