JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4153 of 2010
Dr. Dilshad Begum
Versus
Pakistan Telecommunication Company Limited and others

Date of Hearing:	12.10.2017
Petitioner by:	Mr. Abdur Raheem Bhatti, Advocate.
Respondents by:	Mirza Aamer Baig, Advocate for the respondents Mr. Raheel, Manager (Legal) PTCL.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Dr. Dilshad Begum, who served as a Senior Lady Medical Officer in Pakistan Telecommunication Company Limited (respondent No.1) impugns (i) order dated 28.07.2010, whereby her services were terminated by respondent No.1, and (ii) order dated 23.11.2010, whereby her appeal against the said order dated 28.07.2010, was dismissed. The petitioner also seeks a direction to respondent No.1 to reinstate her as a regular employee with all consequential benefits.

2. The facts essential for the disposal of this petition are that on 30.09.1998, the petitioner was appointed by respondent No.1 as a Medical Officer for a period of one year. Under the terms and conditions of her employment contract, the said contract could be terminated on one month's notice or payment of one month's salary in lieu thereof. The petitioner's contractual employment was extended by respondent No.1 from time to time. On 30.11.2004, the petitioner was promoted to a position of Senior Medical Officer (BPS-18). Clause 10 of the petitioner's employment contract dated 25.08.2008, is reproduced herein below:-

> *"10. **PROBATION AND TERMINATION OF APPOINTMENT***
> *You will commence your employment on a probationary period of six (06) months. On the completion of this period, provided your services are found satisfactory, you will be confirmed in service. Your services can be terminated by giving one (01) month notice period or salary plus allowances equal to one (01) month in lieu of notice period by either side. However the appointment*

> ***shall be terminated if any document or information provided by you proves fake or false."***
> **(Emphasis added)**

3. Vide notification dated 28.07.2010, respondent No.4 terminated the petitioner's contractual employment with immediate effect. As per the said notification, the petitioner was to be paid one month's salary in lieu of notice. Aggrieved by the said notification dated 28.07.2010, the petitioner filed writ petition No.3514/2010 before the Honourable Lahore High Court, Rawalpindi Bench. Vide order dated 04.08.2010, the said petition was disposed of in the following terms:-

> ***"A copy of this writ petition to be sent to the respondent who is directed to look into the grievance of the petitioner in the light of the judgments mentioned in ground (Q) of the writ petition expeditiously, strictly in accordance with law. Disposed of."***

4. On 28.09.2010, the petitioner filed writ petition No.4153/2010 for the implementation of the said order dated 04.08.2010. During the pendency of the said petition, respondent No.1's Review Committee, on 10.11.2010, afforded an opportunity of a personal hearing to the petitioner. Vide letter dated 23.11.2010, the petitioner's appeal seeking her reinstatement in service, was turned down. Thereafter, the petitioner amended the said writ petition so as to seek the relief against the notification dated 28.07.2010, as well as the said letter dated 23.11.2010.

5. Learned counsel for the petitioner after narrating the facts leading to the filing of the instant petition submitted that that the petitioner served respondent No.1 for almost twelve years; that due to the petitioner's outstanding performance, she was promoted from the position of a Medical Officer to Senior Medical Officer; that upon the completion of the petitioner's probation period, she became a confirmed/regular employee of respondent No.1; that the petitioner's relationship with respondent No.1 is not that of master and servant; the termination of the petitioner's employment was based on *malafides*; that the petitioner's employment was terminated because she had refused to sign a pre-drafted resignation letter; that the documents filed by respondent No.1 along with its para-wise comments show that

the petitioner was terminated due to *"poor performance assessed through performance appraisal system"*; and that the termination of the petitioner's services without holding an inquiry regarding her performance had stigmatized her. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for the impugned notification dated 28.07.2010, and letter dated 23.11.2010, to be set-aside. In making his submission, learned counsel for the petitioner placed reliance on the following case law:-

i) Rizwan Javed Vs. Secretary, Agriculture Livestock (2016 SCMR 1443), wherein it has been held that the Government of K.P.K. could not appoint persons by cherry picking in place of contractual employees, whose contractual services had been extended from time to time. The project in which the petitioners in the said case were appointed had been taken over by the Government of K.P.K., and the Finance Department of the said Government had agreed to create the existing posts on regular side. The Honourable Supreme Court directed the Government to reinstate the contractual employees whose services had been terminated.

ii) Qayyum Khan Vs. Divisional Forest Officer (2016 SCMR 1602), wherein the project in which the petitioner was appointed on contract basis had been taken over by the provincial Government which had converted the contractual posts into permanent posts. The petitioner was not considered for appointment on permanent basis and his services were terminated. It was held that the petitioner had been discriminated against and was entitled to continue his job with other similarly placed employees who were allowed induction on regular basis.

iii) Muhammad Rafi Vs. Federation of Pakistan (2016 SCMR 2146), wherein it has been held that an aggrieved person can invoke the constitutional jurisdiction of the High Court against a public authority if he satisfies that the act of the

authority was violative of service regulations even if they are non-statutory.

iv) Pakistan Telecommunication Company Limited Vs. Muhammad Zahid (2010 SCMR 253), wherein it has been held that PTCL cannot discriminate between similarly placed employees performing duties in the International Gateway Exchange irrespective of the fact whether the employees are "workers" or "civil servants" or "contractual employees".

v) Karachi Development Authority Vs. Wali Ahmed Khan (1991 SCMR 2434), wherein the termination of an employee alleged to have fabricated official record was set-aside primarily because no formal inquiry was held before the employee was removed from service.

vi) Sajida Abdullah (ESE Teacher) Vs. District Coordination Officer, (2011 PLC (C.S.) 592), wherein it has been held that whenever fundamental rights of any citizen were infringed, extra ordinary jurisdiction of the High Court under Article 199 of the Constitution would come into play.

vii) Muhammad Aslam Vs. Vice Chairman (2010 PLC (C.S.) 266), wherein it has been held that Article 4 of the Constitution comes to the rescue of every citizen of Pakistan and does not distinguish between a contractual employee or a regular employee. Furthermore, it has been held that every person has to be treated in accordance with the law and is entitled to equal protection of law even if he is a contractual employee.

6. On the other hand, learned counsel for the respondents submitted that the respondents did not harbour any ill will or venom against the petitioner; that at all material times, the petitioner's employment with respondent No.1 was contractual in nature; that as per the terms and conditions of the petitioner's employment contract, the same could be terminated on one month's notice or one month salary in lieu of such notice; that respondent No.1 terminated the petitioner's services in exercise of its right under Clause 10 of the petitioner's employment

contract; that none of the respondents had called upon the petitioner to resign; that there are no statutory rules which governed the petitioner's relationship with respondent No.1; that a writ petition against the termination of a contractual employee is not maintainable; and that an employer is at liberty to terminate a contract of any of its employees whose performance is found to be unsatisfactory. Learned counsel for the respondents prayed for the writ petition to be dismissed. In making his submissions, learned counsel for the respondents placed reliance on the following case law:-

i) Pakistan Telecommunication Company Limited Vs. Employees Old Age Benefits Institution (2016 SCMR 1220), wherein it has been held that where the legislature had not brought into existence an entity through a special statute but the same had been incorporated under some existing statute, then such an entity could not be assigned the status of a statutory body.

ii) Executive Council, Allama Iqbal Open University Vs. M. Tufail Hashmi (2010 SCMR 1484), wherein it has been held that the employees of non-statutory corporations with no protection of statutory rules would be governed by principle of master and servant.

iii) Rizwan Ahmed Bhatti Vs. Federation of Pakistan (2012 PLC (C.S.) 681), wherein this Court held *inter alia* that a writ petition could not be issued against a company for terminating an employee's open ended service contract. Furthermore, it was held that since the rules governing the petitioner's employment with the respondent company were non-statutory, the petitioner could not invoke the constitutional jurisdiction of the High Court against the termination of his service contract.

iv) Syed M. Yahya Vs. First Credit and Investment Bank Limited (2009 UC 656), wherein it has been held *inter alia* that contractual employment containing specific terms and conditions of service would exclude the application of a general terms and conditions of service applicable to non-

contractual employees. Furthermore, it was held that contract employee could not invoke writ jurisdiction under Article 199 of the Constitution against his termination from service in accordance with the specific terms and conditions of service contained in the contract.

7. I have heard the contentions of the learned counsel for the contesting parties, and 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 No.2 to 4 above, and need not be recapitulated.

8. It is an admitted position that there are no statutory rules governing the petitioner's relationship with respondent No.1. Indeed, the petitioner had served as respondent No.1's contractual employee for more than a decade before her services were terminated. Clause 10 of the petitioner's employment contract dated 25.08.2008 empowered respondent No.1 to terminate the petitioner's services by giving her one month's notice or one month's salary plus allowances in lieu of notice. Reliance placed by learned counsel for the petitioner on Clause 10 of the petitioner's employment contract providing *inter alia* that upon the completion of a six-month probation period the petitioner's services will be confirmed, is of no avail simply because respondent No.1 has reserved to itself the power to terminate the contract by giving one month's notice or one month's salary plus allowances in lieu of notice. Clause 10 of the petitioner's employment contract has already been reproduced herein above.

9. It is well settled that where the conditions of service of an employee of a statutory body were governed by statutory rules, any action prejudicial against such an employee in derogation or in violation of statutory rules could be set-aside by the High Court in exercise of writ jurisdiction. In the case at hand, it is admitted that there are no statutory rules governing the petitioner's relationship with respondent No.1. Learned counsel for the petitioner could not even point out any non-statutory service rule which had been violated by respondent No.1 while

terminating the petitioner's employment contract in pursuance of clause 10 thereof. In the case of Masood Ahmed Bhatti Vs. Federation Of Pakistan (2012 SCMR 152), it has been clearly held that the protection of the Federal Government guarantee would not be available to the category of employees who joined PTCL after 01.01.1996, and whose terms and conditions of service would be contractual in nature, and therefore, same would be non-statutory.

10. There is no document on the record showing that the petitioner's services had been regularized at any stage. Rather, in her writ petition, the petitioner has also prayed for the regularization of her services. This means that she was not regularized by respondent No.1 at any stage. The petitioner's said prayer must be declined in view of the law laid down by the Honourable Supreme Court in the case of Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2011 S.C. 132). In the said judgment, it has been held as follows:-

> *"All the employees having entered into contracts of service on the same or similar terms and conditions have no vested right to seek regularization of their employment, which is discretionary with the master. The master is well within his rights to retain or dispense with the services of an employee on the basis of satisfactory or otherwise performance. The contract employees have no right to invoke writ jurisdiction, particularly in the instant case where their services have been terminated on completion of period of contract. Since they fall within the definition of workman, they would be entitled to one month's notice or salary in lieu thereof, as permissible to them under the rule of master and servant."*

11. It is a master's prerogative to terminate a servant's contractual appointment if the former does not find the latter's performance to be satisfactory. Such termination can take place in accordance with the terms and conditions of the employment contract. A contractual employee cannot insist for a regular inquiry to be held regarding the employer's satisfaction with the employees' performance. The notification dated 28.07.2010, whereby the petitioner's contractual appointment was terminated does not, in any manner, stigmatize the petitioner. The petitioner has also not been able to show as to how she has been discriminated against. Learned counsel for the petitioner

has not quoted a single example of a contractual employee similarly placed as the petitioner whose contractual services had been regularized by respondent No.1.

12. In view of the above, this petition is dismissed as not maintainable. As regards the petitioner's grievance regarding the non-payment of gratuity, she is at liberty to approach respondent No.1 for the said payment as very fairly submitted by the learned counsel for the respondents. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

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