

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT**

Writ Petition No. 9967 of 2015

Saghir Ahmad

Versus

**Federation of Pakistan through Secretary, Ministry of
Water and Power, Pak Secretariat, Islamabad, etc.**

J U D G M E N T

Date of hearing: 03.11.2015.
Petitioner by: Mr. Muhammad Shahzad Shaukat, Advocate.
Respondents by: M/s. Akhtar Ali Kureshi, Standing Counsel for
Pakistan, Akhtar Ali Monga, Adil Bandial and
Muhammad Yasin Badar.

MUHAMMAD SAJID MEHMOOD SETHI, J.: This consolidated judgment shall dispose of instant writ petition along with following connected writ petition as common questions of law and facts are involved in these cases:

W. P. No. 29040 of 2014. *Saghir Ahmad v. Federation of Pakistan through Secretary, Ministry of Water and Power, Pak Secretariat, Islamabad, etc.*

2. Brief facts, as stated in the writ petition, are that petitioner was initially an employee of WAPDA, and his services were subsequently placed at the disposal of respondent No. 2 / Pakistan Electric Power Company (**'PEPCO'**) vide office order No. D(CM)S&C/(CM-II)-CS-1/09981(11)/42363-73 dated 07.11.2007. Respondent No.3 / Lahore Electric Supply Company (**'LESCO'**), through advertisement published on 17.06.2007 in "Daily Jang" and "The News", invited applications for the post of Human Resource and Admin (**'HR & Admin'**) Director LESCO. The petitioner being interested in the job and fulfilling the required criteria, applied amongst others for the said post. After completion of due process, the LESCO Selection Committee for HR & Admin

Director, recommended the name of petitioner for the post vide Office Order No. 4390-94/MD(PEPCO)(DDA) dated 08.11.2007 and placed the services of the petitioner at the disposal of LESCO for appointment at the relevant post on temporary basis till the selection of a suitable candidate. The petitioner was appointed for a period of three years on contract basis with effect from 24.09.2008 as the HR & Admin Director LESCO vide Office Order No.20055-62 dated 24.09.2008. In continuation of the restructuring of Power Wing of WAPDA and Manpower Transition Program, the employees of Head Office of PEPCO were allocated by PEPCO Management to Companies. In pursuance thereof, the petitioner was allocated to LESCO, and given the regular employment by respondent No.3 vide Office Order No. 973 dated 28.09.2010. Three extensions were given to the petitioner by LESCO. Subsequently, vide order dated 02.05.2012, respondent No.2 issued an Office Order No. 6728-60/MBP/BD(CM)-I/PT-03 whereby one Ihsan Muhammad Siddiqui was appointed as HR & Admin Director LESCO vice the petitioner, and Office Order dated 03.05.2012 was accordingly issued by the respondent No.3 which constrained the petitioner to file **W.P. No.13114 of 2012** which was admitted for regular hearing and subsequently, the operation of the impugned order dated 02.05.2012 was suspended. Vide order dated 01.08.2012, the post of HR & Admin Director LESCO was bifurcated into HR Director and Admin Director by Board of Directors ('**BOD**') of LESCO, and, subsequently, the above referred writ petition was withdrawn by the petitioner. The petitioner's contract having expired, a working paper, recommending his posting as an HR Director on current charge basis, was placed before the BOD on the basis of his outstanding performance with an explanation that he was the senior most Additional Director General HR working in LESCO as well as in the integrated seniority list maintained by PEPCO and that his promotion is to be considered by the Promotion / Selection Board in

due course of time. The BOD of PEPCO, in its 154th meeting held on 17.09.2014, directed the petitioner to report back to his “Parent Organization” i.e. PEPCO. It was further directed that the post of Director HR LESCO be advertised for being filled from the open market. Advertisements in national dailies were published on 16-10-2014 wherein the maximum age was reduced to 50 from 55 years. The petitioner was relieved from LESCO and he submitted his joining with the PEPCO under protest and subject to his right to take recourse to the Courts of law. The petitioner has since been working as HR Director PEPCO from the date of his joining. The petitioner filed **W.P. No. 29040 of 2014** inter-alia challenging the decision of the BOD dated 17.09.2014, with the following prayer:-

“It is, therefore, most respectfully prayed that this petition be allowed, the decision of the respondent No.2 dated 17-9-2014 and all consequential steps taken pursuant thereto may graciously be declared as illegal, incompetent and without any lawful authority.

Any other relief this Honourable Court deems fit in the circumstances of the case may also very kindly be granted.”

Pre-admission notice on the said writ petition and notice on the application for interim relief was issued but the respondents themselves did not proceed on the advertisement for fresh recruitment on post so advertised and the said writ petition remained pending. Respondents again advertised for the post of HR Director, LESCO through publication in “Daily Dawn” dated 28.02.2015 which again showed that maximum upper age limit was fixed as 50 years on the closing date of the applications. Through instant writ petition, the petitioner has challenged the advertisement dated 28.02.2015 and sought the following relief:-

“It is, therefore, most respectfully prayed that this petition be allowed, the advertisement dated 28-02-2015 and all consequential steps taken pursuant thereto may graciously be declared as illegal, incompetent and without any lawful authority.

Any other relief this Honourable Court deems fit in the circumstances of the case may also very kindly be granted.”

3. Learned counsel for petitioner submits that the impugned actions of the respondents are patently illegal and without lawful authority, and the impugned orders have been issued in complete oblivion of the true facts as the status of the petitioner as a regular LESCO employee has been altogether ignored. Learned counsel further submits that even the decision to advertise the post of HR Director LESCO is contrary to the settled policy / usage having force of law as guided by PEPCO. He adds that 100% shareholdings in LESCO and PEPCO are held by Federation of Pakistan and all these companies are subject to the supervisory control of the Federation through Ministry of Water and Power. Learned counsel argues that Federation had ordered that each promotion from BS-18 and above in DISCOs / GENCOs / NTDC / PITC would be ordered by PEPCO. He further submits that it is now well-settled that appointment to public office has to be made in a transparent manner and on merit, and the authority cannot go beyond the stipulated qualification in order to favour someone with mala fide intentions. He finally submits that by reducing the maximum upper age limit for recruitment on the post of HR Director LESCO, respondents No. 3 & 4 are in fact trying to exclude fair competition. In support of his contentions, learned counsel has relied upon the case law reported as Dr. Habibur Rahman v. The West Pakistan Public Service Commission, Lahore and 4 others (PLD 1973 Supreme Court 144), Chief Executive, Ayub Medical Institution, Abbotabad and another v. Dr. Waqar-ur-Rehman Qureshi and 3 others (2007 SCMR 1442), Lt. Muquddus Haider v. Federal Public Service Commission through Chairman, Islamabad (2008 SCMR 773), the case of Corruption in Hajj Arrangements in 2010 (PLD 2011 Supreme Court 963), Muhammad Zahir Raja v. Federation of Pakistan and others (2012

SCMR 971), Khurram Iqbal v. Deputy Director Food, D.-G. Khan and another (2013 SCMR 55), Syed Mubashir Raza Jaffri and others v. Employees Old-Age Benefits Institutions (EOBI) through President of Board, Board of Trustees and others (2014 SCMR 949), Javed Iqbal Chattha v. Secretary, Government of the Punjab, Agriculture Department, Lahore and 2 others (2008 PLC (C.S.) 1308), Engr. Ghazanfar Ali Khan and others v. F.O.P. and others (PLD 2014 Lahore 375), Bashir Ahmad Butt and others v. The State and others (PLD 2014 Lahore 394), Syed Shahid Aleem and others v. Pakistan Defence Officers Housing Society through Administrator and others (2005 CLC 1624).

4. On the other hand, learned counsel for respondents submits that the Constitutional jurisdiction of this Court cannot be invoked in the dispute pertaining to contractual employment where the grievance is agitated by a person / employee who is not governed by the statutory rules of service. He further submits that the said principle, which has been authoritatively enunciated by the august Court time and again, is squarely applicable in the instant case and, therefore, the instant writ petition is liable to be dismissed.

5. Arguments have been heard and record perused.

6. LESCO is one of the nine power distribution companies working in Pakistan, established / incorporated in the year 1998 as a limited liability company, on account of unbundling of power wing of WAPDA, so as to undertake the activities being undertaken at that time by Lahore Area Electricity Board under the Power Wing of WAPDA. In terms of the scheme of unbundling, the BOD was authorized to independently exercise the powers given and conferred upon the BOD of a corporate entity by the Companies Ordinance, 1984, including the powers to appoint and determine the terms and conditions of their employees. All the internal matters of

the LESCO, including terms and conditions of the service of its employees, are being managed under the supervision of the independent BOD appointed and nominated by the Federal Government, which enjoys the ownership of the shares of LESCO. The constitutive document of LESCO confers the power upon the management of LESCO to appoint its employees and to fix their terms and conditions of service without reference or recourse to the Federal Government. Reference in this regard can be made to judgment passed by this Court in Engineer Ghazanfar Ali Khan and others v. F.O.P. and others (2014 CLD 664) in which it has been observed by this Court as under:

“7. The Board of Directors of PEPCO and of the other restructured companies established under the strategic plan were meant to be independent in the exercise of their management powers given by the Ordinance. This included their service structures being separated from WAPDA. The constitutive documents of the DISCOs conferred their managements with the power to appoint employees and to fix their terms and conditions of service without reference or recourse to the Federal Government.”

7. Since LESCO is an independent corporate entity and, on account of autonomy in managing the operations of the public sector power companies which is being safeguarded by the law including the Companies Ordinance, 1984, power to appoint and determine the terms and conditions of its employees vests exclusively with the BOD. So, in accordance with the decision of BOD, the post of HR Director was advertised in national newspapers in order to ensure a transparent process for appointment of a duly qualified person to the said post and the terms and conditions as well as the qualification and experience required in this regard are explicitly specified in the advertisement. It is well-settled principle of law that this Court while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, does not interfere in the transparent policy decisions

of the executive, aimed at achieving the best possible result in managing its affairs and the Court has very limited jurisdiction for examining such criteria. Such exercise of power cannot be interfered with.

8. As far as the argument of learned counsel for petitioner as to appointment of the petitioner in LESCO on regular basis is concerned, suffice it to say that BOD of LESCO was the competent authority to accord approval for regularization of the service of petitioner in LESCO. PEPCO has no jurisdiction to interfere in the service matters of employees of LESCO. The recommendations made by PEPCO through working paper were not binding upon the BOD of LESCO which, after fully considering those recommendations, decided to fill the post through advertisement and recruitment as per policy of LESCO, and the recommendation of PEPCO as to regularization of the petitioner was neither implemented nor approved by the BOD of LESCO. Since the regular employment of the petitioner was subject to the approval of BOD of LESCO which was never obtained, no lien or right has been created in favour of petitioner. The petitioner continued to work with LESCO on contract basis which fact is evident from the documents available on the record. The very fact that the petitioner has been granted extensions from time to time in his contract period, also proves that the appointment of petitioner was on contract basis which was never confirmed by the competent authority i.e. BOD of LESCO. The documents brought on record show that the petitioner was an employee of PEPCO, not of LESCO. Petitioner is not in possession of any appointment letter issued by the LESCO assigning a job to the petitioner to the effect that he has become a permanent employee of LESCO. Petitioner has failed to bring on record an iota of evidence to show that he had at any point of time become employee of LESCO, therefore, he cannot be held to be a regular employee of LESCO.

9. It is well-settled now that in absence of statutory rules as to terms and conditions of service of an employee, Constitutional petition filed by such employee is not maintainable. A servant, having entered into a contract of service, has no vested right to seek regularization of his employment which is discretionary with the master. The master is within his right to retain or dispense with the services of a servant on the basis of satisfactory or otherwise performance. A contract employee has no right to invoke Constitutional jurisdiction, where his services were terminated on completion of period of contract. Reference in this regard can be made to Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir and others (PLD 2011 Supreme Court 132), PIA Corporation v. Syed Suleman Alam Rizvi and others (2015 SCMR 1545) and Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707).

10. In view of the above discussion, this petition is **dismissed** with no order as to cost.

(Muhammad Sajid Mehmood Sethi)
Judge

Announced in open Court on _____.

Judge

Approved for reporting.

A.H.S.