

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

ORDER SHEET

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge(s).
1	2
01.06.2021	<p data-bbox="558 599 870 639"><u>W.P No.714-A-2020</u></p> <p data-bbox="558 680 1440 755">Present: Mr. Munir Ahmad Bhatti, Advocate, for the petitioners.</p> <p data-bbox="737 801 1440 876">Mr. Muhammad Bilal Khan, Assistant Attorney General for the Federation.</p> <p data-bbox="737 921 1440 1037">Mr. Yaseen Ayaz, Advocate, for respondents No.2 to 5 alongwith Mr. Muhammad Tofeeq, Legal Representative PESCO.</p> <p data-bbox="971 1118 1024 1139" style="text-align: center;">****</p> <p data-bbox="558 1198 1440 1481"><u>SHAKEEL AHMAD, J:</u> The petitioners by way of instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, have made the following prayer:</p> <p data-bbox="667 1521 1341 1997" style="text-align: center;"><i>“It is, therefore, humbly prayed that on acceptance of the instant Writ Petition, the impugned office letter dated 19.03.2019 issued by the additional DG (HR) PESCO, Peshawar may kindly be set aside and the petitioners may graciously be allowed the payment of suspension grant for whole suspension period from 10.11.2016 to 08.11.2017 treating it as duty on full pay alongwith all the consequential benefits accruing therefrom. Any other relief this Hon’ble Court deems fit and proper may also be granted.”</i></p> <p data-bbox="558 2080 1440 2362">2. Precisely the facts relevant and necessary for the adjudication of instant petition are that the petitioners were appointed in the respondent company as Junior Engineers (BPS-17) on contract for a period of</p>

one year vide appointment letters No.3129-32/HR/PESCO Rec-2015 dated 01.02.2016, etc; that in the light of restructuring policy introduced by Federal Government, the Cabinet Committee on privatization duly acknowledged by ECC and Council of Common Interest, created an incorporated entity named PEPCO in 2007 and vested with responsibilities of generation, transmission, distribution and billing through corporatized nine distribution companies termed as DISCOs, four Generation companies GENCOs and National Transmission Dispatch Company NTDC and PESCO were duly incorporated as a public limited company under the Companies Ordinance, 1984 as one of the nine companies, which are administratively autonomous and leading to financial autonomy; that as per terms and conditions of employment, services of the petitioners are regulated by the rules and regulations in vogue in WAPDA as no service rules or regulations are framed by PESCO and WAPDA services rules and regulations are adopted by the respondent-company, therefore, as per rule 5 of the Pakistan WAPDA Employees (Efficiency and Discipline) Rules, 1978, the petitioners were suspended on account of poor photo billing accuracy, amounting to misconduct, vide office orders of suspension dated 10.11.2016, which was further extended twice vide office orders dated 02.02.2017 and 07.06.2017; that in office order of suspension dated 10.11.2016, the petitioners were allowed to draw

suspension grant equal to last pay received by them under the rules, which attained finality; that the profile of respondent-company reveals that the Federal Government is the dominant / principal share holder and overall incharge and controlling authority of PESCO, Chief Executive of the Company is its nominee and had been delegated with such powers by Board of Directors, as such, the respondent-company can be regarded as 'person' performing functions in connection with the affairs of the Federation within the contemplation of Article 199 (5) of the Constitution and is amenable to the constitutional jurisdiction of this Court; that the petitioners assailed the suspension orders alongwith subsequent explanation letter, charge sheets under Rule 6 of the Disciplinary Rules, 1978 before this Court by filing WP NO.1201-A of 2016, which was disposed of on 07.03.2017 thereby directing the respondents to deal the petitioners in accordance with the letter and spirit of law/ rules; that the respondent No.2 constituted inquiry committee and after proper inquiry, the petitioners were reinstated and the show cause notices and charge sheets were withdrawn; that thereafter the contract period of the petitioners was further extended for a period of one year and the intervening period was treated as leave without pay; that afterwards, the petitioners were regularized from their initial appointment in the light of letter dated 22.04.2020 on the recommendations of the PESCO Regularization Board; that the petitioners

also filed departmental appeal for allowing suspension grant to them, however, the said appeal was turned down vide impugned letter dated 10.03.2019. Hence, this petition.

3. When we confronted the learned counsel from the petitioners as to whether the petitioners could invoke the constitutional jurisdiction of this Court for redressal of their grievances in the absence of violation of law or any statutory rules, he replied that through office order dated 11.01.2008 Rules and Orders in force in WAPDA i.e. The Pakistan WAPDA Employees (Efficiency and Disciplines) Rules, 1978 has been adopted by PESCO which are statutory in nature and went on to say that in such a situation writ jurisdiction can be invoked to seek relief from this Court.

4. Arguments heard and record perused.

5. It is an admitted fact that PESCO is a limited company incorporated under the Companies Ordinance, 1984, it has not framed any statutory rules governing terms and conditions of the service of their employees. No doubt, rules making powers and adoption were bestowed upon the Board of Directors of the Company. It is by now established that the regulations/rules whether framed by itself or adopted by reference has no statutory basis in law. In this context, reference may be made to the cases reported as '**Ch. Abdul Rashid V. Capital Development Authority, Islamabad and another**' (PLD 1979 Lahore 803) and '**The Principal,**

Cadet College, Kohat and another V. Muhammad Shoaib Qureshi (PLD 1984 SC 170). The adoption of the rules of the Government or their application by reference will not lend a statutory cover or content to these rules as held in the case reported as '***Lahore Central Co-operative Bank Limited V. Pir Saif Ullah Shah***' (PLD 1959 SC (Pak.) 210) and unreported judgment of the Hon'ble Supreme Court of Pakistan titled '***Chairman Pakistan Council of Scientific and Industrial Research, Islamabad and 3 others V. Dr. Mrs. Khalida Razi***' (Civil Appeal No.2070 of 1993).

6. It is well settled law that an employee of a corporation of company in the absence of violation of law or statutory rule could not press into service the constitutional jurisdiction for seeking relief relating to the terms and conditions of his service. His remedy lay elsewhere. In this context, we are fortified by the dictum laid down in the following judgments.

- (1) ***Mrs. M. N. Arshad and others V. Miss Naeema Khan and others*** (PLD 1990 SC 612)
- (2) ***Messrs Malik & Haq and another V. Muhammad Shams ul Islam Chowdhury and 2 others*** (PLD 1961 SC 531)
- (3) ***Zain-ul-Abideen V. Multan Central Co-operative Bank Limited, Multan*** (PLD 1966 SC 445)
- (4) ***Abdul Salam Mehta V. Chairman, Water & Power Development Authority and another*** (1970 SCMR 40)
- (5) ***Lt. Col. Shuja-ud-Din Ahmad V. Oil & Gas Development Corporation*** (1971 SCMR 566)
- (6) ***The Principal Cadet College Kohat and another V. Muhamamd Shoaib Qureshi*** (PLD 1984 SC 170)

- (7) ***Anwar Hussain V. Agricultural Development Bank of Pakistan and another (PLD 1984 SC 194)***
- (8) ***Syed Akhtar Ali Bukhari V. State Bank of Pakistan and others (PLD 1977 Lahore 234)***
- (9) ***Muhammad Yusuf Shah V. Pakistan International Airlines Corporation (PLD 1981 SC 224)*** and
- (10) ***The Evacuee Trust Property Board and another V. Muhammad Nawaz (1983 SCMR 1275)***

7. In the circumstances, we are of the view that constitutional jurisdiction, as conferred upon this Court under Articles 199 of the Constitution of Islamic Republic of Pakistan 1973, could not have been invoked by the petitioners.

8. Upshot of the above discussion is that this petition is dismissed being not maintainable. However, the petitioners may approach the forum concerned for redressal of their grievances, if so advised.

Announced.
Dt.01.06.2021.

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