

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
[Judicial Department].

**Writ Petition No.5166-P/2018**

Saeed Akhtar Chughtai,  
 Son of Turk Akhtar,  
 Resident of House No.12, street 1 Sector-P.1,  
 Phase-IV, Hayatabad, Peshawar.

Petitioner (s)

**VERSUS**

Government of Khyber Pakhtunkhwa,  
 Through Chief Secretary, Peshawar and others.

Respondents

For Petitioner :- Qazi Jawad Ehsan Ullah, Advocate.  
 For Respondents :- Mr. Fayaz Khan, Advocate.

Date of hearing: **24.01.2019**

**ORDER**

**ROOH-UL-AMIN KHAN, J:-** Petitioner, Saeed Akhtar Chughtai, by invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeks issuance of writ of mandamus against the respondents in general and writ of quo warranto against respondent No.6, in particular, praying that:-

- i. To declare impugned letter No.7186-93/PEDO/CEO dated 18.10.2018, whereby service of the petitioner as Chief Financial Officer (CFO), has been terminated, as illegal, coram non judice, void ab initio, without jurisdiction and based on *mala fide*, hence, be struck down.

- ii. By setting aside the aforesaid impugned order, respondents be directed to re-instate the petitioner in the service with all back benefits.
- iii. To call upon respondent No.6, to show and explain as to under what authority he is holding the Office of Chief Executive Officer (CEO) PEDO.
- iv. Grant any other relief which this august Court may deem fit and proper in the given circumstances of the case.

2. In essence, grievance of the petitioner is that he being a qualified Chartered Accountant was appointed as Chief Financial Officer (**CFO**) in the respondents' department/PEDO vide order dated 09.03.2016, on contract for a period of 03 years, but his services were terminated prior to period of completion of contract. Petitioner has urged that since his appointment, he was honestly and diligently performing his duties with no complaint or concern from the Board or anyone from the superior authorities. Trouble begin when few months ago, respondent No.6 was posted as Chief Executive Officer (CEO) PEDO, on additional charge, which mode of appointment was squarely alien to the provisions of the PEDO Act. Regardless of the illegal appointment of respondent No.6, the petitioner was making best possible efforts to pull on with the newly inducted CEO/respondent No.6, but whenever the call of duty had so demanded, the petitioner did raise questions/concerns on any of the

illegality or irregularity which respondent No.6 would want to undertake, which resulted in displeasure of respondent No.6, followed by termination of the petitioner from service on the basis thereof vide impugned order dated 18.10.2018.

3. Seeking the writ of quo warrant, petitioner alleged that appointment of respondent No.6 as CEO PEDO, is against the provisions of the PEDO Act, as well as Article 129 of the Constitution, as his appointment is not supported by approval of the Government which includes, the Chief Minister and the Cabinet, rather his appointment has been made on the sole concurrence of the Chief Minister. Besides, there is no concept of appointment of CEO in PEDO by way of an additional charge.

4. When summoned, the respondents contested the petition by filing para-wise comments, wherein they have strongly resisted the contentions of the petitioner.

5. Arguments of learned counsel for the parties heard and record perused.

6. So far as the writ of mandamus sought by the petitioner is concerned, it appears from record, particularly, appointment order of the petitioner that his service as a CFO was on contract basis for a period of three years on the terms and conditions embodied in the appointment order dated 09.03.2016. Impugned order dated 18.10.2018, reveals that service of the petitioner has

been terminated under clause 4(g) of terms and conditions of his appointment order, which is reproduced below:-

“4 (g) If you are found guilty of any misconduct, divulging of business matters, corruption of any kind, unauthorized commitments, false representations or action in any manner prejudicial to the interest of the organization, **your service will be terminated without any notice or salary in lieu thereof without consequential damages to the organization.** (emphasis supplied).

7. It is settled law that if a person is employed on contract basis and terms of his/her employment provide the manner of termination of his/her services, he/she can be terminated in terms thereof. In the case in hand, the competent authority in exercise of above referred condition of service has terminated the services of the petitioner. Thus the termination letter, impugned in this petition, in view of the principle laid down by the Hon’ble Supreme Court in cases title, **“The Secretary Government of the Punjab through Secretary Health Department, Lahore and others v Riaz ul Haq (1997 SCMR 1552) and “Agha Salim Khurshid and another v Federation of Pakistan and others (1998 SCMR 1930)”** does not suffer from any infirmity. The Hon’ble Supreme Court of Pakistan in the case of **Brig ( R) Sakhi Marjan, CEO, PESCO, Peshawar v Managing Director PEPCO, Lahore and others ( 2009 SCMR 708)** has held that:-

“If the master rightfully ends the contract, there can be no complaint. If the master wrongfully ends the contract, then the servant can pursue a claim for damages. So, even if the master wrongfully dismisses the servant in breach of the contract, the employment is effectively terminated”.

8. In view of the settled law, a master is well within his right to retain or dispense with services of an employee on the basis of satisfactory or otherwise performance. In this case, the petitioner after having accepted the conditions of service has no locus standi to file constitutional petition seeking writs of prohibition and mandamus to authority to refrain from terminating his services and to retain him on his existing post. In this regard guidance can be derived from the judgments of the Hon’ble Apex Court, rendered in cases of **“Government of Balochistan, Department of Health through Secretary, Civil Secretariat, Quetta v Dr. Zahida Kakar and 43 others (2005 SCMR 642), Abid Iqbal Hafiz and others v Secretary, Public Prosecution Department, Government of the Punjab, Lahore and others” (PLD 2010 S.C 841), “Pakistan Telecommunication Co.Ltd through Chairman vs. Iqbal Nasir and others” (2011 PLC C.S 623) and HRC No.44517-K/2010 regarding**

**Regularization of the contract Employees of Zakat Department (2013 SCMR 304).**

9. Same view has been reiterated by the Hon'ble Supreme Court in its judgment dated 04.10.2017, rendered in **Civil Petitions No.4504 to 4576, 4588 and 4589 of 2017**, as under:-

“Having heard the learned counsel for the parties, we find that contractual employees **have no right** to be regularized, until there is a law provided to that effect and we are not confronted with any such legal proposition. They are the contractual employees and have **to serve till the pleasure of their master** and in case of any **wrongful termination**, which according to them has taken place, they cannot seek the reinstatement. At the best, they can **only have the compensation for the wrongful termination** by applying to the competent Court of law”. **(Bold and underlines are ours for emphasis).**

10. Deriving wisdom and guidance from the judgments of the Hon'ble Supreme Court as well as placing reliance thereupon, the writ of mandamus sought by the petitioner is hereby refused.

11. As regards the writ of quo warranto, it appears from record that Mr. Akbar Ayub Khan, the then CEO, PEDO, was terminated from service vide order dated 24.08.2017 in light of judgment of this Court dated 07.06.2017. Since, the PEDO Act does not provide for assigning additional charge to Government Official, therefore, the competent authority i.e. the Chief Minister,

as per prescribed rules, gave additional charge of CEO PEDO to Mr. Naeem Khan Secretary Energy & Power on 24.08.2017 and then to Mr. Shakil Qadir Khan Secretary Finance Govt of KP on 15.01.2018 and finally to respondent No.6 on 07.05.2018, as stop gap arrangement, on the ground that the PEDO Act only provides appointment of CEO PEDO, for which the appointing authority is the Chief Minister and Cabinet. The post of CEO has now been advertised against which proper appointment shall be made. Handing over the additional charge of CEO to respondent No.6 was only a stop-gap arrangement, and PEDO being under the administrative control of Energy and Power Department Government of Khyber Pakhtunkhwa, the Chief Minister was vested with the power to give additional charge to respondent No.6 for the purpose of smooth running of the affairs and functions of the Institution, till arrival/appointment of the suitable candidate.

12. So far as contention of learned counsel for the petitioner that Chief Executive Officer (CEO) PEDO, was not vested with the power to terminate the contract services of the petitioner on the ground that petitioner was appointed by approval of the Board of Director is concerned, suffice it to say that appointment order of the petitioner leave the matter of termination entirely on the discretion of the CEO. In this regard the relevant parts of

condition/clause No.3 of appointment order of the petitioner are reproduced below:-

“After confirmation, your services can be terminated by either party without assigning any reason with one month’s notice or one month’s Gross Salary in lieu of the notice period.

The CEO has absolute discretion to terminate your appointment/services. Should you for any reason wish to terminate your service with the employer, you will be at liberty to resign in writing (to be sent to CEO) by giving a one month notice.”

At the cost of repetition, services of the petitioners were hired by the respondents on contract basis, regulated by the terms and conditions, mentioned in the appointment letter, which were accepted by the petitioner. The above quoted clause of contract of the petitioner, vests the authority in CEO to terminate services of the petitioner.

13. Argument of learned counsel for the petitioner that petitioner had not been served with prior notice of termination by the respondents, therefore, he has been condemned unheard, is misconceived and unpersuasive, for the reason that on 21.06.2018, the Authority showing its displeasure about non-professional attitude of the petitioner towards his official duties, directed him to mend his way, but he did not, hence, finally contract of his service was terminated vide impugned order dated 18.10.2018.

14. Above all, petitioner after termination of his contract has questioned the order of additional charge of CEO PEDO to respondent No.6. Till he was in service, he kept mum and never objected over the same, therefore, he has not come to the court with clean hands and is estopped by his conduct.

15. For the reasons discussed above, this writ petition being meritless is hereby dismissed.

**Announced:**  
**24.01.2019**

*Siraj Afridi P.S.*

**JUDGE**

**JUDGE**

*DB of Hon'ble Mr. Justice Rooh-ul-Amin Khan and  
Hon'ble Mr. Justice Qalandar Ali Khan*