JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 2944 of 2018

QAZI MUSTAFA KAMAL AND ANOTHER

Vs

SECRETARY, MINISTRY OF INFORMATION & BROADCASTING PAK. SECRETARIAT ISLAMABAD ETC

Petitioners by	**:**	**Mr. Muhammad Waqas Malik, Advocate for the Petitioners.**
Respondents by	**:**	**Mr. Muhammad Nazir Jawad, Advocate for the Respondent No. 2 and 3.** **Raja Zamir ud Din Ahmad, AAG.** **Mr. Waseem A. Rana, Advocate on behalf of SECP.**
Date of hearing	**:**	**18.02.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution"),** the Petitioners seek setting aside of the Office Order No. HP/2387/1228 dated 25.6.2018 **("Impugned Office Order")** issued by the Respondent No. 3 [Pakistan Television Corporation **("PTVC")**] through which the decision of the Board of Directors **("BOD")** of PTVC taken in its 216th meeting held on 10.5.2018 regarding recovery of Islamabad Club Membership Fee from the pension of the Petitioners has been communicated to all concerned. The Petitioners further seek declaration to the effect that the act of the Respondents to deduct the Islamabad Club membership fee directly from the Petitioners' pension is illegal and the 216th meeting of the BOD held on 10.5.2018 is unlawful being in contravention of Memorandum & Articles of Association of PTVC and Public Sector Companies (Corporate Governance) Rules, 2013.

2. The brief facts of the case in hand as per memo of Writ petition are that the membership of Islamabad Club was provided to the Directors of PTVC to enable them to cultivate social interaction with the Policy Makers and influential personalities, to promote the good-will of the Institution and to develop social networking to overcome the impediments and bottlenecks in the matters having a

direct bearing on the interests of PTVC. The BOD in its 191st meeting held on 29.12.2010 approved that working Directors of PTVC be allowed to get membership of Islamabad Club at the expense of PTVC. In pursuance of this decision of the BOD, membership fee was directly deposited with Islamabad Club by PTVC. Through the Impugned Office Order PTVC sought recovery of amount of Club Membership from three individuals only, one serving Director and two pensioners i.e. the Petitioners. Hence the present Petition has been preferred by the Petitioners.

3. The learned counsel for the Petitioners argued that the Petitioners did not get/receive any amount from PTVC and the payment of Islamabad Club Membership Fee was a matter exclusively between PTVC and Islamabad Club; that if the BOD was seriously concerned about the burden on the exchequer, it should have applied its decision on all those individuals who had taken/acquired the Club Membership at the expense of PTVC, irrespective of the year of membership or the amount involved; that the Impugned Office Order and the decision of the BOD appear to be motivated by *mala fide* intentions, as only three individuals have been singled out, while others have been exempted without any explanation for such differential treatment; that under the law, no amount can be deducted or withheld from the pension of a retired servant; that the 216th BOD meeting was not held in consonance with law and was in express violation of Rules 95, 95-A and 96 of the Memorandum & Articles of Association of PTVC read with Public Sector Companies (Corporate Governance) Rules, 2013, hence, is *coram non judice* and liable to be set aside; that the payments/Islamabad Club Membership Fees was made from a company i.e. PTVC after complying all the requisite formalities to another company, hence, the individuals/employees cannot be made liable for such payments; that the reported decision/actions have been taken in an arbitrary manner without taking all the relevant material and facts into consideration and without proper application of mind, hence, same are arbitrary; that the BOD cannot assume by itself the arbitrary authority of deciding the service conditions, entitlements and facilities of the employees, including Working Directors, with retrospective effect; that it is settled law, supported by and upheld through various decisions of the superior Courts that any facility extended to an employee has the effect of a vested right which cannot subsequently be denied or abrogated in an arbitrary manner; that according to the Service Rules, facility

cannot be withdrawn or rescinded in light of the PTVC's Service Rule [2.11]; that both the Petitioners have retired from services in 2014 & 2015; that the recovery of a very substantial amount of Rs.1.5 million from the pension of a retired employee through an illegal decision or an arbitrary order, amounts to almost capital punishment which is being inflicted upon the Petitioners, without serving any Show Cause Notice or giving them an opportunity to explain the factual position; that it is the basic principle of law that no one can be condemned without being heard and the Impugned Office Order is clear violation of this basic principle; that the functionaries and statutory bodies must perform their duties strictly in accordance with law and any action contrary to the law would be unsustainable, and by doing so such authority would expose itself to disciplinary action; that the Petitioners are being unfairly targeted, and their constitutional rights, as guaranteed under the Constitution, are being denied by the Respondents; that the Respondents have no lawful justification or authority for acting in blatant disregard of the law; that to be treated in accordance with the law is the fundamental right of an individual and targeting an individual in such a manner violates Article 4 read with Article 25 of the Constitution; and that the actions of the Respondents No. 3 and 4 are in serious violation of law and the Constitutional guarantees available to the Petitioners.

4. On the other hand, the learned counsel on behalf of Respondents Nos. 2 and 3 argued that in the past, membership of Islamabad Club was granted to the Chairman and Managing Director PTVC, but later on, in 191st meeting of the BOD held on 29.12.2010, the said facility was extended to all working Directors at the expense of PTVC; that initially, the membership fee was very nominal i.e. Rs.50,000/- but with the passage of time it increased up to Rs.1,500,000/- per member, accordingly working Directors including the Petitioners were given membership of Islamabad Club at PTVC's expenses; that during the audit of the PTVC Head Office accounts for the years 2012-13 and 2013-14, conducted by Government Commercial Auditors, an objection was raised regarding the payment of exorbitant and lavish membership fees for acting and retiring Directors, which was deemed a clear waste of public funds and considered both irregular and unjustified; that the Auditors recommended that membership fees paid to Islamabad Club may be withdrawn and deposited to PTVC; that in 206th Meeting of the BOD dated 07.04.2014, decision regarding stoppage of granting further

membership to working Directors was taken and it was resolved that the amount spent on such memberships shall be recovered; that before the said BOD's decision, the membership of four working Directors were already paid to M/S Islamabad Club with the approval of the then Managing Director in accordance with prevalent policy of that time. The names of those Directors and the amounts associated with them are as follows:

Qazi Mustafa Kamal, Ex-Acting M.D	Rs.15,00,000/-	Year 2012-13
Mr. Asad Ullah Khan, Ex-DAP	Rs.15,00,000/-	Year 2012-13
Mr. Asad Ahmed Jaspal, Director Security, the then DAP.	Rs.15,00,000/-	Year 2012-13
Mr. Fakhar Hameed, Director I.T.	Rs.15,00,000/-	Year 2012-13

He further argued that despite PTVC's best efforts to settle or drop the audit para with specific and convincing justifications, the subject audit para was nonetheless converted into a draft para; that the Departmental Accounts Committee (DAC), in its meeting held on 3.2.2015, directed PTVC to refer the matter to the Board for reconsideration, however, the Audit required that the amount be recovered from the Ex-Directors within one month; that the matter was subsequently taken up with the Islamabad Club to request a refund of the said amount; however, they refused, citing that their rules and bye-laws do not permit such a refund; and that the BOD, in its 216th meeting held on 10.5.2018, resolved to recover the Islamabad Club Membership Fee from the concerned Directors and following this decision, the Impugned Office Order was issued for the recovery of the membership fee amounting to Rs. 1,500,000/- from their salary/pension in easy installments.

5. The learned counsel on behalf of the Respondent No. 4 stated that they have filed comments in response to the instant Writ Petition in which it is prayed that the Court may please decide the Petition as deems proper in the interest of justice.

6. I have heard arguments of learned counsel for the parties and perused the record with their able assistance.

7. Under PTVC's previous policy, membership fees were paid on behalf of their working Directors, as the fee at that time was nominal, i.e., Rs. 50,000/-.

However, Islamabad Club later raised the membership fee to Rs. 1,500,000/-, and PTVC paid Rs. 1,500,000/- per membership on behalf of the Petitioners. During an audit of the PTVC Head Office accounts for the years 2012-13 and 2013-14, the Government Commercial Auditors raised an objection, stating that the payment of such a heavy and luxurious membership fee for acting and retiring Directors was a clear waste of public funds, deeming it irregular and unjustified. The auditors recommended that the membership fee paid to Islamabad Club be withdrawn and refunded to PTVC. As a result, in the 206th meeting of the BOD held on 07.04.2014, the policy of granting membership to working Directors in Islamabad Club was discontinued. Furthermore, in the 216th meeting of the BOD held on 10.5.2018, it was decided that the membership fee be recovered from the Petitioners in easy installments from their pension.

8. Despite PTVC's best efforts to resolve or drop the audit para with specific and convincing justifications, the subject audit para was still converted into a draft para. The Departmental Accounts Committee (DAC), in its meeting held on 3.2.2015, directed PTVC to refer the matter to the Board for reconsideration. However, the audit insisted that the amount be recovered from the ex-Directors within one month.

9. The membership was obtained by PTVC for their working Directors, likely to fulfill operational requirements, and as a result, hefty amounts were paid from PTVC's funds. However, when the membership fee of Islamabad Club was increased, it placed a significant financial burden on PTVC. In light of this burden, the Government Commercial Auditors, during their audit of the accounts for the years 2012-13 and 2013-14, raised an objection and formulated audit paras. The Petitioners, who are now retired, still continue to enjoy the Islamabad Club membership for their personal use.

10. In the minutes of the 191st BOD meeting held on 29.12.2010, the recommendations of the Management Committee for Executive and Working Directors were reviewed in which separate recommendations for working Directors were presented, and at serial No. 3, a proposal was submitted that "*all working Directors may be allowed membership of Islamabad Club on the expenses of PTV to the extent of initial membership fee as per previous practice (DMD, Director PTV Global and Director Marketing are already members) no financial implication has been calculated as it will only be paid as per club rules and*

prescribed fee in due course of time", While in the 206th meeting of the BOD, the said policy was discontinued. Similarly, in the 216th meeting of the BOD held on 10.5.2018, under item No. 26, it was decided that "*the Board resolved to recover the amount from concerned whole time working Directors of PTVC except late Fakhar Hameed, Ex-Director Information Technology".*

11. The matter in question is regarding the policy formulated by the BOD of PTVC, in 191st BOD meeting it was allowed that the Islamabad Club fee will be paid by the PTVC and in 206th BOD meeting, the said policy was discontinued. In 216th BOD meeting, it was decided that recovery of the Islamabad Club fee be effected from the Petitioners. Both the decisions were related to policy matter and it is well established that in policy matters, the Writ Jurisdiction of this Court under Article 199 of the Constitution cannot be invoked, unless having done with tint of *mala fide*, which is not the case at present on the score that PTVC tried to settle the audit para and also tried to refund from Islamabad Club but all in vain. It is well established that in policy matters, the Writ jurisdiction of this Court under Article 199 of the Constitution cannot be invoked. For ease of reference, the said Article is reproduced below:-

> **"Jurisdiction of High Court. 199.** (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,—
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> a) On the application of any aggrieved party, make an order—
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> i. directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do ; or
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> ii. declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or"

12. In addition to this, PTVC is classified as a non-statutory body. This classification is based on various legal precedents and judgments. For instance, in the case of *Muhammad Aslam Saleemi Vs. The Pakistan Television Corporation,* 1977 PLD 852, it was established that PTVC operates under the direction of the Federal Government and is considered an agent of the State, but it does not possess the status of a statutory body. Furthermore, the Supreme Court of Pakistan has clarified that while certain Corporations may be deemed statutory, PTVC is not among them, as its Service Rules are non-statutory in nature. This implies that the relationship between PTVC and its employees is based on the principle of master and servant, meaning its employees do not enjoy the same statutory protections as

civil servants. In short, PTVC is a non-statutory body, and its employees are not classified as civil servants, despite being under the control of the Federal Government. Further reliance is placed on *Pakistan Television Corporation Vs. M. Babar Zaman & others,* 1989 SCMR 1549, *A.S.Qureshi & others Vs. Pakistan Television Corporation Limited*, 1997 PLC (C.S) 846, *Muhammad Ramzan Vs. Federation of Pakistan through Ministry of Information & 3 others*, 2017 PLC (C.S) Note 71 [Sindh High Court].

13. Based on the foregoing discussion, the present Writ Petition lacks merit, as this Court cannot intervene in the policy matters of PTVC, which falls outside the scope of Article 199 of the Constitution. Resultantly the instant Writ Petition is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

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