JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4155 of 2017
Abdul Ghaffar
Versus
Pakistan Mineral Development Corporation

Date of Hearing:	08.12.2022
Petitioner by:	Sardar Shahid Hanif and Mirza Jamil Ahmed Baig, Advocates.
Respondent by:	Mr. Ghulam Mustafa Qureshi, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Abdul Ghaffar, impugns (i) letter dated 28.03.2012, whereby he was granted a higher pay scale by the Pakistan Mineral Development Corporation (**"P.M.D.C."**), and (ii) P.M.D.C.'s letter dated 19.05.2017 turning down the petitioner's representation dated 15.08.2016 seeking the grant of pay scale of Surveyor (Grade-I).

2. The record shows that on 14.04.2006, the petitioner was appointed as Survey Instructor at the P.M.D.C. Survey Institute, Khewra on contract basis. The petitioner's employment contract was extendable on satisfactory performance. At no material stage has the petitioner's status been converted from a contract employee to a regular employee.

3. On 01.08.2011, P.M.D.C. issued an Office Memorandum (**"O.M."**) setting out the decision taken by the P.M.D.C.'s Board of Directors in its 136th meeting held on 18.07.2011. One of the decisions taken in the said meeting was that Surveyors teaching in the Survey Institute will be brought at par with Surveyors working in P.M.D.C., and that they will be given the same pay scales and allowances. It was explained that Draftsman and Assistant Draftsman will be allowed the pay scales of Upper Division Clerk and Lower Division Clerk, respectively, and that other lower staff will be paid as per P.M.D.C. pay scales and allowances at Khewra.

4. In implementation of the said decision, P.M.D.C. issued letter dated 10.10.2011 which shows that the petitioner was

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given the revised scale of Upper Division Clerk. The petitioner was dissatisfied with his revised status as an Upper Division Clerk. He submitted a representation to the Managing Director, P.M.D.C. seeking the grant of pay scale of Surveyor (Grade-I). Since no response was given to the said representation, the petitioner filed writ petition No.237/2017 before this Court, which was disposed of vide order dated 24.01.2017 with the direction to P.M.D.C. to decide the petitioner's pending representation. Thereafter, the petitioner was afforded an opportunity of a hearing and vide letter dated 19.05.2017, the petitioner's representation was turned down. The petitioner has assailed the said letter dated 19.05.2017 in the instant writ petition.

5. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that P.M.D.C. is confusing the petitioner's right to be granted the benefit under P.M.D.C.'s O.M. dated 01.08.2011 with his right for promotion; and that the petitioner was not seeking promotion to the post of Surveyor but was seeking the grant of pay scales of Surveyor (Grade-I) on the basis of P.M.D.C's O.M. dated 01.08.2011 according to which the Surveyors teaching in Survey Institutes of P.M.D.C. were to be granted the same pay scales and allowances of Surveyors working in P.M.D.C. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the case of Pir Imran Sajid Vs. Managing Director / General Manager (Manager Finance) Telephone Industries of Pakistan (2015 SCMR 1257), which pertained to regularization of contract employees.

6. On the other hand, learned counsel for P.M.D.C. raised an objection to the maintainability of the instant petition on the grounds that the petitioner was a contract employee, and that he was not seeking to enforce any statutory rule or regulation but a decision taken by the P.M.D.C.'s Board of Directors. Furthermore, it was submitted that the petitioner had been granted exactly the same benefit to which he was entitled under

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P.M.D.C.'s O.M. dated 01.08.2011; that the petitioner cannot be granted the pay scale of a Surveyor (Grade-I) unless he is promoted to the said post; and that since the petitioner was a Surveyor teaching in the Survey Institute of P.M.D.C., he could only be granted the pay scales and allowances of Surveyors working in P.M.D.C. Learned counsel for the P.M.D.C. prayed for the writ petition to be dismissed.

7. 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 petition have been set out in sufficient detail in paragraphs 2 to 4 above and need not be recapitulated.

8. As mentioned above, vide letter dated 14.04.2006 issued by the P.M.D.C. Survey Institute, Khewra, the petitioner was appointed as Survey Instructor in the said Institute on contract basis. There is nothing on the record to show that the petitioner's employment had been converted from a contract employment to a regular one at any stage.

9. The contractual nature of the petitioner's employment has made his relationship with P.M.D.C. as that of master and servant. The petitioner, as a contractual employee, cannot enforce a decision taken by the P.M.D.C.'s Board of Directors pertaining to the terms and conditions of the service of employees in the Training Institutes of P.M.D.C. by filing a petition under Article 199 of the Constitution.

10. Through the instant writ petition, the petitioner is not seeking to enforce any statutory rule or regulation but a decision taken by the P.M.D.C.'s Board of Directors. This is an added reason for holding that the instant petition is not maintainable. Vide judgment reported as Muhammad Iqbal Mehsood Vs. Federation of Pakistan (2020 PLC (CS) 775), this Court dismissed as not maintainable a writ petition filed by an employee of P.M.D.C. seeking relief pertaining to the terms and conditions of his service. P.M.D.C. was respondent No.3 in the said case. Paragraphs 12 to 14 of the said report are reproduced herein below:-

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"12. Respondent No.3 along with its written comments has brought on record the memorandum and articles of association ("the constitution") of respondent No.3. The object of respondent No.3 is to inter-alia, purchase, take on lease, or otherwise acquire any mines, mining rights and metaliferous land in Pakistan or else where and minerals therein and to explore, work, exercise, develop and turn to account the same. The management of the business of respondent No.3 vests in the Directors, all of whom are nominated by the Government of Pakistan. Article 110 read with Article 111(1)(p) of the Articles of Association of respondent No.3 authorize the Directors to make, vary and repeal bye-laws for the regulation of the business of respondent No.3 and its officers and servants. In exercise of this power, the Board of respondent No.3 have made the "PMDC Employees Service Rules, 2012". Rule 6(c) in Chapter-II of the said Rules, provides that posts of General Managers shall be filled through promotion on merit through the MP&NR subject to the recommendations of the Board of respondent No.3.

13. Now respondent No.3 is not the creature of a Statute. It is a company incorporated under the provisions of the Companies Ordinance, 1984. Under the constitution of respondent No.3, the only role that the Federal Government has is to nominate the members of the Board of respondent No.3. The Board of respondent No.3 has made the PMDC Employees Service Rules, 2012. These Rules have not been made in exercise of any statutory power. The constitution of respondent No.3 does not require these rules to be either vetted or approved by the Federal Government.

14. The controversy between the petitioner and respondent No.3 primarily centers around the petitioner's desire to be promoted as General Manager, and respondent No.3's refusal to consider him for promotion unless he returns to respondent No.3 and earns one Annual Confidential Report with respect to his performance. This controversy is, in-fact, a dispute between a Master and Servant regarding the petitioner's employment. As the rules governing the employment of the petitioner are not statutory, I am of the view that this writ petition is not maintainable."

11. In view of the above, the instant petition is dismissed as not maintainable. Since I have held that this petition is not maintainable, it is not necessary to go into the merits of the case.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 12.12.2022.

(JUDGE)

*Ahtesham**