

EXTENSION OF JURISDICTION OF SERVICE TRIBUNALS TO EMPLOYEES OF STATUTORY CORPORATIONS

The Pakistan Law Commission in its meeting held on December 26-31, 1992 at Lahore discussed the issue of extension of jurisdiction of the Service Tribunals to provide relief to the employees of statutory corporations, established, managed or controlled by the Federal or Provincial Governments. It may be pointed out that currently such employees do not have any effective forum to approach for seeking speedy redressal of their grievances pertaining to the terms and conditions of service. As a result, such employees are facing enormous problems which adversely affect their performance and efficiency. It is however pertinent to note that employees of certain corporations, particularly the WAPDA, under the law can seek the redressal of their grievances through the Service Tribunals. Section 17 of the WAPDA Act 1958 specifically provides that the employees shall be treated as civil servants for the purpose of availing the jurisdiction of Service Tribunals. This dichotomy in treatment to corporation employees, in the Commission's view, introduces an element of discrimination among the employees, which is undesirable and impermissible under the Constitution [1]. The Commission, therefore, thought it desirable to address the issue and explore ways and means of resolving the grievances of the corporation employees.

In this respect the Commission examined the case law available on the subject. The question of rights and liabilities of the corporation employees has been agitated in several cases before the superior judiciary. The view consistently upheld by the courts is that the principle of master and servant is applicable to the relationship between the corporation employers and employees. The Supreme Court in the case of Anwar Hussain vs Agricultural Development Bank of Pakistan [2], expressed the view that if the relationship is the result of a contract, freely entered into by the contracting parties, then the principle of master and servant shall govern the situation. The Court went on to observe that such principle shall not apply to a situation where the relationship between employers and employees is governed by a certain provision of law or rule

which restrict the freedom of the parties in the service contract. In such an eventuality, the Court maintained, the employees of statutory corporations are entitled to bring an action through a writ petition [3]. The courts have expressed the opinion that unlike the civil servants who enjoy the legal/constitutional safeguards of seeking redressal of their grievances through Service Tribunals and the Court, no such safeguards are available for the employees of the corporations. As a result, such employees are at the mercy of their employers, who are the sole arbiters of prescribing their terms and conditions of service and can also penalise them at will. As a consequence, for all practical purposes such employees do not possess any legal character, within the meaning of Section 42 of the Specific Relief Act, 1877. Their only remedy lies in bringing an action for damages in a civil court. This state of affairs, the Commission observes, is unsatisfactory and calls for remedial measures.

The Commission also examined the Corporation Employees (Special Powers) Ordinance, 1978 whereunder the President is authorised to scrutinise the cases of appointment and promotion of those corporation employees who were appointed or promoted during the period, 1st January 1972 to 5th July 1977, and take appropriate action in the matter. Under the Ordinance, the President or a person authorised by him may remove or revert an employee in public interest. This Ordinance through a legal fiction gave the aggrieved persons the status of civil servants in order to enable them to challenge such action in a Service Tribunal. This statute undoubtedly has a limited application, however, the Commission observed that it may serve as a model for a new law on the subject of redressal of grievances of the corporation employees, pertaining to their terms and conditions of service.

The Commission after threadbare discussion on the subject came to the conclusion that the employees of statutory corporations, controlled by the Federal or Provincial Governments provide services to the nation, just like the civil servants, however, are treated differently. At present they are facing a lot of hardships with regard to their terms and conditions of service as no tribunal of exclusive jurisdiction is available to them for seeking redressal of their grievances. Therefore, the Commission recommends that with a view to alleviate their problems, a new law should be enacted on the lines of Corporation Employees (Special Powers) Ordinance, 1978 through which such employees, serving in various corporations under the Federal or Provincial

Governments may be declared to be in the service of Pakistan, and given the status of a civil servant for the purposes of approaching Service Tribunals to seek redressal of their grievances concerning their terms and conditions of employment. This measure will undoubtedly increase the work load of the Service Tribunals, the Commission, therefore, recommends that the number of existing Tribunals may be appropriately increased.

References

1. Article 25
2. PLD 1984 SC 194
3. PLD 1990 SC 612

CORPORATION EMPLOYEES (EXTENSION OF JURISDICTION OF SERVICE TRIBUNALS) ACT, 1993.

An Act to provide remedy to the Corporation employees in order to file appeals in service matters before the Service Tribunals.

Preamble: Whereas it is expedient to give right of appeal to the Corporation employees in respect of their terms and conditions of service before the Service Tribunals;

It is hereby enacted as follows:

Short title, commencement and application.-

(1) This Act may be called the Corporation Employees (Extension of Jurisdiction of Service Tribunals) Act, 1993.

(2) It shall come into force at once.

(3) It applies to all Corporation Employees wherever they may be.

2. Definition: In this Act, unless there is anything repugnant in the subject or context, "Corporation" means a Corporation or an Institution set up or established by an Ordinance or Act of Parliament and managed or controlled by the Federal Government.

3. Service of Corporation to be service of Pakistan: Service of Corporation is hereby declared to be service of Pakistan and every person holding a post in a Corporation, not being a person who is on deputation to the Corporation from any Province, shall be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1973 (LXX of 1973).

STATEMENT OF OBJECTS AND REASONS

This recommendation of the Pakistan Law Commission seeks to enact a new Act to extend the jurisdiction of Service Tribunals to provide remedy in cases involving the terms and conditions of service of the employees of Corporations.

PUNJAB CORPORATION EMPLOYEES (EXTENSION OF JURISDICTION OF SERVICE TRIBUNALS) ACT, 1993

An Act to provide remedy to the Punjab Corporation Employees in order to file appeals in service matters before the Service Tribunals.

Preamble: Whereas it is expedient to give right of appeal to the Punjab Corporation Employees in respect of terms and conditions of service before the Service Tribunals:

It is hereby enacted as follows:

Short title, commencement and application.- (1) This Act may be called the Punjab Corporation Employees (Extension of Jurisdiction of Service Tribunals) Act, 1993.

(2) It shall come into force at once.

(3) It applies to all Corporation employees wherever they may be.

2. Definition: In this Act, unless there is anything repugnant in the subject or context, "Corporation" means a Corporation or Institution set up or established by an Ordinance or Act of Provincial Assembly.

3. Service of Corporation to be service of Province of Punjab: Service of Corporation is hereby declared to be service of Province of Punjab and every person holding a post in a Corporation, not being a person who is on deputation to the Corporation from the Federation or any other Province shall be deemed to be a civil servant for the purposes of the Punjab Service Tribunals Act, 1974 (IX of 1974).

STATEMENT OF OBJECTS AND REASONS

This recommendation of the Pakistan Law Commission seeks to enact a new Act to extend the jurisdiction of Service Tribunals to provide remedy in cases involving the terms and conditions of service of the employees of Corporation.

SIND CORPORATION EMPLOYEES (EXTENSION OF JURISDICTION OF SERVICE TRIBUNALS) ACT, 1993

An Act to provide remedy to the Sind Corporation Employees in order to file appeals in service matters before the Service Tribunals.

Preamble: Whereas it is expedient to give right of appeal to the Sind Corporation Employees in respect of terms and conditions of service before the Service Tribunals;

It is hereby enacted as follows:

Short title, commencement and application.- (1) This Act may be called the Sind Corporation Employees (Extension of Jurisdiction of Service Tribunals) Act, 1993.

(2) It shall come into force at once.

(3) It applies to all Corporation employees wherever they may be.

2. Definition: In this Act, unless there is anything repugnant in the subject or context, "Corporation" means a Corporation or Institution set up or established by an Ordinance or Act of Provincial Assembly and managed or controlled by the Government of Sind.

3. Service of Corporation to be service of Province of Sind: Service of Corporation is hereby declared to be service of Province of Sind and every person holding a post in a Corporation, not being a person who is on deputation to the Corporation from the Federation or any other Province shall be deemed to be a civil servant for the purposes of the Sind Service Tribunals Act, 1973 (XV of 1973).

STATEMENT OF OBJECTS AND REASONS

This recommendation of the Pakistan Law Commission seeks to enact a new Act to extend the jurisdiction of Service Tribunals to provide remedy in cases involving the terms and conditions of service of the employees of Corporation.

NWFP CORPORATION EMPLOYEES (EXTENSION OF JURISDICTION OF SERVICE TRIBUNALS) ACT, 1993

An Act to provide remedy to the NWFP Corporation Employees in order to file appeals in service matters before the Service Tribunals.

Preamble: Whereas it is expedient to give right of appeal to the NWFP Corporation Employees in respect of terms and conditions of service before the Service Tribunals:

It is hereby enacted as follows:

Short title, commencement and application.- (1) This Act may be called the NWFP Corporation Employees (Extension of Jurisdiction of Service Tribunals) Act, 1993.

(2) It shall come into force at once.

(3) It applies to all Corporation employees wherever they may be.

2. Definition: In this Act, unless there is anything repugnant in the subject or context, "Corporation" means a Corporation or Institution set up or established by an Ordinance or Act of Provincial Assembly and managed or controlled by the Government of NWFP.

3. Service of Corporation to be service of Province of NWFP: Service of Corporation is hereby declared to be service of Province of NWFP and every person holding a post in a Corporation, not being a person who is on deputation to the Corporation from the Federation or any other Province shall be deemed to be a civil servant for the purposes of the NWFP Service Tribunals Act, 1974 (I of 1974).

STATEMENT OF OBJECTS AND REASONS

This recommendation of the Pakistan Law Commission seeks to enact a new Act to extend the jurisdiction of Service Tribunals to provide remedy in cases involving the terms and conditions of service of the employees of Corporation.

BALUCHISTAN CORPORATION EMPLOYEES (EXTENSION OF JURISDICTION OF SERVICE TRIBUNALS) ACT, 1993

An Act to provide remedy to the Baluchistan Corporation Employees in order to file appeals in service matters before the Service Tribunals.

Preamble: Whereas it is expedient to give right of appeal to the Baluchistan Corporation Employees in respect of terms and conditions of service before the Service Tribunals;

It is hereby enacted as follows:

Short title, commencement and application.- (1) This Act may be called the Baluchistan Corporation Employees (Extension of Jurisdiction of Service Tribunals) Act, 1993.

(2) It shall come into force at once.

(3) It applies to all Corporation employees wherever they may be.

2. Definition: In this Act, unless there is anything repugnant in the subject or context, "Corporation" means a Corporation or Institution set up or established by an Ordinance or Act of Provincial Assembly.

3. Service of Pakistan to be service of Province of Baluchistan: Service of Corporation is hereby declared to be service of Province of Baluchistan and every person holding a post in Corporation, not being a person who is on deputation to the Corporation from the Federation or any other Province shall be deemed to be a civil servant for the purposes of the Baluchistan Service Tribunals Act, 1974 (V of 1974).

STATEMENT OF OBJECTS AND REASONS

This recommendation of the Pakistan Law Commission seeks to enact a new Act to extend the jurisdiction of Service Tribunals to provide remedy in cases involving the terms and conditions of service of the employees of Corporation.