JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.08/2016
Tahir Atique Siddiqui
Versus.
Federation of Pakistan through its Secretary, Ministry of Information Technology, Islamabad and another

Date of Hearing:	24.11.2017
Petitioner by:	Mr. Muhammad Shahid Kamal, Advocate.
Respondents by:	Mr. Abdul Rehman Qadir Khan, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Tahir Atique Siddiqui, former Deputy General Manager (C&DS) (BS-19) in the Telephone Industries of Pakistan ("T.I.P.") impugns the order dated 03.12.2014, whereby the petitioner was dismissed from service on the ground that vide judgment dated 27.11.2014, passed by the learned Judge Accountability Court No.1, Islamabad, in Reference No.15/13-IBD, titled "State Vs. Azad Bakht etc.", the petitioner had been convicted and sentenced to rigorous imprisonment for a period of five years, and fine Rs.5 million.

2. Learned counsel for the petitioner submitted that the petitioner had been served as a Deputy General Manager in T.I.P.; that in the year 2005, TIP Haripur succeeded to get two contracts No.1303 and 1341 for supply, testing, installation and commissioning of battery banks at various sites owned by PTCL; that the said battery banks were to be supplied by a German Company (Hoppecke); that the said German Company (Hoppecke) had already nominated a firm, namely, M/s AJ Power as its local agent for Pakistan; that the delivery of said battery banks was started when the period of the contract with PTCL was about to expire; that an extension in time for performance of the contract was not given to the T.I.P.; that in the year 2006, a N.A.B. reference was filed against the five persons including the petitioner; that the proceedings before the learned accountability Court culminated in the judgment dated 27.11.2014, whereby the petitioner was convicted and

sentenced under Section 9(a)(iii) (iv) (xi) and (xii) of the National Accountability Bureau Ordinance, 1999, to rigorous imprisonment for five years, and fined Rs.5 million; that aggrieved by the said judgment dated 27.11.2014, the petitioner filed writ petition No.4917/2014 before this Court; that vide order dated 12.05.2015, this Court suspended the petitioner's sentence and released him on bail; that against the said order dated 12.05.2015, N.A.B. filed civil petition No.1802/2015, which was dismissed by the Hon'ble Supreme Court, vide order dated 01.10.2015.

3. Learned counsel for the petitioner further submitted that on 03.12.2014, the petitioner was "dismissed from service" on the sole ground that he had been convicted by the accountability Court; that vide order dated 20.11.2015, the petitioner's departmental appeal was turned down by the Board of Directors of T.I.P.

4. Learned counsel for the petitioner further submitted that since the petitioner was a BS-19 officer, his dismissal order could only have been passed by the Board of Directors of T.I.P., and not the Managing Director of T.I.P.; that since the petitioner's dismissal order dated 03.12.2014 was passed by the Managing Director of T.I.P., the same was *coram non judice* and without lawful authority; that since the sentence awarded to the petitioner had been suspended by this Court, the petitioner should have been reinstated in service; that simply on account of the petitioner's conviction, he could not have been dismissed from service, without the issuance of a show cause notice, the holding of a regular inquiry or personal hearing being afforded to the petitioner; and that by dismissing the petitioner from service on the sole ground of the petitioner's conviction by the accountability Court, the petitioner's fundamental right to a fair trial under Article 10-A of the Constitution has been violated. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned order to be set aside.

5. On the other hand, learned counsel for respondent No.2 took preliminary objections to the maintainability of the writ

petition. He submitted that since the service rules of T.I.P. are not statutory in nature, the instant petition is liable to be dismissed. In this regard, he placed reliance on the judgment dated 24.03.2011, passed by the Hon'ble Supreme Court in Civil Appeal No.424/2009 titled "Fakhar-ul-Islam Qureshi Vs. Government of Pakistan through Secretary, Ministry of Finance". He further submitted that since the impugned order dated 03.12.2014 has been passed in the Province of Khyber *Pakhtunkhwa*, this Court does not have the territorial jurisdiction to adjudicate upon the matter; and that since the T.I.P. is located in the Province of Khyber *Pakhtunkhwa*, the dominant nexus of this petition is not within the territorial jurisdiction of this Court. Learned counsel for respondent No.2 submitted that since the impugned order dated 03.12.2014 has been challenged after a lapse of one year, the instant petition is liable to be dismissed due to laches. In this regard, he placed reliance on the judgments reported as PLD 1979 SC 678, PLC 2011 SC 676 and 2012 CLC 1729.

6. Furthermore, learned counsel for respondent No.2 submitted that the petitioner's conviction by the learned accountability Court has till date not been set aside by the appellate forum; and that the mere suspension of a sentence does not do away with a conviction. In this regard, he placed reliance on the judgments reported as *PLD 1990 SC 823, 2013 CLC 1856, and 2003 CLC 300*. He submitted that if the petitioner's conviction is set-aside by the appellate forum, the order whereby the petitioner was removed from service, would be recalled and he would be paid his pensionary benefits. He further submitted that upon a public office holder's conviction by a criminal Court, he is to be dismissed from service without the necessity of holding a regular inquiry or personal hearing. In this regard, he placed reliance on the judgments reported as *1994 SCMR 1001 and 2013 SCMR 1904*. Learned counsel for respondent No.2 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.

8. I propose first to deal with the preliminary objections taken by the learned counsel for respondent No.2 regarding the maintainability of this petition. The admitted position is that the service rules of T.I.P. are not statutory. The stance of the learned counsel for respondent No.2 is that since T.I.P. is a public limited company with no statutory service rules, the writ petition seeking the setting aside of the order, whereby the petitioner was dismissed from service on the ground of his conviction by the accountability Court, is not maintainable. The petitioner's view point was that since the majority share holding of the T.I.P. is owned and controlled by the Federal Government, the petitioner could file the instant writ petition even though T.I.P. had no statutory service rules. Learned counsel for the petitioner did not dispute the clarification made by the learned counsel for respondent No.2 that 55% of T.I.P.'s share holding was owned by the Telecom Foundation, and not directly by the Federal Government. Be that as it may, it is not disputed that the service rules governing the petitioner's service in T.I.P. were not statutory.

9. The question whether a writ petition can be filed against the T.I.P. by an employee aggrieved of T.I.P.'s decision with respect to his service, was considered and decided by the Hon'ble Supreme Court in the judgment dated 24.03.2011, passed in civil appeal No.424/2009, titled "Fakhar-ul-Islam Qureshi etc. Vs. Government of Pakistan through Ministry of Finance etc." T.I.P. was respondent No.2 in the said appeal. The appellants, who were retired employees of T.I.P., were seeking an increase in the pensionary benefits in the same way as was being paid to former government employees or employees of organizations owned and controlled by the Federal Government. The said appeal was filed by an employee of T.I.P. after his writ petition had been dismissed by this Court. Vide the said judgment dated 24.03.2011, the Hon'ble Supreme Court held that

since T.I.P.'s service rules were not statutory, the writ petition filed by the employee of T.I.P. with respect to a matter concerning his service, was not maintainable. It is pertinent to reproduce herein below paragraphs 4 and 5 of the said judgment of the Hon'ble Supreme Court:-

> ***"4. Heard. While arguing the matter, learned counsel for the appellants has categorically admitted that the constitution petition filed by the appellants would only be competent, if the rules on which the appellants are basing their right are 'Statutory Rules' in nature. We are also of the view that notwithstanding the company being a corporate body, having the control and management of the Government and also performing functions in relation to the State or not, no writ can be issued, if it does not have the 'statutory rules' of service, therefore, without in any way dilating upon the first two propositions, we are confining ourselves to this aspect of the case. To show that the rules are statutory, the learned counsel for the appellants has specifically referred to "Executive Pension Rules – 1986 of the respondent No.2", when asked, he was stated that these rules have been approved by the Federal Government and regarding this, mention is made to Rules 6 and 7 which read as under:-***
>
> > ***"6. <u>Amendment in Pension Rules</u>***
> >
> > ***Amendment to these Pension Rules can only be made with the prior approval of the Board after with the prior approval/concurrence of the Federal Government.***
> >
> > ***7. Where the TIP Executive Pension Rules 1986, are silent, the corresponding provision of Pension Rules/Regulations/Instructions applicable to Civil Servants of the Federal Government shall apply to the TIP Executive also."***
>
> ***He has also been made reference to letters dated 14.5.1986 and 29.1.1986 to urge that these rules were submitted for the approval of the Ministry of Finance, Government of Pakistan and were so finally approved.***
>
> ***5. It is an admitted position that respondent No.2 has not been constituted by any Act of the Parliament/Statutes, rather it is a body corporate formed under the company law, obviously in such a situation there is no authority and mandate of law empowering anyone to make the rules, which could in terms of that specific law be approved by the Federal Government, it is only the Articles of Association perhaps, that the rule making mechanism is envisaged. These Articles cannot be considered to be the substitute of law, therefore, if any rules have been drawn under the articles and got approved even from the Federal Government, such rule do not attain the status of "Statutory Rules', for the purposes of which it is imperative that the rule making power and authority must originate, spring from and arise from a Statute. Thus, even assuming as argued by learned counsel for the appellants that respondent No.2 is a body corporate, controlled and managed by the Federal Government and some of its functions are in furtherance of the State activities, yet, when the rules do not qualify the test of being 'Statutory Rules', only for the reason that the Federal Government as a superfluous exercise and without the mandate of law has approved the rules; such cannot be held to be***

statutory. Therefore, on that account the constitution petition was untenable. As the said proposition has been resolved in the matter against the appellants, therefore, in the light thereof, we do not find it appropriate to dilate upon the other question on which the leave was granted in this matter."

10. Learned counsel for the petitioner placed reliance on the case of Pir Imran Sajid Vs. Managing Director/General Manager (Manger Finance) Telephone Industries of Pakistan etc. (2015 SCMR 1257) in support of his contention that a writ petition against T.I.P. is maintainable. In the said case, the appellants were seeking the regularization of their service in T.I.P. on the basis of a decision of the Sub-Committee of the Cabinet on Regularization of contract/daily wages employees in T.I.P. The Hon'ble Supreme Court, while allowing the said appeal against the judgment of the Hon'ble Peshawar High Court whereby the writ petitions filed by T.I.P.'s employees seeking the regularization of their services, was cognizant of its earlier judgment dated 24.03.2011, passed in civil appeal No.424/2009, and distinguished the same in the following terms:-

"5. ..... The learned counsel for the respondents, in support of his second objection i.e. lack of statutory service rules, relied upon the judgment in the case of Fakhr-ur-Islam Qureshi (Civil Appeal No.424 of 2009), authored by one of us (Mian Saqib Nisar, J.), whereby the said appeal was dismissed on the ground that relationship between the appellant, retired employee and TIP is not governed by statutory rules. Such reliance, in our view, is wholly mis-placed for the reason, that unlike in the preset case the appellants therein were seeking pensionary benefits on the basis of pensionary rules, which rules were non-statutory. Whereas in the present case, the appellants are seeking implementation of the directive of the Prime Minister of Pakistan and the decision of the cabinet sub-committee for their regularization sought to be enforced by the relevant ministry."

11. Learned counsel for the petitioner made no attempt to show that the service rules governing the petitioner's service in T.I.P. were statutory in nature. He also made no attempt to show the violation of any service rule while the impugned order was passed against the petitioner.

12. Since the judgment dated 24.03.2011, passed by the Hon'ble Supreme Court in civil appeal No.424/2009 holds good, and has not been over turned by the judgment reported as *2015*

SCMR 1257, the preliminary objection raised by the learned counsel for respondent No.2 regarding T.I.P.'s service rules to be non-statutory, succeeds. Resultantly, this petition is dismissed as not maintainable. I refrain from touching the merits of the case, lest it may prejudice to the parties case before the competent forum. There is catena of case law in support of the view that where a Court holds a petition not to be maintainable, it ought not to delve into or give findings or even observations on the merits of the case. Reference in this regard may be made to the judgments in the cases of S.M. Waseem Ashraf Vs. Federation of Pakistan through Secretary, Ministry of Housing & Works and others (2013 SCMR 338), Yousuf A. Haroon Vs. Custodian of the Karachi Hotel Project (2004 CLC 1967), and Messrs Voyage de Air, General Sales Agent, Shaheen Air International Vs. Shaheen Air International Pvt. Ltd. (2006 CLC 173). There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Qamar Khan*

Uploaded By: Zulqarnain Shah