ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

I.C.A. No.24 of 2022

Syed Jamal Nasir

Versus

Pak Datacom Limited through its Chief Executive Officer and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.01.2022	Mr. Asad Iqbal Siddiqui, Advocate for the appellants.

SARDAR EJAZ ISHAQ KHAN, J: For the detailed reasons recorded in our even dated order passed in ICA no. 23/2022, instant ICA is also **dismissed in limine**.

(AAMER FAROOQ)
JUDGE

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Imran

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ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

I.C.A. No.23 of 2022

Syed Hussain Raza

Versus

Pak Datacom Limited through its Chief Executive Officer and others

I.C.A. No.24 of 2022

Syed Jamal Nasir

Versus

Pak Datacom Limited through its Chief Executive Officer and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.01.2022	Mr. Asad Iqbal Siddiqui, Advocate for the appellants.

SARDAR EJAZ ISHAQ KHAN, J: By this consolidated order, we dispose of ICAs 23/2022 and 24/2022 as they raise common questions of law and arise out of identical orders, whereby the two writ petitions were dismissed for the reason that the primary prayer therein for mandamus for the appellants to continue in their employment with respondent no. 1 company, Pak Datacom Limited, could not be granted because of the absence of any statutory rules governing the employment with Pak Datacom.

2 The learned counsel for the appellants laid emphasis on the maintainability of the petition claiming that Pak Datacom is owned and controlled by the Government, as 5 out of 8 directors on the board of directors of Pak Datacom are appointed by the Government and that 54% shareholding of Pak Datacom is held by Telecom Foundation, which is an attached wing of the Ministry of Information Technology and Telecommunication, and that it is a Public Sector Company as defined in the Companies Act, 2017. But the memos of the writ petitions also state that Pak Datacom is a public limited company listed on the stock exchange and "…*is now governed under the prevailing Companies Act, 2017*…". Without deciding whether the indirect ownership through Telecom

Foundation actually amounts to ownership and control by the Government, we proceed on the assumption that it does.

3 The petitions and the ICAs conflate the maintainability of a petition in general against a Government owned company with the maintainability of a petition by an employee seeking a writ of mandamus for continuation in employment without the backing of any statutory rules governing the employment. The former is a general rule, while the latter is an exception to the rule in matters of employment. The exception replaces the general rule when the exception is attracted: *generalia specialibus non derogant*. Other similar exceptions exist, for example, the existence of a factual controversy not fit for decision in a writ petition. The amenability of a person to writ jurisdiction does not *ipso facto* lead to the conclusion that the petition lies in all circumstances. While this point alone should have sufficed to dispose of these appeals, we heard the appellants' counsel on his further arguments on statutory rules and the status of the appellants as permanent employees.

4 The memos of appeals refer to the Service Manual of Pak Datacom which, per the appellants' counsel, is applicable to permanent employees of Pak Datacom and which he says should be accorded the status of statutory rules because the Federal Government exercises control over Pak Datacom. The appellants' counsel relied on (i) *Shafiq Ahmed Khan versus NESCOM through Chairman, Islamabad PLD 2016 Supreme Court 377*, (ii) *Muhammad Zaman and others versus Government of Pakistan through Secretary, Finance Division (Regulations Wing), Islamabad, 2017 SCMR 571*, and (iii) *Muhammad Ashraf Tiwana versus Pakistan, 2013 SCMR 836*, to assert that the Service Manual be treated at par with statutory rules.

5 In *Shafiq Ahmed*, the rules existed; they were made under the relevant sections of the National Command Authority Act, 2010. The Supreme Court went into deep analysis of the statutory provisions relating to employees and rule-making; the rules in question there were made to carry out the objectives of the Act. In other words, not only the

respondent was a statutory body, but the rules in question were also made in exercise of powers conferred by statute. In *Muhammad Zaman*, the regulations in question were framed by the State Bank of Pakistan under powers conferred by the State Bank of Pakistan Act, 1956 (as amended). Again, not only the respondent there was a statutory body but the regulations in question were made under powers conferred by statute. In *Muhammad Ashraf Tiwana*, not only the service rules made under the parent legislation existed, there was also a challenge to the *vires* of the service rules.

6 To argue from these three cases to claim Pak Datacom's Service Manual at par with statutory rules is *non sequitur*. Pak Datacom is a company, and we have not been shown how the Service Manual owes its genesis to any statutory powers. The ownership and control of Pak Datacom by the Federal Government does not *ipso facto* entail the conclusion that the Service Manual was approved, or was required to be approved, by the Federal Government, nor, as the law stands settled, would such approval (or the lack thereof) matter if the Service Manual did not come into existence as sub-delegated legislation under a statute.

7 The appellants' counsel has also alleged *mala fide*, claiming that the letters annexed to the writ petitions alluding to the appellants' employment on contract basis were meant to deny the status of permanent employees to the appellants. No letter of initial employment was however annexed or produced before the Court. Instead, reliance was placed on the company's vehicles policy for permanent senior posts attached to the minutes of board meeting dated 24.06.2019, which also have the appellants' names/designations, to assert that the appellants' posts were permanent. However the same board minutes note at para 8 that:

> The Board expressed its displeasure that despite the employment contract of some employees of the company had not extended but salary is being paid to them. The Board directed to management to start the process of renewal of agreements prior to 3 months before expiry of the agreement. It was further directed by the Board that in future salary shall not be paid to relevant employee in case of expiry of his agreement.

> The Board further extended agreement of the employment of chief operating officer Syed Jamal Nasser till December 2019. [sic!]
>
> (Emphasis supplied)

8 To assert a permanent employee status based on a vehicle policy document when the board minutes to which the vehicle policy document is attached expressly state the employment to be on contract is outright untenable, as it calls for giving precedence to an incidental document relating to the perks of the employees over the minutes of the board meeting. This becomes all the more significant in view of the memos of the writ petitions which state that "*the Petitioner's employment is regulated through the Board of Respondent No.1. As such the present level of employment of the Petitioner being a Senior Executive falls under the domain of the Board of Directors of Respondent no. 1*."

9 The case law on the principle of a writ being not maintainable in case of non-statutory rules is set out in the order impugned before us, which we need not repeat. Resultantly, these ICAs are **dismissed in limine**.

(AAMER FAROOQ)
JUDGE

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Imran

Approved for reporting.