

**Judgment Sheet**

**IN THE LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

**I.C.A. No.361/2017**

**JUDGMENT**

**Pakistan Agricultural Storage and Services Corporation**  
**vs.**  
**Muhammad Akram and 31 others**

**Date of Decision:** 18.01.2018

**Appellant by:** Ms. Tabinda Islam, Advocate.

**Respondents by:** Mr. Abid Saqi & Mr. Nabeel Javed Kahloon,  
Advocates.  
Ms. Rabbiya Bajwa, Advocate for the Staff Union.

**C.M. No.2/12017**

Through this Application, filed under Order I Rule 10 CPC, the Applicants seek permission to be impleaded as party to the Appeal. Learned counsel for the Applicant has relied upon the case titled **Basharat Ali etc. v Muhammad Anwar etc.**(PLJ 2011 SC 27), **Asad Khan Mengal and others v. Muhammad Afzal Shouq and others** (2010 SCMR 970) and **Muhammad Shahban v. Falak Sher and others** (2007 SCMR 882).

In view of above, the Application is allowed and the Applicants are made party to the Appeal as Respondents.

**Main Case**

**JAWAD HASSAN, J:-** Through this single judgment we intend to decide the instant Intra Court Appeal as well as I.C.A. No.362/2017 titled "*Pakistan Agricultural Storage and Services Corporation Ltd. v.*

*Col. (R) Ghafoor Arshad etc.*” through which the validity of order dated 07.03.2017 passed by the learned Single Judge in W.P. No.21953/2016 whereby the writ Petitions of the Respondents No.1 to 30 were allowed, has been challenged.

2. Brief facts of the case are that in pursuance of the advertisement made by the Appellant in the newspaper on 09.04.2013, the Respondents No.1 to 30 were appointed by the Selection Board constituted by the Appellant. The appointment letters to the Respondents No.1 to 30 were issued in different dates in May 2013. Subsequently, the said Board extended the contract period of the Respondents No.1 to 30. The Staff Union of the Appellant (the Union) filed a complaint before the Appellant that the entire process for the appointment of the Respondents No.1 to 30 was not carried out in transparent manner, hence Board of the Appellant conducted a fact finding inquiry which was concluded on 08.11.2013 with the findings that the correct procedure was followed for appointment of the Respondents No.1 to 30 as per law and policies. The Union again approached different forums against the recruitment process of the Respondents No.1 to 30 and on the directions of the Prime Minister, the Appellant reopened the inquiry. Whereupon the inquiry report dated 27.05.2016 was submitted with the recommendation that the MD and GM (HR) being competent authority for the recruitment may be proceeded against under the relevant rules and the recruitment process of the Respondents No.1 to 30 was declared to be based on irregularities and illegalities. Hence, vide order dated 02.06.2016 the

Respondents No.1 to 30 were declared ceased to be the employees of the Appellant with immediate effect. The Respondents No.1 to 30 filed writ petitions there-against which was allowed. Hence these Appeals.

3. Learned counsel for the Appellant *inter alia* submitted that the impugned order is against law and facts and liable to be set aside; that infact vide order dated 02.06.2016 the Respondents No.1 to 30 alongwith other employees' contract already stood expired were laid off from the strength of the Appellant; that as the Appellant does not fall within the definition of 'person' therefore, the writ petitions were not maintainable; that the learned Single Judge has failed to appreciate the fact that the relationship between the Appellant and the Respondents No.1 to 30 is that of master and servant; that the rules of the Appellant are non-statutory in nature; that the services of the Respondents No.1 to 30 were contractual in nature therefore, despite the remedy of writ petitions, the Respondents No.1 to 30 had the alternate remedy by filing civil suits. Learned counsel for the Appellant has placed reliance on the case titled *Justice Khurshid Anwar Bhinder and others v. Federatonof Pakistan and another* (PLD 2010 SC 483), *Brig (R) Sakhi Marjan, CEO, PESCO, Peshawar v. Managing Director PEPCO, Lahore and others* (2009 SCMR 708) and *Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir and others* (PLD 2011 SC 132).

4. On the other hand learned counsel for the Respondents No.1 to 30 vehemently controverted the arguments advanced by the learned counsel for the Appellant and prayed for dismissal of the Appeal.

Learned counsel in support of his arguments has placed reliance on the case titled *Muhammad Rafi and another v. Federation of Pakistan and others* (2016 SCMR 2146) and *Government of the Punjab through Chief Secretary and others v. Aamir Junaid and others* (2015 SCMR 74).

5. We have heard the arguments of both the sides and perused the record.

6. The bare reading of the order dated 02.06.2016 reveals that neither any show cause notice has been issued to the Respondents No.1 to 30 nor any opportunity of personal hearing has been afforded to them before passing the same rather, it has been observed therein that in compliance of the inquiry report from M/o NFS&R No.1-13/2013 FS dated 27.05.2016 and directions contained therein, the contract employees (list attached) stands ceased to be the employees of PASSCO with immediate effect. The impugned order was passed solely relying upon the inquiry report which shows that the Inquiry Committee interviewed the concerned Officers of PASSCO, President (then GM HR). The Inquiry Committee also interviewed the Ex-President of All Pakistan PASSCO Staff Union (CBA) (Complainant) as well as the present President of the CBA to have a clear idea regarding illegalities in the recruitment process. The whole inquiry proceedings show that the Respondents No.1 to 30 were not heard. Moreover, the Inquiry Committee concluded its findings to the effect that owing to these illegalities and irregularities the Committee has reached to the conclusion that Formal Inquiry may be conducted under PASSCO

Employees Service (Efficiency & Disciplinary) Regulations, 2007 (the “**Regulations**”) to fix the responsibility against the defaulting officers as well as the selected candidates. But the record reveals that the Respondents No.1 to 30 were ousted through the impugned order dated 02.06.2016 without adopting the proper procedure as set down in the Inquiry Report viz: *PASSCO Employees Service (Efficiency & Disciplinary) Regulations, 2007*. Consequently, the order dated 02.06.2016 infringed the fundamental rights of the Respondents No.1 to 30 guaranteed under Article 4 of the Constitution as to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen.

7. From the above, it is very much clear that since there are serious allegations against the Respondents No.1 to 30 and their Officers for committing illegalities and irregularities in the appointment of the Respondents No.1 to 30, therefore, they should have been afforded an opportunity of fair trial and personal hearing. But no personal hearing was given to the Respondents No.1 to 30 before passing the order dated 02.06.2016. Although it is a developed jurisprudence by the superior Courts that this Court cannot interfere into the contractual matters yet in this case evidently, neither the Respondents No.1 to 30 were provided opportunity of fair trial, particularly when there is serious allegation against them, nor the required procedure as advised in the Inquiry Report was adopted to proceed against them. The Respondents No.1 to 30 should not have been terminated with a single stroke of pen rather in due course of law as suggested in the Inquiry Report i.e. under the

Regulations. Furthermore, the Appellant passed the impugned order dated 02.06.2016 for termination of the Respondents No.1 to 30 but it did not adopt the proper procedure as contained in the Inquiry Report i.e. formal inquiry against the Respondents No.1 to 30 alongwith their Officers strictly in accordance with the Regulations. Therefore, the action of the Appellant against the Respondents No.1 to 30 is itself contradictory and against the principle of natural justice.

8. As such, the learned Single Judge has rightly held in the impugned order that passing the order dated 02.06.2016 without any reasoning and in absence of opportunity of personal hearing, there is violation of natural justice and the Respondents No.1 to 30 have been deprived of their fundamental right of fair trial and due process guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”). Recently, the Hon’ble Supreme Court of Pakistan in case titled *Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others* (2017 SCMR 2010) has held as under:

*“However, the question which escaped the attention of the High Court and needs our consideration is as to whether Rule 8(b)(1) of the Service Rules framed by the appellant in 2008 for their employees which authorizes the Administrator to dispense with the services of an employee by giving him one month's notice or a month's pay in lieu thereof without assigning any reason or providing an opportunity of hearing is violative of the principle of natural justice, which always has been*

*treated as violation of law. The said rule further appears to be against the principles of public policy which requires the public functionaries to maintain transparency and to exercise their powers in good faith in the public interest and not on the basis of personal likes or dislikes or on the basis of whims and fancies and, therefore, it needs to be examined as to whether such rule could be allowed to be retained in the service rules (though non-statutory) of the appellant a statutory body.”*

9. Reliance can also be placed on the case titled **Muhammad Ashraf Tiwana and others v. Pakistan and others** (2013 SCMR 1159)

wherein it was held that to sum up the discussion in this part, when we read the Act in the light of principles elaborated repeatedly in our precedents, it becomes clear that the SECP cannot simply be terminating the services of its employees at its whims and pleasure, without having recourse to valid reasons. It can only terminate an employment when it has reasons to do so which are fair and just and advance the purposes of the Act. Both law and public policy require this. The judgments cited by the learned counsel for the Appellant cannot be relied upon as each and every case has its own facts and circumstances, as such distinguishable from the case in hand.

10. We, therefore, agree with the findings of the learned Single Judge and do not see any illegality or perversity in the impugned order which has been passed in accordance with law and does not warrant any interference by this Court; consequently, the impugned order is upheld

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and the instant Appeal as well as ICA No.362/2017, being devoid of any merit, are hereby dismissed.

**(Ayesha A. Malik)**  
**Judge**

**(Jawad Hassan)**  
**Judge**

\*M.NAVEED\*