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**Judgment Sheet**

**IN THE LAHORE HIGH COURT, LAHORE.**

JUDICIAL DEPARTMENT

**Case No. W.P. No.243662 of 2018**

**Tahir Pervaiz, Director-                      Versus                      Federation                      of  
General, Legal Affairs,                      Pakistan                      and six  
Pakistan Railways                      others.**

**JUDGMENT**

Date of Decision:                      08.01.2019

Petitioner by:                      M/s. Muhammad Shahzad Shaukat,  
Qalbe Hassan, Taha Asif, Talat  
Farooq Sheikh, Barrister Taha  
Shaukat and Muhammad Sharif  
Khokhar, Advocates.

Respondents by:                      Ch. Ishtiaq Ahmad Khan,  
Additional Attorney-General.  
Sadia Malik, Assistant Attorney-  
General.  
Mr. Muhammad Zikriya Sheikh, on  
behalf of the Pakistan Railways.  
Salman Kazi, Osman Khan and  
Khurram Shahzad, Legal  
Consultants on behalf of the  
Pakistan Railways.  
Umme Imara, Advocate/vice  
counsel for Mr. Azhar Siddique,  
Advocate.  
Rai Shahid Saleem Khan, Assistant  
Advocate-General.

**JAWAD HASSAN, J.-** Through the instant Constitutional petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”), the Petitioner has made the following prayer:

*“It is, therefore, respectfully prayed that the instant writ petition may kindly be accepted, consequently impugned notice for termination of services dates 15.10.2018 may be declared void, quorum non judice, illegal unlawful, having been issued by an incompetent authority, as such having no legal effect in the interest of justice.”*

**(I) Brief Facts of the Writ**

2. The facts tersely revealed from the petition are that in pursuance of advertisement in the year 2014, the Petitioner was appointed on contract basis as Director General/Legal Affairs (MP-II Scale) in Pakistan Railways for a period of two years (2014-2016) vide offer/appointment letter dated 05.06.2014 which was accepted by the Petitioner vide letter dated 06.06.2014. The contract of the Petitioner was extended from time to time and ultimately for one year w.e.f. 07.06.2018 vide notification dated 28.05.2018. But the contract of the Petitioner was terminated by the Respondents through the impugned termination letter dated 15.10.2018. Hence, this petition.

**(II) Proceedings of the Court**

3. When this petition was filed, this Court issued notices to the Respondents and granted interim relief to the Petitioner vide order dated 19.10.2018. Thereafter, report and parawise comments were filed on behalf of the Respondents separately, vehemently denying the allegations levelled in the petition and praying for dismissal of the same.

4. In view of the report and parawise comments, the Petitioner filed amended writ petition alongwith certain documents and prayed for acceptance of the petition as prayed for. The Respondents submitted additional written statement alongwith certain documents including order dated 29.12.2018 of the Hon'ble Supreme Court of Pakistan which reads as under:

*“We requisitioned the file of the instant writ petition yesterday to consider the contents thereof and the various orders passed therein. After having heard the Petitioner, present in person and Sh. Rasheed Ahmed, Federal Minister for Railways, we direct the Registrar of the learned High Court to fix the instant petition for hearing on 31.12.2018 and are sanguine that keeping in view the importance of the matter, the same shall be decided within a period of one week.”*

After that the case was taken up on 02.01.2019, 04.01.2019, 07.01.2019 and finally today i.e. 08.01.2019.

**(III) Petitioner's Submissions**

5. Mr. Muhammad Shahzad Shaukat, learned counsel for the Petitioner *inter alia* contended that the impugned order is illegal and liable to be set aside on the grounds that the same has been issued by the incompetent authority; that the summary to the Prime Minister for the approval of the termination of the Petitioner is nothing but result of deliberation mere to fill the lacunae of prior approval of the competent authority; that the effect of the impugned order

retrospectively is totally illegal; that although no reason has been given for termination of the Petitioner in the impugned letter yet in the summary serious allegations have been leveled, as such the same amounts to stigma on the dignity of the Petitioner, therefore, proper inquiry was required to be conducted in the matter; that it is settled principle of law that the contract can be terminated in an event of breach but the service of the Petitioner remained unblemished throughout and his extensions were made on the basis of good performance; that the impugned order has been passed on the basis of *mala fide*, arbitrariness and capricious exercise of authority; that the impugned termination letter has been issued without affording any opportunity of personal hearing to the Petitioner, as such the same has been issued in sheer violation of principle of natural justice; that the impugned letter has been issued in violation of Articles 10-A and 25 of the Constitution; that the termination of the Petitioner is premature as the contract of the Petitioner was valid up to June 2019, therefore, the impugned letter cannot be considered to be issued in accordance with law. To fortify his contentions learned counsel for the Petitioner placed reliance on the case titled *Yousaf Ali v. Muhammad Aslam Zia and 2 others* (PLD 1958 Supreme Court (Pak.) 104), *Nasir Said v.WAPDA through its Chairman and another* (PLD 1987 Supreme Court 421), *Khuda Baksh Khan v. Deputy Commissioner, Bahawalpur and others* (1991 MLD 2020), *Mst. Misbah Fatima v. Province of Punjab through Secretary and 4 others* (2011 MLD 1994), *Tariq Aziz ud Din and others* (Human Rights Cases Nos.8340, 9504-G, 13936-G, 13635-G and 14306-G

to 143309-G of 2009), *Munir Ahmad v. Federation of Pakistan and others* (2018 CLC 530 [Lahore]), *Muhammad Ilyas Khokhar and 24 others v. Federation of Pakistan and others* (2006 SCMR 1240), *Muhammad Suleman Kanjiani and 3 others v. Dadex Eternit Ltd. Through Chief Executive and 4 others* (2009 CLD 1687), *Syed Sikandar Ali Shah v. Auditor General of Pakistan and others* (2002 SCMR 1124), *Noor Muhammad v. The Member Election Commission, Punjab and others* (1985 SCMR 1178), *Dr. Muhammad Abdul Latif v. The Province of East Pakistan and others* (PLD 1964 Dacca 647), *Javaid Iqbal v. Director General, T&T Corporation and 2 others* (1993 PLC (C.S.) 1755), *Muhammad Siddiq Javaid Chaudhary v. the government of West Pakistan* (PLD 1974 Supreme Court 393), *Syed Yaqoob Shah v. XEN, PESCO (WAPDA) Peshawar and another* (PLD 2002 Supreme Court 667), *Muhammad Amjad v. The Chief Engineer, WAPDA and another* (1998 PSC 337 [Supreme Court of Pakistan]) and *Mst. Mumtaz Bibi and 12 others v. Provincial Government of Khyber Pakhtunkhwa through Secretary Health Department and 11 others* (2013 MLD 1412).

#### (IV) Respondents' Submissions

6. Learned Law Officer as well as legal representatives appeared on behalf of the Respondents vehemently contested the arguments advanced by the learned counsel for the Petitioner and prayed for dismissal of the instant petition.

(i) **On behalf of Federation of Pakistan/Respondent No.1**

Ch. Ishtiaq Ahmad Khan, Additional Attorney-General for Pakistan and Sadia Malik, Assistant Attorney-General for Pakistan firstly objected to the maintainability of the writ petition on the grounds that in contractual matters this Court cannot interfere and jurisdiction of this Court is barred. They also reiterated all the arguments advanced by Mr. Zikriya Sheikh on behalf of the Respondents No.1 to 3. To fortify their contentions they relied upon the case titled **Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs. V. Muhamamd Azam Chattha** (2013 SCMR 120) and **Chairman NADRA, Islamabad through Chairman Islamabad and another v. Muhammad Ali Shah and others** (2017 SCMR 1979).

(ii) **Pakistan Railways, Respondents No.1 to 3**

Mr. Muhammad Zikriya Sheikh, Advocate appeared on behalf of the Respondents No.1 to 3 and contended that there was no need to obtain fresh approval of the Prime Minister at the time of Petitioner's termination by invoking Clause-11 of the contract employment because at the time of issuance of appointment letter the permission for Petitioner's termination was also considered to be obtained under the said Clause i.e. 11; that infact the appointing and terminating authority of the Petitioner is the Secretary Railway Board (the "Board") under the Rules; that the contract of the Petitioner has been

terminated on the basis of terms and conditions of his contract employment; that the impugned letter has been issued with the approval of the competent authority i.e. Prime Minister; that the Petitioner's contract was liable to be terminated on one month notice or one month's basic pay in view of Clause-11 of the contract dated 05.06.2014; that the Petitioner was a contract employee and this petition is not maintainable against contractual matters; that the Petitioner was treated as per terms and conditions of his contract employment which he duly accepted at the time of appointment, therefore, now at this stage he cannot deviate from the same; that the Petitioner is estopped by Article 102 of the Qanoon-e-Shahadat Order, 1984. While relying upon the clauses 16 & 21 of the General Clauses Act, 1897 learned counsel submitted that the impugned order has rightly been passed; that it was infact a pleasure post and at any time could be terminated, therefore, the Petitioner has no locus standi to file this petition. In this regard the learned counsel has placed reliance on the judgment of this Court titled **Malik Muhammad Bashir Lakhesar Assistant Advocate-General v. Government of Punjab etc.** (PLD 2019 Lahore 1). He also placed reliance on the case titled **Sheikh Muhammad Akhtar v. Shahab ud Din** (2003 CLD 1284), **Brig. Retd. Safdar Hussain Awan v. Government of Pakistan through Principal Secretary to the Prime Minister and others** (2008 PLC (C.S.) 949), **Fasih Azhar v. Federation of Pakistan through Secretary Ministry of**

**Petroleum and Natural Resources, Government of Pakistan, Islamabad and 2 others (2012 PLC (C.S.) 377) and Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs. V. Muhamamd Azam Chattha (2013 SCMR 120).**

**(iii) Establishment Division/Respondents No.4 & 5**

Report and parawise comments were also submitted on behalf of the Respondents No.4 & 5- Establishment Division also submitted their report and parawise comments contending therein that the termination of the Petitioner was made by adopting all the legal procedure, as such no fundamental right of the Petitioner has been violated thus the petition is not maintainable and liable to be dismissed.

**(iv) Finance and Cabinet Division/Respondents No.6 & 7**

Likewise, the Respondents No.6 & 7 Finance Division and Cabinet Division respectively stating therein that they are proforma Respondents and has no concern whatsoever with the matter in hand and the Petitioner has not been effected by any of their orders, as such the petition be disposed of.

7. I have heard the arguments of both the sides and perused the record minutely.

**(V) CONSTITUTIONAL MOOT POINTS**

8. For the just determination of the case, keeping in view the facts, arguments of both the parties as well as the law on the point,

this Court deems appropriate to frame constitutional moot points which are as follows:

- i. Whether this petition is maintainable in contractual matters as the Petitioner was purely appointed on contract basis?*
- ii. Whether the Petitioner is estopped to challenge his termination in presence of Clause-11 of his appointment letter dated 05.06.2014 as well as Petitioner's acceptance letter dated 06.06.2014?*
- iii. Whether the Board which appointed the Petitioner or the Prime Minister which approved his appointment is the competent authority?*

9. To thrash out the above framed constitutional moot points, this Court has minutely examined the available record and also taken into consideration the anxious arguments advanced by both the sides and case law on the point.

**(VI) Determination on Constitutional Moot Points by the Court**

**(i) First Moot Point**

10. As far as first moot point is concerned; counsel appeared on behalf of the Respondents contended that the Petitioner was appointed purely on contract basis and therefore, in contractual matters this Court cannot interfere; at the most the Petitioner may claim damages to the extent of his unexpired period of service rather than invoking the jurisdiction of this Court. Contrary to that the learned counsel for the Petitioner argued that instant constitutional petition is maintainable as the termination of the

Petitioner was made prior to expiry of his contract which is illegal. It is a settled principle of law as laid down by Honorable Supreme Court of Pakistan that a contractual employee cannot enforce terms of his contract in constitutional jurisdiction. Reliance is placed on **Abdul Wahab and others V. HBL and others** (2013 S C M R 1383) ratio was laid as under:

*“7.....It is settled law that, where a service grievance is agitated by a person/employee who is not governed by the statutory rules of service, before the High Court(s), in terms of Article 199 of the Constitution such petition shall not be maintainable; reference in this behalf can be made to PLD 2010 SC 676 (Pakistan International Airline Corporation v. Tanweer-ur-Rehman) and PLD 2011 SC 132 (Pakistan Telecommunication Co. Limited v. Iqbal Nasir)......”*

11. As for as objection of the Petitioner regarding termination of his contract before its expiry is concerned; reliance is placed on **Chairman NADRA, Islamabad through Chairman Islamabad and another v. Muhammad Ali Shah and others** (2017 SCMR 1979) & **Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs. V. Muhamamd Azam Chattha** (2013 SCMR 120) in which ratio was laid as under:

*“In addition to it, it is a cardinal principle of law that a contract employee instead of pressing for his*

*reinstatement to serve for the leftover period can at best claim damages to the extent of unexpired period of his service.”*

12. In view of above stated case law, I am of the considered view that instant constitutional petition is not maintainable. Furthermore, the contention of Sadia Malik, Assistant Attorney-General for Pakistan is instructive that even if the impugned order is presumed to be passed without lawful authority then the main grievance of the Petitioner would be that he has been terminated prior to expiry of his contract period, which the Petitioner cannot claim as has been held above by the Hon’ble Supreme Court of Pakistan that the Petitioner at the best can claim damages to the extent of unexpired period of his service.

13. It is an established principle that where employment is on contract, there is a relationship of master and servant and in such like cases the Constitutional petition under Article 199 of the Constitution is not maintainable. Reliance in this regard can be placed on **Lt. Col. Rtd. Aamir Rauf v. Federation of Pakistan through Secretary M/o Defence and 3 others** (2011 PLC (CS) 654) and **Nadeem Ahmed v. Pakistan State Oil Company Limited and another** (2005 PLC (C.S.) 1447). In case titled **Naweed Akhtar Cheema V. Chairperson, Teveta and others** (2011 P L C (C.S.) 803) ratio was laid as under:

*“10.....Relationship of the petitioner is contractual in nature and is not governed by any*

*statutory rules of service. Therefore, the relationship of the petitioner with the respondent Authority is governed by the principle of master and servant for which remedy lies before the Civil Court of competent jurisdiction and not under the constitutional jurisdiction of this court. Reliance is placed on Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others PLD 2010 SC 676 and Chairman, State Life Insurance Corporation and others v. Hamayun Irfan and 2 others 2010 SCMR 1495 and Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir and others PLD 2011 SC 132.”*

**(ii) Second Moot Point**

14. As far as second constitutional moot point is concerned; counsel for the Petitioner contended that he was appointed on contract basis initially for a period of two years and ultimately his contract period was extended w.e.f. 07.06.2018 and was to be expired in June 2019 but the same was terminated prior to the expiry of his contract period. Admittedly, the Petitioner was appointed on purely contract basis in the Respondent's Department. The Petitioner after accepting all the terms and conditions of his contract employment submitted his joining report. In this regard I would like to refer Clause-11 of the contract employment of the Petitioner dated 05.06.2014 which specifically deals with the termination of contract

(*On one month's notice on either side or payment of one month's basic pay in lieu thereof*). Meaning thereby; that the contract of the Petitioner was liable to be terminated on one month's notice on either side or payment of one month's basic pay in lieu thereof. The impugned letter explicitly reveals that the termination of the Petitioner's services was made with immediate effect with one month's basic pay in lieu of notice in accordance with Clause-11 of the offer of contract appointment. As such, the impugned letter has been issued strictly in accordance with the terms and conditions of contract employment duly accepted by the Petitioner at the time of joining.

15. The Respondents have invoked Clause-11 of the offer letter and terminated the services of the Petitioner with immediate effect entitling the Petitioner to receive one month's pay in lieu of the quit service as per terms and conditions, therefore, assertions of the learned counsel for the Petitioner that the contract has been terminated prior to expiry and no notice has been served upon the Petitioner, cannot sustain. At the time of his joining the Petitioner accepted the above said terms of his contract employment and now at belated stage he cannot deviate from the same. The law on this point has been settled by the apex Court of the country in the cases of *Government of Balochistan, Department of Health through Secretary, Civil Secretariat, Quetta Vs. Dr. Zahida Kakar and 43 others* (2005 SCMR 642) and *Majoy (R) Nisar Ali Vs. Pakistan Atomic Energy Commission and another* (2004 PLC (C.S.) 758).

16. This Court in case titled *Muhammad Mohsin Ismail v. Managing Director Punjab Daanish Schools and 2 others* (2018 PLC (C.S.) 722) has also held as under:

“7. The main grievance of the Petitioner is that he was appointed on contract basis for a period of three years on 12.10.2015 but he was terminated prior to the expiry of his contract period i.e. till 12.10.2018. Admittedly, the Petitioner was appointed on purely contract basis in the Respondents/Department. The Petitioner after accepting the terms and conditions of his contract employment submitted his joining report. The specific terms in the employment contract, containing certain terms and conditions, are inserted which explicitly reveal that initially this offer of appointment is only for a period of three years whereas, the specific clause dealing with the controversy involved is Clause-4 which reflects that in case of gross misconduct or any other compliant, the Competent Authority can terminate this contract forthwith without any notice. Further, Clause-4(b) depicts that the contract can be terminated on one month's notice from either side or on payment of one month's salary in lieu thereof.....

11. The Hon'ble Division Bench of this Court in case titled *Dr. Abid Ali v. Chief Secretary, Government of Punjab and 3 others* (2017 PLC (C.S.) 488) has held that the employee, after accepting terms and conditions of his

*contract employment had submitted his joining report.*  
*Service of such employee could be terminated without*  
*assigning any reason.* Employee had no right to claim  
*extension in his contract period as a vested right.*  
*Behaviour of employee remained unsatisfactory towards*  
*his superior which resulted into his termination. In Case*  
*titled Mubashar Majeed v. Province of Punjab and 3*  
*others (2017 PLC (C.S.) 940) the Hon'ble Division Bench*  
*of this Court has also held that employee could not claim*  
*extension of the contract as a matter of right rather it*  
*was the prerogative of the competent authority either to*  
*dispense with services of such employee or continue with*  
*the same by tending the contract.*”

17. Moreover, it has also been alleged by the Petitioner that the impugned letter has been issued on the basis of *mala fide* but the Petitioner has nothing appended with this petition in support of his this contention. Mere verbal allegation cannot be relied upon; a specific stance taken by any party should be proved with substantial material.

### **(iii) Third Moot Point**

18. As far as the third constitutional moot point is concerned; that the impugned order has been passed by the incompetent authority. The learned counsel for the Petitioner has laid much stress on the point that the impugned letter has been issued by the incompetent authority and that too without necessary approval of the competent

authority. Further that if any approval has been made that is *ex-post facto* approval which is not permissible under the law because an *ex-post facto* law is a law that retroactively changes the legal consequences of actions that were committed, as such the impugned order cannot be said to be passed with the approval of the competent authority i.e. the Prime Minister. The Respondents have also filed written submissions annexing therewith relevant documents including copy of approval of termination of contract passed by the Prime Minister of Pakistan (page-18 to 22). The bare reading of the same reflects that the Prime Minister has duly approved the proposal contained in para 5 read with para 8 of the summary moved for the termination of the Petitioner. Meaning thereby that the approval of the Prime Minister has been accorded but *ex-post facto*. Mr. Ishtiaq Ahmad Khan, the learned Additional Attorney-General for Pakistan for the Respondent No.1 has submitted that originally the appointment of the Petitioner was made by the Board and the Prime Minister is mere the approving authority. He has placed reliance on section 16 of the General Clauses Act, 1897 (the "Act") which is reproduced hereunder for ready reference:

***16. Power to appoint to include power to suspend or dismiss*** -Where, by any (Central Act) or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having (for the time being ) power to make the appointment shall also have power to suspend or dismiss any person

*appointed (whether by itself or any other authority ) in exercise of that power.*

19. Furthermore, the learned counsel for the Respondents also taken the stance that at the time of appointment which was made by the approval of the Prime Minister, the approval for termination under Clause-11 was also accorded at that time by the Prime Minister and there was no need to obtain further approval by the Prime Minister and the said appointment letter was to be implemented by the Board itself, as such has been passed strictly in accordance with law. Basically, the appointing authority is the competent authority of the Petitioner's appointment and i.e. the Board/Secretary who passed the impugned order.

20. In the Federal Rules of Business, 1973 (the "Rules") the Pakistan Railways is a Division known as 'Railways Division' which deals with all matters pertaining to Pakistan Railways. The Division is defined in the Rules as under:

*(vi) "Division" means a self-contained administrative unit responsible for the conduct of business of the Federal Government in a distinct and specified sphere and declared as such by the Federal Government;"*

It further reveals the ***Organization of Divisions as (1) Each Division shall consist of a Secretary to Government and of such other officials subordinate to him as the Government may determine:***

*Provided that the same person may be Secretary of more than one Division.*

*(2) The Secretary shall be the official head of the Division and shall be responsible for its efficient administration and discipline and for the proper conduct of business assigned to the Division under rule 3 (3) and for the due execution of the sanctioned policy.*

21. From the above, it is clear that the competent authority to appoint the Petitioner is the Selection Board headed by the Secretary of the said Ministry/Division and not the Prime Minister rather it is the approving authority, as the impugned order cannot be said to have been passed by the incompetent authority.

22. Further, I have gone through the file and found that the Respondents appended with the written submissions, the copy of procedure showing the Petitioner's appointment in Chapter-2 Recruitment/Appointment/Seniority and Promotion ESTA Code which is as follows:

<b>Sl. No.</b>	<b>Nature of Case</b>	<b>Selection Procedure</b>	<b>Approving Authority</b>
i.	Appointment of Chief Executive/Head of the Organization	Selection Board headed by the Minister Incharge to consider and recommend from a panel of three names for each vacancy. *Provided that, where the charge of a Ministry/Division is held by the Chief Executive**, the Selection Board shall be headed by the Secretary of the respective Ministry/Division.	Prime Minister/Chief Executive
ii. (a)	Posting of government servants of BPS 21 and above.	To be processed through the Establishment Division.	Prime Minister/Chief Executive
(b)	Posting of government servants of BPS 20	—	Establishment Secretary
(c)	Posting of government servants of BPS 17 to 19	To be processed in the Ministry/Division concerned.	Secretary of Ministry/Division concerned.
(d)	Posting of government servants in BPS 16 and	To be processed by the Department concerned.	Heads of Departments.

	below.		
iii. (a)	<b>Appointment to posts in Management Grades other than of a Finance Member/Director and those covered by (i) and (ii) above.</b>	<b>Selection Board headed by the Secretary of the Ministry/Division concerned to consider and recommend from a panel of three names for each vacancy.</b>	<b>Prime Minister/Chief Executive</b>
***(b)	Appointments to posts carrying a minimum pay equal to the minimum of BPS 20 and above.	Selection Board headed by the Secretary of the Ministry/Division concerned to consider and recommend from a panel of three names for each vacancy.	Minister Incharge
iv.	Appointment of Heads of Subsidiary Companies not included in Management Grade.	Selection Board headed by Secretary of the Ministry/Division concerned and recommend from a panel of three names for each vacancy.	Minister Incharge
v.	Appointment to posts other than those mentioned above.	Through appropriate Selection Board set up in the Organization	*An Officer authorized by Head of the Organization concerned.

23. It is very much clear from the above procedure/guidelines that no doubt the approving authority of the Petitioner is the Prime Minister but it is noticeable here that the word 'prior' is never mentioned; meaning thereby that although the 'approval' of the Prime Minister for the appointment of the Petitioner is essential yet the 'prior approval' is not necessary for appointment or termination of the Petitioner. The word 'approval' has been defined in the Black's Law Dictionary (Fifth Edition) which states as under:

*"Approval. - The act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another."*

Hence, approval to an act or decision can also be subsequent to the act or decision. Because of the jurisprudence developed across the world, there is distinction between 'permission', 'prior approval' and

‘approval’. The requirement that the Management must obtain approval is distinguished from the requirement that it must obtain permission. If the words used were "with the prior approval of the Prime Minister", the impugned order could not be issued without first obtaining the approval of the Prime Minister. But since the words used in the procedure are "Approving Authority", the impugned order could be passed after obtaining the approval of the Prime Minister subsequently and in case the Prime Minister did not grant approval subsequently, any action taken on the basis of the decision of the Board would be invalid and not otherwise. The contention of the learned counsel for the Petitioner that the *ex-post facto* approval of the Prime Minister *qua* the impugned order cannot have any legal sanctity, is not instructive in view of the above drawing distinction between the expression "approval" and "prior approval". Hence, the distinction is also drawn between "approval" and "permission" for in the latter prior approval or permission is required. However, the approval was required, and the action holds good and only if it is disapproved, it loses its force. Accordingly, when the permission was required, it does not become effective till permission was obtained. As is clear from the above, the dictionary meaning of the word "approval" includes ratifying of the action, ratification obviously can be given *ex-post facto* approval. In the instant case, the action was approved by the Prime Minister. It is also worth mentioning that if the prior approval is required, expression "prior" has to be in the particular provision. In the instant case the word "prior" is not conspicuous. Although a valuable right of a citizen cannot be

permitted to be taken away yet this Court is bound to determine the respective rights of the parties. As such, the Petitioner cannot be allowed to base his case on the ground that the impugned order has been passed without approval by the competent authority i.e. the Prime Minister. Reliance in this regard can be placed on the case titled *Shakil Ahmed v. Muhammad Hanif and another* (2007 MLD 1395) wherein it has been held as under:

*“Objection of tenant that gift in favour of donee by his father was made without prior approval of Central Government; and that approval granted after filing of ejectment petition rendered same incompetent. Validity. Permission of Central Government or Cantonment Board would not be necessary for transfer of old grant. Central Government had granted post facto approval to such gift. Objection was overruled in circumstances.”*

*(emphasis added)*

#### **(VII) ANALYSIS BY THE COURT**

24. A discreet analysis of above stated circumstances reveals that the Petitioner being a contract employee has no *locus standi* to file instant petition. It is settled law that, where a service grievance is agitated by a person/employee who is not governed by the statutory rules of service, the constitutional petition before the High Court, in terms of Article 199 of the Constitution is not maintainable. Where relationship of the Petitioner is contractual in nature and is not governed by any statutory rules of service then the principle of master and servant will be applicable for which remedy lies before

the Civil Court of competent jurisdiction and not under the constitutional jurisdiction of this Court. In addition to that, it is a cardinal principle of law that a contract employee instead of pressing for his reinstatement to serve for the leftover period can at best claim damages to the extent of unexpired period of his service. It is needless to mention that contract employees are always governed by the terms and conditions of contract and cannot ask for more than that. Therefore in this case, his contract was terminated under Clause-11 of the contract.

25. The Petitioner after accepting all the terms and conditions of his contract employment submitted his joining report as "*I hereby tender my acceptance to the terms and conditions of the said contract mentioned in the offer of appointment*". As per Clause-11 of the contract employment of the Petitioner dated 05.06.2014 which specifically deals with the termination of contract (*On one month's notice on either side or payment of one month's basic pay in lieu thereof*). Meaning thereby; that the contract of the Petitioner was liable to be terminated on one month's notice on either side or payment of one month's basic pay in lieu thereof. As such, the impugned letter has been issued strictly in accordance with the terms and conditions of contract employment duly accepted by the Petitioner. As stated above, it is reiterated that at the time of his joining the Petitioner accepted the above said terms of his contract employment and now at belated stage he *cannot deviate* from the same. It is settled principle that where the employee, after accepting terms and conditions of his contract employment had submitted his

joining report, service of such employee could be terminated without assigning any reason. It is the prerogative of the competent authority either to dispense with services of such employee or continue with the same by extending the contract.

26. Moreover, it has also been alleged by the Petitioner that the impugned letter has been issued on the basis of *mala fide* but the Petitioner has nothing appended with this petition in support of his this contention. Mere verbal allegation cannot be relied upon; a specific stance taken by any party should be proved with substantial material.

27. From the above stated circumstances, it is clear that the competent authority to appoint the Petitioner is the Selection Board headed by the Secretary of the said Ministry/Division and not the Prime Minister rather it is the approving authority, as such the impugned order cannot be said to have been passed by the incompetent authority. Moreover, it is very much clear from the above procedure/guidelines that no doubt the approving authority of the Petitioner is the Prime Minister but it is noticeable here that the word 'prior' is never mentioned; meaning thereby that although the 'approval' of the Prime Minister for the appointment of the Petitioner is essential yet the 'prior approval' is not necessary for appointment or termination of the Petitioner.

28. The judgments produced by the learned counsel for the Petitioner cannot be relied upon being distinguishable from the facts and circumstances of the case in hand as each and every case has its own facts and circumstances.

29. In view of above, I see no illegality or legal infirmity in the impugned order. Consequently, the instant petition is devoid of any merit and is accordingly dismissed.

(JAWAD HASSAN)  
JUDGE

*Approved for reporting*

JUDGE

\*M.NAVEED\*