JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3732 of 2019
Masood Alam Niazi
Versus
Secretary, Ministry of Industries and Production and another

Dates of Hearing:	12.08.2021, 20.10.2021, 08.11.2021 and 30.11.2021
Petitioner by:	M/s Muhammad Munir Paracha and Nauman Munir Paracha, Advocates in W.P.No.3732/2019 Mr. Muhammad Akram Gondal and Ch. Muhammad Bashir Sappal, Advocates in W.P.No.290/2020
Respondents by:	Mr. Attiq-ur-Rehman Siddiqui, learned Assistant Attorney-General M/s Muhammad Shoaib Shaheen and Nasir Saleem, Advocates for Utility Stores Corporation Mr. Safdar Sial, Law Officer, Utility Stores Corporation

---

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.3732/2019 and 290/2020 since they entail certain common features.

2. Through writ petition No.3732/2019, the petitioner, Masood Alam Niazi, seeks the issuance of a direction to the Utility Stores Corporation of Pakistan **("USCP")** to permit him to join his duties and to release his salary.

3. Through writ petition No.290/2020, the petitioner, Ziaullah Khan Warsi, seeks a direction to USCP to permit him to join his duties. Furthermore, the said petitioner also seeks a direction to USCP to reinstate him in service with effect from 11.10.2018 with all back benefits.

4. The facts essential for the disposal of the writ petition are that while the petitioner, Masood Alam Niazi was serving as Senior General Manager (BS-20), and the petitioner, Ziaullah Khan Warsi was serving as Accounts Clerk (BPS-16) in USCP, Reference No.41/2016 was filed before the learned Accountability Court No.III at Karachi in which both the petitioners were accused of having committed corruption and corrupt practices. The trial

UNCERTIFIED COPY

before the said Accountability Court culminated in the judgment dated 11.10.2018 whereby Ziaullah Khan Warsi and Masood Alam Niazi were convicted and sentenced to serve imprisonment for a period of seven years and five years rigorous imprisonment, respectively.

5. Vide office orders dated 07.11.2018, the petitioners were dismissed from service by USCP on the sole ground that they had been convicted by the learned Accountability Court.

6. The said judgment dated 11.10.2018 was assailed by the petitioners before the Hon'ble High Court of Sindh in criminal accountability appeals No.56 and 57/2018. Vide judgment dated 07.08.2019, the said appeals were allowed; the judgment dated 11.10.2018 passed by the learned Accountability Court was set-aside; and the petitioners were acquitted of the charges against them by giving them the benefit of doubt.

7. I am told that vide order dated 24.11.2020, the Hon'ble Supreme Court has dismissed the appeal filed by the National Accountability Bureau against the said judgment dated 07.08.2019 passed by the Hon'ble High Court of Sindh.

8. Vide letter dated 09.08.2019, the petitioner, Masood Alam Niazi requested the Managing Director, USCP to permit him to join his duties and to be given a charge commensurate with his seniority and experience. It is an admitted position that USCP did not permit the petitioner to join his duties.

9. On 05.09.2019, the petitioner, Masood Alam Niazi submitted an application before the Secretary, Ministry of Industries and Production requesting him to advice the Managing Director, USCP to permit the petitioner to join his duties and to assign him a portfolio. Vide letter dated 17.12.2019, the Ministry of Industries and Production conveyed the decision of the Secretary of the said Ministry for the petitioner, Masood Alam Niazi to be reinstated in service with effect from 09.08.2019, and to treat the period between 11.10.2018 and 09.08.2019 as having been spent on leave. Despite the issuance of the said letter, USCP did not permit the said petitioner to join his duties.

UNCERTIFIED COPY

10. Similarly, the petitioner, Ziaullah Khan Warsi also attempted to join his duties but was not permitted to do so by USCP.

11. The refusal on the part of the USCP to permit the petitioners to join their duties and/or for the office orders for their dismissal to be recalled caused the petitioners to file these writ petitions before this Court.

12. Learned counsel for the petitioners, after narrating the facts leading to the filing of the writ petitions, submitted that at no material stage was any departmental inquiry conducted against them in accordance with the procedure prescribed in Chapter-V of the Utility Stores Corporation of Pakistan (Pvt.) Ltd. Service Rules, 1981; that the sole ground on which the petitioners were dismissed from service was their conviction by the learned Accountability Court; that after the petitioners' appeal was allowed by the Hon'ble High Court of Sindh and their convictions were set-aside, it was incumbent on the USCP to have permitted the petitioners to join their duties and for their dismissal orders to be recalled; that USCP has also ignored the advice of the Ministry of Industries and Production to reinstate the petitioner, Masood Alam Niazi in service; and that since the petitioners have been acquitted from all the charges against them, the inaction on the part of the USCP to permit them to join their duties is unlawful and unconstitutional. Learned counsel for the petitioners prayed for the writ petitions to be allowed in terms of the relief sought therein.

13. On the other hand, learned counsel for USCP raised an objection to the maintainability of the writ petitions on the ground that the terms and conditions of the petitioners' service in USCP were not governed by any statutory rules. He further submitted that merely because the petitioners' conviction had been set-aside by the Hon'ble High Court of Sindh, their dismissal orders could not be recalled and they could not be permitted to join their duties; that a fact-finding inquiry report regarding loss of Rs.19.237 million on account of loading charges of sugar purchased during 2006-2008 from the Trading Corporation of

UNCERTIFIED COPY

Pakistan, Karachi had been submitted by the two-member inquiry committee to the General Manager, USCP on 14.04.2021; that in the said report, it had been found that the petitioners had violated the Standard Operating Procedures and had committed unlawful activities; that during the pendency of the writ petitions, the Board of Directors of USCP after afforded an opportunity of a hearing to the petitioners and going through the inquiry report in the matter decided that they could not be reinstated in service; that vide letter dated 25.08.2021, the petitioners were informed by the USCP that they could not be reinstated in service; and that the said letter dated 25.08.2021 has not been assailed by the petitioners before any forum. Learned counsel for USCP prayed for the writ petitions to be dismissed.

14. In rebuttal, learned counsel for the petitioners submitted that the petitioners were neither alleging the violation nor seeking the enforcement of any non-statutory service rule against USCP; that the petitioners were not associated in the fact-finding inquiry conducted by the two-member inquiry committee; and that the petitioners are not even seeking for an inquiry to be conducted against them in accordance with Chapter-V of the Utility Stores Corporation of Pakistan (Pvt.) Ltd. Service Rules, 1981. In making their submissions, learned counsel for the petitioners placed reliance on the judgments reported as *2017 PLC (C.S.) 973, 2013 SCMR 1159, 2010 PLC (C.S.) 266* and *2007 PLC (C.S.) 1046*.

15. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the writ petitions have been set out in sufficient detail in paragraphs 2 to 11 above and need not be recapitulated.

16. The need for delving into the merits of the case would arise only after it is determined that the writ petitions are maintainable.

17. Recently, the Hon'ble High Court of Balochistan has vide judgment dated 25.10.2021 passed in constitution petition No.249/2015 titled "Muhammad Gul Vs. the Secretary, Ministry of Industries / Chairman, Utility Stores Corporation, etc." held that a

UNCERTIFIED COPY

writ petition filed by an employee of USCP agitating the grievance with respect to his terms and conditions of service was maintainable. The Hon'ble High Court of Balochistan had allowed the said writ petition and issued directions for the reinstatement of the petitioner in service with all back benefits. After making reference to the definition of a “Public Sector Company” in the Public Sector Companies (Corporate Governance) Rules, 2013, and observing that the Government of Pakistan held 100% shares in USCP and its Board of Directors were appointed by the Ministry of Industries and Production, the Hon'ble High Court of Balochistan spurned the objection to the maintainability of the said writ petition in the following terms:-

> *“30. In view of all above, it is concluded that USC is a State-Owned Company and same is amenable to constitution jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 (hereinafter “the Constitution”). Reference in this regard is made to the case of Imran Hussain v. Water & Power Development, 2011 PLC (CS) 116. Reliance in this regard is placed on Human Rights case No.3654/2018, 2019 SCMR 01, Federal Government Employees Housing Foundation v. Muhammad Akram Alizai, PLD 2002 SC 1079 and Munawar Hussain Bukhari v. Appellate Authority, 2016 SCMR 1087.*
>
> *31. For the above reasons, the objection raised by respondent No.2 about maintainability of the instant constitution petition is overruled.”*

18. Given the fact that the entire shareholding of USCP vests in the Government and that its Managing Director and Members of the Board of Directors are appointed by the Government would make USCP amenable to the Constitutional jurisdiction of this Court. However, where an employee of USCP agitates in a constitutional petition a grievance pertaining to the terms and conditions of his service which are not governed by statutory service rules, such petition would not be maintainable since the relationship of such employee with the USCP would be governed by the principle of 'master and servant.' The Utility Stores Corporation of Pakistan (Pvt.) Ltd. Service Rules, 1981 have not been made by the Federal Government but by the Board of Directors of USCP pursuant to the provisions of its Memorandum and Articles of Association. The said rules have not been made in exercise of any statutory powers. Chapter-V titled “Efficiency and

UNCERTIFIED COPY

Discipline Rules" of the said Rules provide an elaborate mechanism for conducting disciplinary proceedings against employees of USCP. The petitioners were not dismissed from service in accordance with or by resorting to the procedure prescribed in the said Rules but solely due to their conviction by the learned Accountability Court. The refusal by the USCP to permit the petitioners to join their duties after their conviction had been set-aside and they were acquitted by the Hon'ble High Court of Sindh has caused a dispute to arise between the USCP and the petitioners *qua* their service. Since these rules are non-statutory in nature, it is my view that the relationship between USCP and the petitioners is governed by the principle of 'master and servant' and therefore, both the petitions filed by the petitioners are liable to be dismissed as not maintainable. In holding so, reliance is placed on the law laid down by the Hon'ble Supreme Court in the case of Pakistan International Airline Corporation Vs. Tanweer-ur-Rehman (PLD 2010 SC 676), wherein it was held as follows:-

> *"19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction."*

19. The said ratio was reiterated by the Hon'ble Supreme Court in the case of Pakistan Airline Pilots Association Vs. Pakistan International Airline (2019 SCMR 287), wherein it was held as follows:-

> *"6. We may also state that where conditions of service of employees are not regulated by a statutory provision then such employees are to be governed by the principle of "Master and Servant". As the terms and conditions of employment in PIAC are admittedly not governed by any statutory provision and the employees are amenable to the Rule of "Master and Servant", Article 199 of the Constitution of Pakistan 1973 cannot be invoked."*

UNCERTIFIED COPY

20. The distinction in a writ petition filed by a third party against a Public Sector Corporation and a writ petition filed by an employee of such a Corporation with respect to a matter pertaining the terms and conditions of his service has been well-explained by the Hon'ble Lahore High Court in the recent judgment in the case of Khalid Zamir Rasid Vs. Province of the Punjab (2021 PLC (C.S.) 994) in the following terms:-

> *"11. Finding an opportunity, we may clarify here that maintainability of Writ Petition against a chartered university by a member of the society is entirely distinct as compared to a person who assails any order passed by university authorities qua terms and conditions of his service. In both these situations, entirely different tests are to be applied inasmuch as in the first category it is to be seen as to whether the university is performing functions in connection with affairs of the State or not and in the subsequent category maintainability of a Constitutional Petition is to be determined in relation to nature of service rules/regulations governing terms and conditions of service of aggrieved employee of the University. Though, learned counsel representing the petitioner addressed the Court at certain length but failed to refer to any statutory rules or regulations governing the terms and conditions of service justifying interference by this Court in exercise of its Constitutional jurisdiction."*

21. This Court vide order dated 20.09.2021 passed in writ petition No.3293/2021 titled "Noor Ullah Saeed Vs. Utility Stores Corporation of Pakistan (Pvt.) Ltd." held that a writ petition filed by an employee of USCP against the USCP was not maintainable since the service rules of USCP were non-statutory and that the relationship of the petitioner with the respondent in the said case was governed by the principle of 'master and servant.' Furthermore, this Court vide judgment dated 18.11.2014 passed in writ petition No.1986/2009 held as follows:-

> *"5. It is an admitted fact that the respondent Corporation is a juristic person incorporated under the provisions of the Companies Ordinance, 1984 and therefore, its Regulations are non-statutory. It is a settled law by now, inter alia, as expounded by the august Supreme Court of Pakistan in the cases of Muhammad Mubeen-Us-Salam and others Versus Federation of Pakistan through Secretary, Ministry of Defence and others [PLD 2006 Supreme Court 602] and Muhammad Idrees Versus Agricultural Development Bank of Pakistan and others [PLD 2007 Supreme Court 68] that where the regulations are non-statutory the relationship between the employer and the employees is that of Master and Servant. Undoubtedly, the jurisdiction of this Court under Article 199 of the Constitution can neither be invoked nor*

extended when the terms and conditions of the employees, whose Service Regulations or Rules are non-statutory, are involved."

22. Since I have already held that the writ petitions are not maintainable, it is not necessary to give any finding on the legality of the decision taken by the Board of Directors of USCP not to reinstate the petitioners in service lest it may prejudice the case of either party before the appropriate forum.

23. In view of the above, both the petitions are dismissed as not maintainable.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 06/12/2021

*Sultan**

(JUDGE)

APPROVED FOR REPORTING

UNCERTIFIED COPY