JUDGMENTSHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. No. 1883 of 2012

Muhammad Saeed

Versus

Pakistan Telecommunication Company Limited & another.

Petitioner by : Advocate.	Mr. Muhammad Asif Gujjar,
Respondents by:	Mr. Habib Ahmad Bhatti, Advocate with Raheel Zafar, Senior Manager (Legal) PTCL
Date of hearing:	10.02.2022

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ARBAB MUHAMMAD TAHIR, J: The instant writ petition is arising out of order dated 24.02.2010,passed by the Pakistan Telecommunication Company Limited-PTCL ('**respondent-department'**) whereby petitioner was removed from service on account of unauthorized absence from duty w.e.f. 08.07.2010.

2- Precisely, the petitioner joined the erstwhile T&T department, subsequently converted into PTCL, as lineman on 30.06.1990. According to respondent-department, petitionerremained absent and consequently was removed from service vide order dated 24.02.2010, being impugned through the instant writ petition.

3- The learned counsel argued that being former employee of T&T, petitioner is entitled to protection of his terms and conditions of service; that he was condemned unheard; no opportunity of defence was afforded to him; that he was thrown out of service without realizing that he had rendered more than twenty years' service with the respondent department without any dint of stigma, therefore, impugned action being unilateral, in violation of principles of natural

justice and against the rules on the subject, isliable to be set aside. Learned counsel placed reliance upon order dated *19.02.2016 passed by the Hon'ble Apex Court in Civil Review Petitions 247 to 249 of 2011 in C.As 239 to 241 of 2011, order dated 29.11.2016 passed in Civil Appeal No.230-L of 2015 and judgment dated 21.12.2017 passed in W.P. No.2985/2014, PLD 2011 SC 365, 2015 SCMR 795*.

4- On the other hand, learned counsel for the respondent-department objected upon the maintainability of the instant writ petition. On facts, it was asserted that the petitioner absented himself from the duty for quite long time and also admitted his misconduct during personal hearing, therefore, petition is liable to be dismissed. Reliance is placed upon *1998 SCMR 1890, 2021 SCMR 144, 2020 SCMR 1154 and judgment dated 02.11.2021 passed by this Court in ICA No.82/2020.*

5- Heard, record examined.

6- The objection on the maintainability of instant writ petition is twofold i.e. petition in terms of Article 199 of the Constitution is not maintainable against the respondent department and that the status of the petitioner is of a"*workman*" for which remedy lies under the provisions of the Industrial Relations Ordinance 1969 and the West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance 1969.

7- To give sense of protection to the employees of the erstwhile T&T, Section 9 (*since repealed*) as of the said Act, provides that "*all departmental employees shall, on the establishment of corporation, stand transfer to, and become employees of the Corporation, on the same terms and conditions*". Further, the legislature promulgated the Pakistan Telecommunication (Reorganization) Act, 1996, Section 35 whereof being relevant is produced hereunder:-

> "*35. Vesting of rights, property and liabilities of the Corporation.-*
>
> *(a) The federal government may, by orders, direct that all or any property, rights and liabilities to which the*

> *Corporation was entitled or subject to immediately before such orders, and identified therein, shall , on such terms and conditions as the Federal Government may determine, vest in –*
>
> *(b) The National Telecommunication Corporation;*
> *(c) The Authority;*
> *(d) The trust or;*
> *(e) The Board through the Federal Government becomes the property, rights and liabilities of the respective entity.*
>
> *(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."*

8- The services of the employees of erstwhile T&T are protected by the above legislation, whereas those employed by the Company or Corporation on contract basis, or work charge basis, whose terms and conditions of service were governed by the rules of the Company that are clearly non-statutory. Reliance is placed upon case of ***"Pakistan Telecommunication Company Limited v. Muhammad Samiullah"*** (**2021 SCMR 998**) (paragraph-8).

9- It has graciously been held in the case of ***PTCL supra*** in Paragraph-7 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 of the 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 and including pensionary benefits of the transferred employees. This matter has been elaborately addressed by this Court in the case of* ***Masood Ahmad Bhatti and others v. Federation of Pakistan and others (SCMR 2012 152) and "PTCL and others v. Masood Ahmad Bhatti and others (2016 SCMR 1362)."***

10- The ratio set in case of ***PTCL supra*** guides to hold that a distinction needs to be drawn between departmental employees of the T&T Department whose terms and conditions of services on their transfer to the Corporation and Company were protected by law and those who were employed by the Company on contract of work charge basis whose terms and conditions of service were governed by the rules of the Company that are clearly non-statutory.

11- In order to characterize status of the petitioner in the light of ratio set in the referred case law**(2021 SCMR 998)**, material placed on record by both the parties has been examined. It is admitted by the respondent-department in its parawise comments that petitioner was appointed as *Lineman* in June 1990. It is also an admitted position that once he was offered VSS Scheme vide letter dated 15.11.2007 (Annex-F). The contents of the said letter are self-explanatory and rendered the stance of the respondent-department superficial. Paragraph-2 of the said letter starts with *"under this program,* ***all regular status employees*** *under the age of 58 as of 15.11.2007 are eligible to participate in this PTCL Voluntary Separation Scheme.*"

12- In addition, the proforma qua verification of quality in service for the purpose of pension in respect of non-government servants/gazetted servants is also part of record as Annexure-D, issued by the Divisional Engineer Telegraph Jhelum. The entries in the said document pertaining to service history of the petitioner also clearly depict his status as of a regular employee of the erstwhile T&T. It is also an admitted position that at the time of passing of impugned order, petitioner had more than 20 years' service at his credit.

13- In view of above, it is clear that the case of the petitioner before this Court, as mentioned above, falls under the category of former employee of T&T Department whose terms and conditions of service on his transfer to the Corporation and Company were protected by law whereas in view of the law laid down by the Hon'ble Apex Court in the case of ***Masood Ahmad Bhatti*** (**2016 SCMR 1362)** those

employees whose services stands transferred from the erstwhile T&T to the Pakistan Telecommunication Corporation Limited, violation of any term or condition of services of such employees would thus be amenable to the Constitutional jurisdiction of High Court. The objections of the respondent-department with regard to status of the petitioner and maintainability of instant writ petition are accordingly repelled being misconceived and in contravention of its own stance as divulges through the VSS Offer Letter.

14- With regard to status of the respondent-department, being amenable to constitutional jurisdiction in terms of Article 199 of the Constitution due to having status of *"person"* within the meaning of Article 199(5) of the Constitution, the Hon'ble apex Court in paragraph No.12 of the above judgment rendered the objection as ***"misconceived".*** It has graciously been held that:-

> *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 v. Iqbal Nasir and others (PLD 2011 SC 132). The relevant part is reproduced below for ease of reference*:
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> *"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.*"

15- The right of access to justice is a well-recognized sacrosanct right under Article 4 of the Constitution. This right is equally found in the doctrine of *due process of law*. The right includes the right to be treated according to law, to have a fair and proper trial and an impartial Court or Tribunal. The term "*due process*" includes issuance of proper show-cause notice in respect of proceedings initiated against an employee that may affect his rights, and he shall also be given a reasonable opportunity to defend himself before imparting any pervasive order towards his rights guaranteed under any law of the land. Reliance is placed upon case titled ***"Aftab Shahban Mirani v. President of Pakistan and others"*** **(1998 SCMR 1863),** ***"Allah Rakhi v. Irshad Bibi"*** **(1994 SCMR 2244) and*****"Muhammad Nawaz v. Abdus Salam and another"*****(PLD 1997 SC 563).**

16- Every public functionary is under obligation to act within the four corners of mandate of the constitution and the law. The dispensation of the cases should be with due application of mind with cogent reasons within reasonable time. The departure from the course would definitely be considered offensive to section 24 of the General Clauses Act. Guidance is solicited from case of ***Ch. Zahur Illahi's case*** **(PLD 1975 SC 383),** ***M/S Airport Support Services' case*** **(1998 SCMR 2268)** and ***the Government of Pakistan through Director General, Ministry of Interior, Islamabad and others v. Farheen Rashid*** **(2009 PLC(CS) 996)**.

17- Furthermore, the principle contained in maxim "*audi alteram partem*" has to be applied in all judicial and non-judicial proceedings notwithstanding the fact that right of hearing has not been expressly provided by the statue governing the proceedings. Issuance of show cause notice to an employee before termination of his services is indispensible,reliance is placed upon case of ***Pakistan International Airlines Corporation v. Nasir Jamal Malik & others*****(2001 SCMR 934),*Mrs. Aneesa Rehman v. PIAC & others*****(1994 SCMR 2232)** and ***Abdul Hafeez Abbasi and others v. Managing Director Pakistan International Airlines Corporation, Karachi and others*** (**2002 SCMR 1034**).

18- Having examined the facts of the instant case on the touchstone of the principles on the subject, it is noticed that at the relevant time, petitioner had more than 20 years' service at his credit. The respondent-department has not placed on record a single document to show that whether any disciplinary proceedings under the relevant rules were initiated against him. It is not the case of department/respondent that they ever served the petitioner with a show cause notice, not a single document has been annexed with the written comments to show that the petitioner was proceeded against on account of unauthorized absence in due course of law in accordance with rules. The entire stress had been on the point that the petitioner admitted his willful absence at the time of personal hearing afforded to him pursuant to order dated 21.03.2018 passed in the instant writ petition. The treatment afforded to the petitioner for throwing him out of service after rendering 20 years' service as being regular employee, in no way can be termed justified and in accordance with the cannons of law. The treatment under due process is right of every employee while principle of fair trial is also a fundamental right in terms of Article 10-A of the Constitution.

19- To conclude, it is observed that in case of statutory employment within the public domain, procedural fairness and due process is indispensable. The removal of an employee without due

process also offends Article 9 of the Constitution because right to life includes right to a lawful and meaningful livelihood. In the case in hand, the petitioner hailing from a less privileged segment of the society with limited social and economic chances in life cannot be treated arbitrarily in derogation to the procedure and due process of law for throwing him out of service with a stroke of pen. It is the duty of public functionary to act reasonably, fairly, justly and in accordance with law. There is no room for arbitrary and unreason orders by a public functionary. The departure from the due process committed by the respondent-department in throwing out the petitioner is not only unjustified, in violation of rules on the subject but also offends the fundamental rights of due process and fair trial enshrined in the Constitution.

20- In view of above, impugned termination order dated 24.02.2010 is not legally sustainable. The same is accordingly set aside. Consequently, petitioner is reinstated in service without back benefits. The intervening period shall be treated as extra ordinary leave in due course.

21- The instant writ petition is **allowed** in the above terms.

(ARBAB MUHAMMAD TAHIR)
JUDGE

AR. Ansari*

Announced in open court on: .02.2022.

JUDGE

APPROVED FOR REPORTING