Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No. 45 of 2011

Raja Amjad Hussain.
Vs
Pakistan Steel, etc

DATE OF HEARING: 01-10-2014.
PETITIONERS BY: Sardar Abdul Raziq Khan, Advocate for the petitioner.
RESPONDENTS BY: Syed Anwar Ahmed Shah, Advocate for the respondents.

ATHAR MINALLAH, J:- Briefly stated facts of the case are that the petitioner was employed as Junior Assistant by the respondent No.2 on 01-08-1978. He was promoted from time to time and his last promotion was as "Assistant Manager". After his promotion, he was temporarily attached with the Motorway Project, Islamabad. The respondent No.1 offered Voluntary Retirement Facility (hereinafter referred to as "VRF), vide Circular dated 25.05.2000. The petitioner opted for VRF on 09-06-2000, and the same was accepted vide order dated 10-08-2000. After acceptance of the offer of VRF, the respondent No.1 vide letter dated 03-03-2001 and 18-04-2001 informed the petitioner to submit required documents and information, so that no objection certificate could be issued to him for the final settlement of accounts. The respondent No.1 has stated in its comments that the petitioner did not respond to the letters. It is further alleged that he remained absent

from duty. In accordance with the laid down procedure, the petitioner was required to produce and submit the no demand certificate, but he failed to do so.

2. The respondents have stated, in their respective comments, that the case of the petitioner has been delayed on account of his failure to complete the necessary requirements. After 18 months from the date of acceptance of VRF, the petitioner was relieved vide order dated 27-03-2002. It is admitted by the petitioner that after acceptance of VRF, he received an amount of Rs.50,000/- in June 2002, while the remaining amount is stated to have been withheld by the respondents. The petitioner filed departmental appeal dated 15-10-2002, but it is denied by the respondents in their comments. The petitioner approached the Federal Service Tribunal, and the Registrar of the Tribunal passed an order that the appeal stood abated in the light of the landmark judgment of the Supreme Court, dated 27-06-2006, passed in the case of ***Mubeen-ul-Islam***. The petitioner invoked the jurisdiction of the Lahore High Court, Rawalpindi Bench, by filing W.P.No.3362/2006, but the same was withdrawn on 28-05-2008, in order for him to avail his remedy before the Federal Service Tribunal, as the order of the Registrar was not in accordance with the law. The learned Federal Service Tribunal, vide order dated 26-10-2013, recalled the order of the Registrar and thereafter held that the appeal stood abated. The petitioner was directed to seek his legal remedy before the proper forum. The petitioner thereafter invoked the jurisdiction of this Court under Article 199, seeking the writ against respondents No.1 & 2.

3. At the very outset, the learned counsel for the petitioner was asked to satisfy this Court regarding the maintainability of the petition, as both the respondents are situated out of its territorial jurisdiction. The main thrust of the learned counsel was on the last posting of the petitioner in the Motorway project. It was contended that since the respondents operations are throughout Pakistan, therefore, they are amenable to the jurisdiction of this Court.

4. After giving careful consideration to the submissions made by the learned counsel for the petitioner, and perusing the record with his able assistance, this Court holds as follows:-

5. The jurisdiction under Article 199 (1) and clause (a) (i) or (ii) of the Constitution of Islamic Republic of Pakistan 1973 (hereinafter referred to as "Constitution"), has been restricted by the makers of the Constitution to the territorial jurisdiction of a High Court. The writ sought by the petitioner is of a nature which would fall within Article 199 (1)(a). In terms of Article 199 (1)(a) and Clause (i), a High Court can make an order on the application of any aggrieved person, 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"*. Similarly, clause (ii) restricts the jurisdiction of a High Court to make an order *"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".

6. The provisions of the Constitution are unambiguous, and a High Court can exercise its jurisdiction only if a person or authority, in respect of which the writ is to be issued, is situated within its territorial jurisdiction. This is the mandate of the Constitution and a settled law. In the present case the prayer has been sought against the respondents, who are, admittedly, outside the territorial jurisdiction of this Court. The contention of the learned counsel for the petitioner that this Court can exercise jurisdiction and issue an appropriate order on the ground that the petitioner was posted in the Motorway project is without any force. It is also noted that the prayer sought by the petitioner is in relation to the settlement of the VRF accounts, and the bare perusal of the respective comments filed by respondents No.1 and 2, makes it a case of disputed questions of fact. The respondents, in their respective comments, have stated that the petitioner failed to respond to the letters addressed to him for settlement of the accounts, nor returned the material in his possession. It is further stated that the petitioner remained absent from duty and did not pursue the issuance of the no objection certificate. It appears from the prayer sought in the petition that the respondents have deducted an amount of Rs.106,440/- on account of alleged shortage of material.

7. In the light of the above, this Court is not impressed with the contentions raised by the learned counsel for the petitioner. The learned counsel has also not been able to persuade this Court that it has the territorial jurisdiction to issue a writ under Article 199 (1), clause (a) of the Constitution of the Islamic Republic of Pakistan, 1973.

8. In the circumstances, the petition is dismissed with costs. The petitioner is directed to deposit with respondent no. 1, Rs.5000/-(five thousand only) imposed as costs.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on _____.

JUDGE

*Asif M**

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No. 45 of 2011

Raja Amjad Hussain.
Vs
Pakistan Steel, etc

DATE OF HEARING: 01-10-2014.
PETITIONERS BY: Sardar Abdul Raziq Khan, Advocate for the petitioner.
RESPONDENTS BY: Syed Anwar Ahmed Shah, Advocate for the respondents.

ATHAR MINALLAH, J:- Briefly stated facts of the case are that petitioner was employed as Junior Assistant by the respondent No.2 on 01-08-1978. He was promoted from time to time and his last promotion was as (Assistant Manager). After his promotion he was temporarily attached to the Motorway Project, Islamabad. The respondent No.1, offered Voluntary Retirement Facility (hereinafter referred to as "VRF), vide Circular dated 25.05.2000. The petitioner accepted the offer and opted for VRF on 09-06-2000, and the same was accepted vide order dated 10-08-2000. After acceptance of the offer of VRF the respondent No.1 vide letter dated 03-03-2001 & 18-04-2001 informed the petitioner to submit required documents and information, so that no objection certificate could be issued to him. The respondent No.1 has stated in comments that the petitioner did not respond to the letters. It is further alleged that he remained absent from duty. In accordance with the

laid down procedure the petitioner was required to produce and submit the no demand certificate, but he failed to do so.

2. The respondents have stated in their comments that the case of the petitioner has been delayed on account of his failure to complete the necessary requirements. After 18 months from the date of acceptance of VRF, the petitioner was relieved vide order dated 27-03-2002. It is admitted by the petitioner that after acceptance of VRF, he received an amount of Rs.50,000/- in June, 2002 while the remaining amount is stated to have been withheld by the respondents. The petitioner filed departmental appeal dated 15-10-2002, and the same is denied by the respondents in their comments. The petitioner approached the Federal Service Tribunal, but the Registrar of the Tribunal passed an order that the appeal stood abated in the light of the (landmark) judgment dated 27-06-2006, of august Supreme Court passed in case of ***Mubeen-ul-Islam***. Petitioner invoked the jurisdiction of the Lahore High Court, Rawalpindi Bench through filing W.P.No.3362/2006, but the same was withdrawn on 28-05-2008. So as to avail the remedy before the Federal Service Tribunal as the order of Registrar was not in accordance with law, the learned Federal Service Tribunal vide order dated 26-10-2013 recalled the order of the Registrar and thereafter held that the appeal stood abated. The petitioner was directed to seek his legal remedy before the proper forum. The petitioner thereafter invoked the jurisdiction of this Court under Article 199 seeking the writ against respondents No.1 & 2.

3. The learned counsel for the petitioner at the very outset was asked to satisfy this Court regarding the maintainability of the petition as both the respondents situated out of the territorial jurisdiction of this Court. The learned counsel contends that the last posting

of the petitioner was on the Motorway project, the respondents operations are throughout the Pakistan and, therefore, they are amenable to the jurisdiction of this Court.

4. After giving careful consideration to the submissions made by the learned counsel for the petitioner and perusing the record with his able assistance, this Court holds as follows:-

(i). The jurisdiction of this Court under Article 199 (1) and Clauses (a) (i)(ii), has been restricted by the makers of the Constitution to the territorial jurisdiction of this Court. The nature of writ sought by the petitioner is in the nature which would fall within Article 199 (1)(a). In terms of Article 199 (1)(a) and Clause (i), a High Court can make an order on the application of any aggrieved person, 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).*

(ii). Similarly, Clause (ii) the jurisdiction of this Court is restricted to make an order *(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).*

5. The provisions of the Constitution are unambiguous and a High Court can exercise a jurisdiction if a person or authority to whom writ is to be issued must be within its territorial jurisdiction. It is a settled law and mandate of the Constitution that the writ can only be issued by this Court to a person or authority within its territorial jurisdiction. In the

present case admittedly the prayer has been sought against the respondents who are outside the jurisdiction of this Court. The contention of the learned counsel for the petitioner that this Court can exercise jurisdiction and issue appropriate order on the ground that the petitioner at the time when the cause of action had arisen was posted on the Motorway project is without any force. It is also noted that the prayer sought by the petitioner is in relation to the settlement of the VRF accounts and the bare perusal of the comments filed by the respondents No.1 & 2 makes it a case of disputed question of law. The respondents and their comments have stated that the petitioner failed to respond to the letters addressed to him for settlement of the accounts and for the return of the material in his possession. It is also stated that the petitioner remained absent from duty and did not pursue the issuance of no objection certificate. It also appears from the prayer being sought that the respondents have deducted an amount of Rs.106440/- on account of alleged shortage of material.

6. In the light of the above this Court is not impressed with the contentions raised by the learned counsel for the petitioner. The learned counsel has also not been able to persuade this Court that it has the territorial jurisdiction to issue a writ under Article 199 (1) Clause (a) of the Constitution of the Islamic Republic of Pakistan, 1973.

7. In the circumstances, the petition is dismissed and cost of Rs.5000/- is imposed on the petitioner to be deposited with the respondent No.1, within four weeks.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on _____.

JUDGE

*Asif M**

Uploaded By: Zulqarnain Shah