JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1972 of 2021
Ch. Muhammad Yousaf
Versus
Federation of Pakistan and others

Date of Hearing:	30.03.2022
Petitioner by:	Petitioner in-person
Respondents by:	Mr. Ijaz Mahmood Chaudhary, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Ch. Muhammad Yousaf, seeks a direction to Overseas Pakistanis Foundation (**"O.P.F."**) to allot him a plot, refund his social security and to pay him lump-sum pension. The petitioner further seeks a direction for the initiation of disciplinary and criminal proceedings against Mr. Amer Sheikh, Managing Director, O.P.F. and other officials for causing delay in settlement of his claim.

2. The brief facts of the case are that the petitioner remained employed in Libya from where he returned to Pakistan in the year 1984. The petitioner claims that at the time of his return to Pakistan, he was not paid his terminal benefits *i.e.,* Social Security Fund and lump-sum pension which were payable by the Libyan Social Security Department under the laws of the said country. According to the petitioner, under a Social Security agreement between Libya and Pakistan, Pak-Libyan Joint Technical Committee on Social Security held meetings to resolve the claims of social security payment raised by the Pakistani workers like the petitioner. The minutes of the said Committee's meetings dated 20 to 23.08.1999, annexed with the petition, show that the Libyan government had informed their Pakistani counterparts that under Libyan Social Security laws only those workers who had been employed in Libya for minimum five years were eligible for payment of the social security. According to the petitioner, he had fulfilled the condition of the required length of service and his name was mentioned in the list of eligible employees provided by the Libyan authorities but the said list was changed by the Pakistani Officials due to which the said payment of social security has not be made to him, so far.

UNCERTIFIED COPY

3. The second limb of the petitioner's claim is with regard to allotment of a residential plot in a Housing Scheme floated by O.P.F. He claims that in response to O.P.F.'s invitation for participation in the Housing Scheme, he had made payment of Rs.550/- from Tripoli, Libya on 13.01.1982 and Rs.20,000/- at Islamabad on 10.03.1990. According to the petitioner, he was allotted plot No.347-B at O.P.F.'s Chattar Housing Scheme but the said Scheme was abandoned by O.P.F. Later on, vide O.P.F.'s letter dated 08.11.1994, he was offered a plot in another Scheme. In response to O.P.F.'s said letter dated 08.11.1994, the petitioner vide letter dated 11.11.1994 had requested that a plot should be allotted to him in lieu of the plot already allotted to him for which he had made total payment of Rs.20,550/-.

4. Since the petitioner's grievance could not be redressed, he filed a complaint before Wafaqi Mohtasib. Order dated 13.10.2005 passed by the Wafaqi Mohtasib (annexed at page 46 of the petition) shows that O.P.F. took stance before the Wafaqi Mohtasib was that amount deposited by the petitioner for the allotment of the plot was refunded to him, and that it was agreed that if the said amount is proved to have been credited to the petitioner's account, O.P.F. would be absolved, and if not, the petitioner would be accommodated in another housing scheme of O.P.F. in accordance with the policy of that scheme and particularly the schedule of payment. Another letter dated 08.12.2015 issued by the Director General (Implementation), Wafaqi Mohtasib (annexed at page 47 of the petition) shows that the Wafaqi Mohtasib Secretariat took strict view regarding non-implementation of its earlier order dated 30.09.2005 and termed the same as criminal negligence on the part of O.P.F.'s officials. In the said letter dated 08.12.2015, it was mentioned *inter alia* that the refund transaction into the petitioner's account was found non-existent, consequently the O.P.F. was directed to accommodate the petitioner in O.P.F.'s housing scheme in Sindh province.

5. The respondent O.P.F. assailed Wafaqi Mohtasib's said letter dated 08.12.2015 through a representation filed before the President. The President vide order dated 07.10.2016 accepted the O.P.F's representation and observed that there was a factual controversy between the parties with regard to refund of Rs.20,000/-. The President had vide the said order dated 07.10.2016 also directed the Managing

UNCERTIFIED COPY

Director O.P.F. to hold an enquiry to ascertain as to why prompt action was not taken by the officials of the O.P.F. in the year 2005 when recommendations were made by the Wafaqi Mohtasib.

6. The petitioner thereafter filed writ petition No.2904/2018 before this Court for the same relief as has been sought in the present writ petition. During the proceedings in the said writ petition No. 2904/2018, on 28.11.2019 Mr. Amer Sheikh, the Managing Director O.P.F. appeared before this Court and gave an assurance to examine and decide the grievance of the petitioner in accordance with law. On this assurance and with the consent of the petitioner, the said writ petition No.2904/2018 was disposed of directing the O.P.F. to submit a compliance report.

7. Thereafter vide order dated 20.01.2020, the Managing Director, O.P.F. declined both the claims of the petitioner *i.e.,* for allotment of plot and for payment of social security. The petitioner moved a contempt petition bearing criminal original petition No.113/2020 against the Managing Director O.P.F. which was dismissed vide order dated 16.03.2021 and his intra Court appeal No.189/2021 was also dismissed vide order dated 28.04.2021 passed by learned Division Bench of this Court. In the said order dated 28.04.2021 while dismissing the petitioner's Intra Court appeal the learned Division Bench observed that: *"If the order passed by the M.D., O.P.F. was not to the appellant's satisfaction, its remedy was not to file a contempt petition against the M.D., O.P.F. but to assail the order dated 20.01.2020 before the appropriate forum."* The petitioner has hence filed the instant petition.

8. The petitioner appeared in-person and after narrating the facts leading to the filing of the instant petition, submitted that the order dated 20.01.2020 passed by the Managing Director O.P.F. is against the facts and law; that the petitioner was never refunded the amount of Rs.20,000/-; that the petitioner served in Libya for more than six years therefore, he is eligible for social security payment by the Libyan government; that vide the said order dated 20.01.2020, the Managing Director O.P.F. attempted to shield the officials of O.P.F. from the consequences of their illegal actions and delaying tactics; that Mr. Amer Sheikh the incumbent Managing Director, O.P.F. remained posted as Community Welfare Attache in the Pakistan Mission at Libya

UNCERTIFIED COPY

and had played role in changing the lists of Pakistani workers entitled for payment of social security and lump sum pension; that vide the Order dated 20.01.2020 for declining the petitioner's claim for social security the Managing Director O.P.F. has relied on the letter dated 12.04.2000 issued by Pakistan Embassy at Libya, and had held that the petitioner had only served for three years at Libya; that the Managing Director O.P.F. has ignored the subsequent letter dated 30.05.2016 issued by the Embassy whereby the petitioner was found to have served for about seven years from 1978 to 1984; that O.P.F. retains funds of around US Dollars 24,976.68 which were received from Libyan authorities on account of social security payment for the Pakistani workers; that another amount of US Dollars 8,675.24 was received by O.P.F. on account of social security but the same has not been disbursed because the list of entitled employees was not received from Pakistan Mission at Libya; that the said state of affairs was eloquently explained in the report dated 13.04.2017 prepared by Mr. Suhail Aamir, Secretary, Ministry of Overseas Pakistanis; and that the officials of the O.P.F. want to usurp the rights of the petitioner and other overseas worker. The petitioner prayed for the writ petition to be allowed in terms of the relief prayed therein.

9. Conversely, learned counsel for O.P.F. raised preliminary objection with regard to the maintainability of the petition by submitting that writ petition is not maintainable against O.P.F. which is a company established under the provisions of the erstwhile Companies Ordinance, 1984 and was functioning on "no profit no loss basis"; that O.P.F. is neither a statutory body nor performing affairs in connection with the affairs of the Federation; that the petition is also hit by the principle of *res judicata* as previously the petitioner had filed W.P.No. 2904/2018 for the same relief which was disposed of vide order dated 28.11.2019 passed by this Court; that the M.D., O.P.F. had issued a detailed order dated 20.01.2020 on the grievances of the petitioner; that in the said order detailed reasons have been given for declining the claim of the petitioner; and that the petitioner has invoked the jurisdiction of this Court without any justifiable cause. In support of his contentions, learned counsel relied on judgment dated 24.11.2016 passed by learned Division Bench of this Court in I.C.A.No.68 of 2011. Learned counsel for O.P.F. prayed for the writ petition to be dismissed.

UNCERTIFIED COPY

10. I have heard the contentions of the learned counsel for the parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 7 above and need not be recapitulated.

11. It first needs to be determined whether this Court can issue a writ of *mandamus* directing O.P.F. to grant the relief as prayed for by the petitioner. O.P.F. is undisputedly an organization registered under the Companies Ordinance, 1984. In order for such an organization to fall within the purview of 'person' as defined under Article 199(5) of the Constitution, either the said organization should have been entrusted with the functions of the State involving some exercise of sovereign or public power or its control should vest in a substantial manner in the hands of the Government receiving bulk of funds. While determining the question of maintainability of a writ petition against an organization, it is to be borne in mind that there is a distinction between a writ petition filed by an employee of such an organization for enforcement of his terms and conditions of service and on the other hand a writ petition wherein the petitioner is seeking from the organization to perform its public duty. Where an employee is claiming enforcement of employment rights, the state function test is not relevant instead the test to be applied is as to whether the organization has got statutory rules of service because in absence of the statutory rules of service, the terms and conditions cannot be enforced in writ jurisdiction. The case law referred by the learned counsel for O.P.F. pertains to the category of cases wherein the employees were claiming to enforce their terms and conditions of service governed by non-statutory rules of O.P.F. therefore, the said cases are distinguishable.

12. In the case of Salah-ud-Din Vs. Frontier Sugar Mills & Distillery Limited (PLD 1975 SC 244), the Hon'ble Supreme Court laid down the conditions which if fulfilled then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province. The said conditions are that if an organization is entrusted with functions of the state or its control substantially vests in the hands of government and it receives bulk of funds from the state then it's a person performing functions in connection with the affairs of the

UNCERTIFIED COPY

Federation. In the said judgment, the Hon'ble Supreme Court held as follows:-

> *"The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Government: and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not."*

13. In the Constitution, Part-III is as titled as 'Federation of Pakistan.' In the said Part-III of the Constitution, Article 90(1) prescribes that the executive authority of the Federation is exercised by the Federal Government, consisting of the Prime Minister and the Federal Ministers, which shall act through the Prime Minister, who shall be the chief executive of the Federation. Now, the business of Federal Government is conducted in the manner given in the Rules of Business, 1973 framed by the Federal Government under Article 99(3) of the Constitution. The business among different Divisions of Federal Government is distributed Under Schedule-II of the said Rules of Business, 1973 (**"the 1973 Rules"**). Now in the Schedule-II of the 1973 Rules, through the clause 27(8), administrative control of O.P.F. is vested with the Overseas Pakistanis and Human Resources Development Division. This goes on to show that the O.P.F. is substantially under the control of the Federal Government. Similarly, O.P.F. was constituted pursuant to the provisions of the Emigration Rules, 1979 which have been framed by the Federal Government under Section 16 of the Emigration Ordinance, 1979. Additionally, the Articles and Memorandum of Association of the O.P.F. suggest its basic function is to advance social welfare of Pakistanis working overseas. Under its Articles and Memorandum, the O.P.F. is also authorized to collect funds from the emigrant Pakistanis under the Emigration Ordinance, 1979. The Governors of O.P.F. are appointed by the Federal Government. All these characteristics and functions of O.P.F. show that substantial manner of control is exercised over it by the Federal Government and the O.P.F. is not only controlled by the Federal Government but also entrusted with sovereign functions bringing the O.P.F. within the ambit of the term 'person' as defined under Article 199(5) of the Constitution as follows:-

UNCERTIFIED COPY

> ***(5)*** *In this Article, unless the context otherwise requires,— "person" includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan*; ....."

14. In the case of Huffaz Seamless Pipe Industries Limited Vs. Sui Northern Gas Pipelines Limited (1998 CLC 1890), the Division Bench of the Hon'ble Lahore High Court, after ascertaining that the majority shareholding in the respondent / company vested in the Federal Government which has dominant control over it, held as follows:-

> ***"Although this Company is registered under the Companies Ordinance, 1984 yet it carries gases from one place to another and makes it available to the citizens of this State. Seen from the above angle, we are clear in our mind that this Company possesses all the attributes of State instrumentality / agency of the State and so is subject to Constitutional limitations as other functionaries of Federal and Provincial Government, while performing their functions in connection with affairs of Federation or a Province. We are, therefore, in complete agreement with the findings of the learned Single Judge that this company is subject to judicial review under Article 199 of the Constitution."***

15. The said judgment was upheld by the Hon'ble Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Limited Vs. Sui Northern Gas Pipe Lines (2004 SCMR 1274). Reference in this regard may also be made to the case of Kamran Ahmad Vs. Water and Power Development Authority (2014 PLC (C.S.) 332). In the latter case, it was held as follows:-

> ***"16. Though GEPCO is not a statutory authority as it is not established under a statute but incorporated as a company under the Companies Ordinance 1984, however, when applied the aforesaid "functional test", it squarely applies to GEPCO. It is an entity wholly owned and controlled by the Government and for all intents and purposes, it follows the policies laid down by the Government of Pakistan regarding supply of electricity under its controlled area. Indeed it is a "public utility company" providing basic amenities to the public at large. Therefore, I have no hesitation to hold that GEPCO is a body corporate performing function in connection with the affairs of the State and therefore, amenable to the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973."***

16. For these reasons, it is safe to hold that O.P.F is a 'person' performing functions in connection with the affairs of the Federation to whom a writ can be issued by this Court. It may be clarified that this view does not hold good for disputes between O.P.F. and its employees since it does not have any statutory service rules.

UNCERTIFIED COPY

17. On the merits, the petitioner's grievance is essentially founded in rejection of his claims vide order dated 20.01.2020 issued by Managing Director, O.P.F. The Managing Director, O.P.F. had issued the said order dated 20.01.2020 after this Court vide order dated 28.11.2019 passed in writ petition No.2904/2018 had directed the latter to submit a compliance report after deciding the petitioner's grievance in accordance with the law. Perusal of the Managing Director's order dated 20.01.2020 shows that he declined the petitioner's request for the allotment of plot on the ground that the amount of Rs.20,000/- deposited by the petitioner was refunded to him vide O.P.F. payment voucher No.89, dated 24.07.1990. Although the petitioner denies to have received the said amount but after the relevant bank had expressed its inability to verify the transaction after a lapse of more than ten years, the determination of the authenticity of the rival claims requires factual inquiry which cannot be undertaken in the Constitutional jurisdiction. However, beside the amount of Rs.20,000/, the petitioner had also deposited Rs.550/- on 13.01.1982. The said payment was made as a membership registration fee. The said deposit has not been denied by O.P.F. Despite this it has not been explained in the Managing Director's order dated 20.01.2020 as to why the petitioner was not entitled to allotment of a plot in a subsequent scheme of O.P.F. especially when his membership remained intact.

18. Additionally, the Managing Director, O.P.F. vide order dated 20.01.2020 while dealing with the petitioner's claim for social security relied on letter dated 12.04.2000 issued by the Pakistan Embassy, Tripoli, Libya. Vide the said order dated 20.01.2020, the petitioner was held ineligible for payment of social security due to having served for three years, hence not meeting the threshold requirement of minimum five years of service. The petitioner has placed on record the decision dated 13.04.2017 passed by the Secretary, Ministry of Pakistanis and Human Resource Development Division. In the said decision dated 13.04.2017 it is mentioned, against paragraph-12, that the Pakistan Embassy at Libya had subsequently issued letter dated 30.05.2016 and informed that *"as per record available in the mission, Ch. M. Yousaf worked in Libya from 1978 to 1984."* On the benchmark of said period, the petitioner apparently having served in Libya for more than five years becomes eligible for the payment of social security. This aspect

UNCERTIFIED COPY

of the matter has not been touched by the Managing Director, O.P.F. in its order dated 20.01.2020.

19. For the above reasons, the decision of the Managing Director, O.P.F. suffers from material error and is not in accordance with the facts and law. Therefore, the said order dated 20.01.2020 is set-aside. The Managing Director, O.P.F. is directed to decide afresh:-

(i) The petitioner's entitlement and rights arising from the payment of the membership fee in the year 1982; and

(ii) The petitioner's entitlement with regard to payment of social security after verification of his service tenure vide letter dated 30.05.2016 issued by the Pakistan Embassy at Libya.

20. It may be clarified that the petitioner's claim with regard to non-refund of Rs.20,000/- paid by him for allotment of plot requires factual inquiry for which he may avail the remedy before the appropriate forum.

21. The petition is disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN OPEN COURT ON 29.06.2022.

JUDGE

Sultan*

UNCERTIFIED COPY