JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.349 of 2016
Oil and Gas Development Company Ltd.
Versus
Dr. Riaz Arshad, Deputy Chief Medical Officer OGDCL

Date of Hearing:	13.02.2023
Appellant by:	Mr. Mushtaq Hussain Bhatti, Advocate.
Respondent by:	Mr. Naeem Ahmad Khan, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal the appellant, Oil and Gas Development Company Ltd. (**"O.G.D.C.L."**), impugns the order dated 24.05.2016 passed by the learned Judge-in-Chambers, allowing writ petition No.3721/2010 filed by the respondent, Dr. Riaz Arshad. Through the said writ petition, the respondent had sought a declaration to the effect that he should be treated as having been absorbed in O.G.D.C.L. with effect from 11.11.2003 instead of 11.10.2006. Furthermore, the respondent had also sought the payment of increments that would have been allowed to him by his earlier parent department *i.e.,* the Health Department, Government of Sindh but could not have been granted due to his absorption in O.G.D.C.L. The respondent had also sought premature increments on absorption from a lower to a higher pay.

2. The record shows that during the year 2003, the respondent was serving as Medical Officer (BPS-17) in the Health Department, Government of Sindh. On 18.03.2003, he submitted an application to O.G.D.C.L. seeking his transfer on deputation in O.G.D.C.L. on humanitarian grounds. In the said application, it was mentioned that the respondent's wife was serving as Trained Graduate Teacher (BPS-16) in the Federal Directorate of Education, Islamabad, and that he wanted to live with his wife and children. Vide letter dated 10.04.2003, the Manager (Personnel), O.G.D.C.L. suggested to the Ministry of Petroleum and Natural Resources ("**Ministry of P&NR**") that the Health Department, Government of Sindh may be approached for the provision of the respondent's services on

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deputation basis in O.G.D.C.L. for a period of three years. Letter dated 21.04.2003 from the Ministry of P&NR shows that a decision had been taken to appoint the respondent as Medical Officer (BPS-17) in O.G.D.C.L. on deputation basis for a period of three years. The Health Department, Government of Sindh was requested to relieve the respondent from his duties so that he could join O.G.D.C.L. Vide notification dated 30.10.2003 issued by the Services, General Administration and Coordination Department (**"SGA&CD"**), Government of Sindh, the respondent's services were placed at the disposal of O.G.D.C.L. for a period of three years. On 06.11.2003, the respondent relinquished his charge as Medical Officer from the Health Department, Government of Sindh. On 11.11.2003, the respondent joined his duties as Medical Officer in O.G.D.C.L. Vide letter dated 19.11.2003 from O.G.D.C.L., the respondent was appointed as Medical Officer (EG-III) in the Medical Services Department of OGDCL for a period of three years on deputation basis. The terms and conditions on which the respondent was appointed in O.G.D.C.L. were sent by O.G.D.C.L. to the Ministry of P&NR on 02.01.2004. These terms and conditions had been accepted by the respondent on 13.09.2004. It may be mentioned that clause 13 of the terms and conditions provided that the respondent *"will have no right of induction during the period of deputation in OGDCL."*

3. Vide letter dated 29.12.2003, the respondent requested the Managing Director, O.G.D.C.L. to revise his pay scale from EG-III to EG-IV on the ground that officers are promoted to the next scale after every five years and that the officers on deputation are given a higher scale than the one in which they were serving in their parent departments. The respondent had also sought the grant of pay scale of EG-IV on the basis of his additional professional qualification of Post Graduate Diploma in Nutrition. Letter dated 19.01.2004 from the Ministry of P&NR shows that the respondent's request for the grant of pay scale of EG-IV had been recommended by Major Habibullah Warraich, Member National Assembly, Minister for P&NR. The position taken by O.G.D.C.L. in its letter dated 09.03.2004 was that the respondent could only be taken in O.G.D.C.L. in the Executive

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Group equivalent to Medical Officer *i.e.,* EG-III. In the said letter, it was also mentioned that the respondent had been appointed on deputation basis in O.G.D.C.L. after he was given sympathetic consideration due to his domestic circumstances and that if the terms and conditions of his appointment were acceptable to him, he could reconsider his appointment on deputation.

4. Office Memorandum (**"O.M."**) dated 21.09.2004 issued by O.G.D.C.L. shows that the respondent was taken on deputation in O.G.D.C.L. with effect from 11.11.2003 as Medical Officer (EG-III) for a period of three years. The said O.M. shows that the respondent shall stand repatriated to his parent department on the completion of his deputation period. It was also stated that he was entitled to deputation allowance plus other allowances admissible to EG-III officers.

5. The respondent had also made a request to the Prime Minister of Pakistan for being permanently absorbed in O.G.D.C.L. Although the respondent's absorption order is not on the record but O.G.D.C.L. in its written comments admitted that the respondent was absorbed in O.G.D.C.L. with effect from 11.10.2006 when his deputation period came to an end.

6. On 13.04.2007, the respondent submitted an application to the Chairman, O.G.D.C.L. seeking the grant of 35% increase in his basic pay and the grant of premature increment on the grounds that the terms and conditions of his deputation entitled him to the allowances admissible to EG-III officers and that if he had remained in his parent department, he would have been entitled to an annual increment on 01.12.2006. The respondent sent reminders to O.G.D.C.L. but to no avail. Subsequently, on 24.08.2010, he filed writ petition No.3721/2010 which was allowed by the learned Judge-in-Chambers vide order dated 24.05.2016 which has been assailed in the instant intra Court appeal.

7. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that the appellant, in its written comments, had taken a specific objection to the maintainability of the writ petition on the ground that the terms and conditions of the respondent's service in O.G.D.C.L. were

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governed by the Oil and Gas Development Company Limited Employees Service Rules, 2002 ("**the 2002 Rules**") which have been made by O.G.D.C.L.'s Board of Directors and therefore do not have a statutory status; that the learned Judge-in-Chambers, in the impugned order dated 24.05.2016 recorded the appellant's said objection but did not decide the same; that without deciding the said objection, the learned Judge-in-Chambers could not have delved into the merits of the case; that nevertheless the reliance made in the impugned order on the judgment dated 28.10.1998 passed by the Hon'ble Supreme Court in civil appeal Nos.946 to 948/1993 is unfounded since the same does not decide a dispute of employees whose terms and conditions of service are governed by non-statutory rules; that even otherwise it is well settled that the absorption of a deputationist takes effect from the date of the absorption and not from the date of the appointment of the deputationist in the borrowing department; that the respondent was appointed as a deputationist in O.G.D.C.L. on 11.11.2003 after he had made a request for appointment on deputation basis; that the respondent's absorption was made on 11.10.2006 when his deputation period came to an end; and that the respondent's absorption cannot be ante-dated nor can he be given the benefits of a permanent employee during the period when he served as a deputationist in O.G.D.C.L. Learned counsel for the appellant prayed for the appeal to be allowed and for writ petition No.3721/2010 filed by the respondent to be dismissed.

8. On the other hand, learned counsel for the respondent submitted that the instant appeal was not maintainable since Chapter-IX titled *"Conduct / Discipline and Efficiency Regulations"* of the Oil and Gas Development Corporation Service Regulations, 1994 (**"the 1994 Regulations"**) provides for the remedy of an appeal; that the impugned order does not suffer from any legal or jurisdictional infirmity; and that the respondent is at the verge of retirement and ought not to be deprived of the benefit under the impugned order dated 24.05.2016. Learned counsel for the respondent prayed for the appeal to be dismissed.

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9. 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 instant appeal have been set out in sufficient detail in paragraphs 2 to 6 above and need not be recapitulated.

10. It is not disputed that in the year 2003, the respondent had made a request for being appointed on deputation basis in O.G.D.C.L. so as to enable him to live with his wife who was serving as a Trained Graduate Teacher at the Federal Directorate of Education, Islamabad. It is not disputed that he was appointed on deputation on 11.11.2003 and was absorbed in O.G.D.C.L. on 11.10.2006. The respondent wants his absorption to be given effect from the date when he was appointed on deputation basis in O.G.D.C.L. so that he may be granted benefits of a permanent employee of O.G.D.C.L. with effect from the date when he was appointed on deputation basis.

11. Indeed, O.G.D.C.L. in its written comments had raised an objection to the maintainability of the respondent's writ petition on the ground that the terms and conditions of his service were governed by the 2002 Rules which had been made by O.G.D.C.L.'s Board of Directors and therefore did not have a statutory status.

12. Oil and Gas Development Corporation (Reorganization) Ordinance, 2001 was promulgated on 05.07.2001. Section 1(3) of the said Ordinance provides that it shall be deemed to have taken effect on 23.10.1997. Section 3 of the said Ordinance provides that the Oil and Gas Development Corporation shall be deemed to have been converted into a company limited by shares with effect from the date of incorporation of the company with the Securities and Exchange Commission of Pakistan under the Companies Ordinance, 1984.

13. The respondent, through his writ petition, had raised a grievance pertaining to the terms and conditions of his service with O.G.D.C.L. / Company. Now the employees of O.G.D.C.L., who had been regularly employed prior to the promulgation of the Oil and Gas Development Corporation (Reorganization) Ordinance, 2001, were governed by the Oil and Gas Development Corporation Employees (Service) Regulations, 1994, and the terms and conditions of their

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service were protected under Section 5 of the said Ordinance. However, the employees of O.G.D.C.L. employed after the promulgation of the said Ordinance, or the making of the Oil and Gas Development Company Limited Employees Service Rules, 2002, their terms and conditions of service were not governed by statutory rules/regulations. The relationship of the latter category with their employer was that of master and servant. Such employees could not file a petition under Article 199 of the Constitution with respect to a matter concerning the terms and conditions of their service.

14. The mere fact that the respondent was employed in his parent department i.e. the Health Department, Government of Sindh in the year 1990 would not make him subject to the Oil and Gas Development Corporation Employees (Service) Regulations, 1994 as he was appointed on deputation after the date when the 2002 Rules came into force. The respondent was employed in O.G.D.C.L. as a deputationist on 11.11.2003 and was absorbed on 11.10.2006. Both these dates are after the conversion of Oil and Gas Development Corporation into a company limited by shares and after its incorporation under the erstwhile Companies Ordinance, 1984. Therefore, the terms and conditions of the respondent's service are not governed by any statutory rules/regulations. The terms and conditions of the respondent's service are governed by the 2002 Rules which do not have statutory force.

15. For the purposes of whether the respondent's terms and conditions are governed by the 2002 Rules he will be considered to have been appointed on permanent basis with effect from the date of his absorption *i.e.,* 11.10.2006. We say so on the basis of the law laid down in the cases of Chairman Federal Board of Revenue Vs. Iqbal Hussain Shaikh (2016 SCMR 773), Deedar Hussain Jakhrani Vs. Federation of Pakistan (2011 PLC (C.S.) 203), Hamid-ul-Hussain Vs. Federation of Pakistan (2006 SCMR 832), S.M. Farooq Vs. Muhammad Yar Khan (1999 SCMR 1039), Muhammad Arshad Sultan Vs. Prime Minister of Pakistan (PLD 1996 SC 771) and Munir Ahmad Shaikh Vs. Government of Sindh (PLD 1994 SC 899).

16. It is well settled that a writ petition is maintainable where the respondent / authority violated any provision of law or statutory

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rules. Employees who are governed by statutory rules can avail the remedy of filing a writ petition before the High Court. It is also well settled that the principle of 'master and servant' was applicable to the employees whose services were not governed by any statutory rules. Employee of a company, owned by the Government, in absence of violation of law or any statutory rule, could not press into service the Constitutional jurisdiction of the High Court in order to seek relief with respect to his employment. Reference in this regard may be made to the law laid down in the cases of Samiullah Narago Vs. Federation of Pakistan (2012 PLC (C.S.) 1205), Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2013 SC 132) and Pakistan International Airline Corporation Vs. Tanveer-ur-Rehman and others (PLD 2010 SC 676). In the latter case, it has been 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."***

17. Learned counsel for the respondent did not refer to any service rule / regulation (which had the force of law) applicable to the respondent, which had been violated by O.G.D.C.L. in not treating him as absorbed in O.G.D.C.L. with effect from the date when he was appointed on deputation. Since we cannot take a view different to the one taken by the Hon'ble Supreme Court in the abovementioned judgments, we hold that the writ petition filed by the respondent was not maintainable.

18. This Court in the judgment dated 30.06.2016 passed in writ petition No.1407/2015, titled Muhammad Azhar Khattak Vs. OGDCL etc. has held *inter alia* that employees appointed in the O.G.D.C.L. after the promulgation of the Oil and Gas Development Corporation (Reorganization) Ordinance, 2001 were not governed by statutory

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rules and regulations but by rules framed by the Board of Directors of O.G.D.C.L. which were non-statutory in nature. Furthermore, it was held that such employees could not file a writ petition with respect to a matter concerning the terms and conditions of their service.

19. As regards the objection taken by the learned counsel for the respondent to the maintainability of the instant appeal, we have held herein above that the respondent's terms and conditions of service in O.G.D.C.L. are not governed by the 1994 Regulations but the 2002 Rules, which have been made by O.G.D.C.L.'s Board of Directors and therefore do not have a statutory status.

20. Indeed an intra Court appeal is competent only in a case in which the statutory remedy of appeal, revision or review is not available at the time of the passing of the original order in the proceedings. Section 3(2) of the Law Reforms Ordinance, 1972, provides that an appeal shall lie to a Bench of two or more Judges of a High Court from and order made by a single Judge of that Court under clause (1) of Article 199 of the Constitution not being an order made under sub-paragraph (i) of the paragraph (b) of that clause. The proviso to Section 3(2) is reproduced herein below:-

> ***"Provided that an appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article [199] arises out of any proceedings in which the law applicable, provided for at least one appeal [or one revision or one review] to any Court, Tribunal or authority against the original order."***

21. Although we have not been able to find a provision in the 2002 Rules providing for a right of appeal to an employee of O.G.D.C.L. against the refusal to ante-date his absorption, assuming that the said Rules do provide a right of appeal, the vital question that needs to be answered is whether the said Regulations will have the status of *"law"* so as to prevent an appellant from filing an intra Court appeal. Since the 2002 Rules have not been made by the Federal Government but by O.G.D.C.L.'s Board of Directors, they have a non-statutory status and therefore cannot be termed as *"law"* so as to prevent an appellant from filing an intra Court appeal. Since the 2002 Rules are non-statutory, we hold that the instant appeal is not barred by the *proviso* to Section 3(2) of the Law Reforms Ordinance, 1972.

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22. In view of the above, the instant intra Court appeal is allowed, and the impugned order dated 24.05.2016 is set-aside. Consequently, the writ petition filed by the respondent is dismissed as not maintainable.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 21.02.2023.

(JUDGE) **(JUDGE)**

*Sultan**

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