

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**(Judicial Department)**

**W.P No. 2596-P/2022**  
**With Interim Relief**

**Nayab Khan.....(Petitioner)**

**vs**

**Chief Executive Office PESCO Peshawar and  
others.....(Respondents)**

Present: Mr. Pir Hamid Ullah Shah, Advocate for the  
petitioner.

Mr. Asad Jan, Advocate for the respondents/  
PESCO.

**Date of hearing: 20.07.2022**

**JUDGMENT**

**MUHAMMAD IJAZ KHAN, J.-** Through the instant  
writ petition, petitioner has approached to this Court  
with the following relief:-

**“It is therefore, most humbly prayed that this  
Honorable Court may very graciously be  
pleased to set aside the impugned order No.  
39022-29/HR/PESCO/5/2238 dated 20.06.2022,  
being illegal, unlawful, unconstitutional, having  
no sanctity in the eyes of law, based on malafide  
and political influence and against the  
posting/transfer policy of the government and  
may grant any other remedy deem fit in the  
circumstances to meet the ends of justice.”**

**2.** Briefly stated the facts necessary for the  
decision of this case is that petitioner is the employee  
of Peshawar Electric Supply Company Limited  
(PESCO) and is performing his duty as Line  
Superintendent. It has been pleaded in his petition that  
respondent No. 5/Project Director PESCO sent a letter

*Ijaz*

to respondent No. 2/Director General H.R PESCO and requested to post the petitioner to this Directorate on emergency basis so as to cover the huge pendency of electrification work in Bannu Division. Accordingly his request was acceded and the petitioner was transferred and posted in the Office of XEN (Construction) Division PESCO, Bannu vide order dated 09.06.2022. Thereafter, the petitioner assumed the charge of his duty, submitted his arrival report and he was further posted to Construction Sub-Division PESCO Bannu by the Executive Engineer vide order dated 10.06.2022. It has further been pleaded that the Project Director once again requested respondent No. 2 to post the petitioner as against the post of SDO (Construction) Sub-Division PESCO, Bannu as the said post is lying vacant since long and the financial year is about to close but still a huge electrification work is pending completion. This request of the respondent No. 5 was also acceded and the petitioner was appointed on acting charge basis as SDO (Construction) Sub-Division PESCO, Bannu. He was performing his duties as against the aforesaid post when in the meanwhile, the impugned order dated 20.06.2022 was issued, whereby his earlier transfer order dated 09.06.2022 was withdrawn/ cancelled,

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hence, the petitioner has approached to this Court for issuance of the desired writ.

3. When this case was taken up for hearing on 18.07.2022, the respondents/PESCO were put to notice for today. Accordingly, learned counsel representing the respondents/PESCO appeared before the Court.

4. Arguments of both the learned counsel for the parties were heard in detail and the record perused with their able assistance.

5. At the very outset, learned counsel representing the respondents/PESCO raised a preliminary objection regarding maintainability of the instant writ petition on the ground that since the petitioner is the employee of PESCO and as his services are not governed by any statutory rules, therefore in view of the settled law since long, a writ petition could not be maintained.

6. It is admitted on both ends that the petitioner is the employee of PESCO, which has been established in the year 2002 in view of bifurcation of the Power Wing of WAPDA as envisaged in Section 8 (vii) of the WAPDA Act, 1958, whereby the Power Wing of the WAPDA was restructured into generation,

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transmission and distribution of electric power, and thereafter 13 different corporate entities/companies were established including the respondents company duly registered under the then Companies Ordinance, 1984. The respondents company in view of the aforesaid bifurcation has taken control and manage the process of transition of the WAPDA Power Wing and thereafter, all the functions of the respondents company are being performing by its Board of Directors. The authority of hiring and firing of the services of its employees including all other functions qua the terms and conditions of their services exclusively vests in the Board of Directors of the Company in which neither the Federal Government nor the Provincial Government nor any local authority has a say. The learned counsel for the petitioner neither in the instant petition has mentioned nor could named the Rules of the respondents company, for the enforcement of which he has approached to this Court through the instant petition, however it is admitted on both ends that services of the employees of the respondents company are governed and regulated by the Rules which they have adopted for their internal arrangement.

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7. The question as to whether the rules of the respondents company and other Companies as established in the year 2002 after bifurcation of the Power Wing of the WAPDA are statutory or not has since been settled by the Hon'ble Apex Court in the case titled Chief Executive Officer PESCO, Peshawar vs. Muhammad Aftab-ur-Rehman and others (Civil Petition No. 1591 of 2011), operative part of which is reproduced as under:-

**“6. It would be seen that as long as ago in 1984 in the case of Principal Cadet College Kohat vs. Muhammad Shoaib Qureshi (PLD 1984 SC 170), this Court had held that where the terms and conditions of service of an employee of a statutory body were governed by statutory rules then any action taken against him in derogation of the said Rules could be set aside by writ jurisdiction. However, in absence of such statutory rules any violation thereof could not normally be enforced through a Writ Petition. Recently this Court in the case of Pakistan International Airline Corporation and others vs. Tanweer-ur-Rehman and others (PLD 2010 SC 676) has held that although the Corporation was performing functions in connection with the affairs of the Federation but in the absence of statutory rules any adverse action taken by the employer was not amenable to the writ jurisdiction of the High Court and in these circumstances the principle of Master and Servant would be applicable. A similar view was taken by this Court in the case of Pakistan Telecommunication Co. Ltd. through Chairman (Supra).**

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**7. Admittedly the petitioner Company has been incorporated under the Companies Ordinance and does not have any statutory rules though it may be discharging functions in connection with the affairs of the Federation i.e. power generation. Hence in the absence of statutory rules any violation of the terms and conditions of service of the employees would not attract the writ jurisdiction of the High Court. In these**

circumstances, we are of the opinion that the Learned High Court did not have the jurisdiction to entertain the Writ Petition of the Respondent No. 1 and hence the impugned order is not sustainable.”

The aforesaid view has also re-endorsed by the Hon'ble Apex Court in a recent case titled **Pakistan Electric Power Company vs. Syed Salahuddin & others (Civil Appeal No. 749 of 2021)** decided on 21.12.2021, where it has once again been held by the Apex Court that employees of the respondents company are not governed by any statutory rules. It has further been observed that in a case of an employee of a corporation/organization/ company where protection cannot be sought under any statutory instrument or enactment, the relationship between the employer and employee is governed by the principle of Master and Servant and in such a case, the constitutional jurisdiction of the High Court under Article 199 of The Constitution of Islamic Republic of Pakistan, 1973 cannot be invoked. Similarly, in the case of **Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Ltd., Takht Bhai and 10 others** reported as **PLD 1975 Supreme Court 244**, the Hon'ble Apex Court has held that private organizations or persons as distinguished from Government or Semi-Government agencies and functionaries cannot be

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regarded as persons performing functions in connection with the affairs of Federation or Province simply because their activities happen to be regulated by the laws made by the State. It was also held that person including body corporate can be regarded as person performing functions in connection with the affairs of Federation etc., if functions entrusted to them are indeed functions of State or if control of organization vests substantially in the hands of the Government. It was further held that public limited company not created by any statute and governmental control limited only by certain regulations, such company not a person performing functions in connection with the affairs of Federation etc. and as such, such company is not amenable to the issuance of writ under Article 199 of The Constitution. In the case of **Tanvir-ud-Din vs. Messrs National Road Telecommunication Corporation (PVT.) LTD. (NRTC) through Managing Director and 3 others** reported as 2013 PLC (C.S.) 69, this Court has held that the respondent company was not established under any statute and has no statutory rules and was registered under the Companies Ordinance, 1984, therefore constitutional petition could neither be entertained nor maintained against such companies. In the case of **Roshan Dani and 11 others vs. WAPDA**

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through Chairman and 3 others reported as 2015 PLC (C.S.) 263, this Court again clarified this legal proposition that in case of the employee of the erstwhile WAPDA, who has been proceeded against under the Pakistan WAPDA Employees (Efficiency & Discipline) Rules, 1978, then in such eventuality this Court would have jurisdiction to entertain a writ petition, however, in case he is the employee of PESCO and has been proceeded as per the adopted rules, then this Court would have no jurisdiction to entertain a writ petition.

8. In view of the aforesaid discussion, when it is admitted that petitioner is the employee of PESCO and when the controversy involved in this case relates/pertains to his terms and conditions of his service as he has challenged his transfer order, which his grievance is not governed by any statutory rules, therefore the instant writ petition could not be maintained and conversely, his services are to be governed by the principle of Master and Servant for which the proper remedy with him is to approach the civil Court and not to this Court in a writ jurisdiction.


9. For what has been discussed above, the instant writ petition is found by us to be not maintainable, therefore the same is dismissed,

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however, the petitioner is at liberty to approach the competent forum/civil Court for the redressal of his grievance, if so advised.

Announced  
Dt: 20.07.2022

  
JUDGE

  
JUDGE