

# **IN THE HIGH COURT OF SINDH, AT KARACHI**

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

## **C.P No. D-411 of 2015**

Dr. Amir Bux and 9 others

V/s

The Federation of Pakistan & another

## **C.P No. D-6708 of 2014**

Dr. Mumtaz Ali Shar & 3 Others

V/s

The Federation of Pakistan & another

## **C.P No. D-7782 of 2015**

Mukhtiar Ahmmed Chachar

V/s

The Federation of Pakistan & another

Petitioners : Through Mr. Salahuddin Ahmed advocate along with Mr. Rehan Kiyani advocate in C.P No. D-411/2015 & 7782/2015.  
Mr. Mehmood Baloch advocate in C.P No. D-6708/2014

Respondent No.1 : Through Mr. Aslam Butt DAG

Respondent No.2 : Through Mr. Asim Iqbal advocate along with Mr. Farmanullah, advocate

Date of hearing : 15.02.2017

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** The above captioned Constitutional Petitions are being disposed of via this common judgment as all petitions pertain to common points of law and facts. In all these petitions, the

Petitioners are seeking fixation of their salaries in Grade-VI, along with the arrears and all the service back benefits, as were granted by the Hon'ble Supreme Court in the case of Dr. Anwar Sahto and others , by means of corrigendum (dated 31.05.2010 & 07.06.2010) issued by the Management of Respondent No. 2.

2. Brief facts of the above referred petitions are that the Petitioners were appointed in Sui-Southern Gas Company Limited (hereinafter referred to as "SSGCL"), as Medical Officers on contract basis after qualifying test/interview against the vacant posts. As per the terms of company service rules all executive employees have to undergo one year probation period, which was successfully completed by the Petitioners, however, instead of issuing formal regularization letter, the respondent company terminated their services along with others on 09.09.1997.

3. The Petitioners No.1, 2 and 7 in C. P. No. D-411 of 2015 and Petitioner No.1 in C. P. No. D-6708 of 2014 and other employees challenged the said orders at different fora including this Court in C.P No.D-2062 of 2016 and C.P No.D-863 of 2007. Copies of the orders are available at Pages-49-57.

4. In the meanwhile the Sacked Employees (Re-instatement) Ordinance, 2009 (hereinafter referred to as "Ordinance") was promulgated, which was subsequently named as the Sacked Employees (Reinstatement) Act, 2010, (hereinafter referred to as "Act"). In pursuance of the said Act, a statement was given on behalf of the Respondent-Company in C.P No.D-863 of 2007 that the Petitioners' case fall within the ambit of the Ordinance in question and therefore, they were

reinstated. Thereafter, the Petitioners in that Constitutional Petition were satisfied and the petition was disposed of vide order dated 26.04.2010 with the observation that if the Petitioner's cases were not dealt by the Respondent in accordance with the law, then they would be entitled to approach this Court by filing a fresh petition. Accordingly, the present Petitioners were reinstated in service in the month of April, 2009.

5. Thereafter, via letter dated 27.06.2010, the Petitioners claimed that they were demoted to Grade-III with basic pay Rs.16,900/-, instead of the claim of one step promotion.

6. The Petitioners, thus now, have challenged basically their demotion through the instant Constitutional Petitions.

7. The Respondent No.2 filed parawise comments to the Petitions.

8. Mr. Salahuddin Ahmed, advocate for Petitioners has argued that all Petitioners were appointed on contract basis as Medical Officers in the year 1995-96 in the Respondent company. He further stated that the services of the Petitioners were terminated in the year 1997. He stated that being aggrieved with the said action, the Petitioners filed Constitution Petition No.2062 of 2006 before this Court and this Court vide Order dated 22.09.2010, disposed of the same as withdrawn. However, on the promulgation of the Ordinance, and subsequently on its conversion into an Act, the Petitioners were reinstated in service in the month of April, 2009. He next argued that the respondents however, did not provide them their basic right of being reinstated in a higher rank but they were reinstated on their original rank and subsequently, they

were demoted to Group No.III, which was a discriminatory treatment with them. The learned counsel next argued that an identical case was decided by the Hon'ble Supreme Court Re: Dr. Anwar Ali Sahto, wherein it was pleaded that his case was discriminated from the case of Dr. Humaira Shaheen and others, who were reinstated in service in Grade VI and were given due grade after fixing due salary and the Hon'ble Supreme Court allowed the same vide order dated 31.08.2009. He further argued that the case of the Petitioners is identical and is at the same footing as that of Dr. Humaira Shaheen, Dr. Munawar Hayat and Dr. Anwar Ali Sehto, who had been given due grade after fixing their due salaries i.e. Grade VI. Pursuant to this, the Petitioners kept approaching the respondent no.2 for being provided same treatment in compliance of the judgment passed by the Hon'ble Apex Court referred above. However, the Respondent No.2 paid no heed and disobeyed the Judgment of the Hon'ble Supreme Court. He further emphasized that in the month of January 2010 and September 2011, the Sub-Committee of the Cabinet passed directions to the respondent No.2 to give equal treatment, as per the directions of the Hon'ble Supreme Court, but the same was not executed upon. He next contended that one Dr. Mumtaz Ali filed a C.P bearing No.1494/2012 before this Court and this Court was pleased to pass an order dated 29.05.2014 directing the Respondent company to decide the representation within two months, but the same was decided one sided even no chance of personal hearing was given to him. The learned counsel has emphasized that the Petitioners possess requisite qualification to be placed in Grade VI rather than Grade III which has been denied to them by the respondent company and the same is in violation not only with regard to the directives of the Hon'ble Apex Court

in the case of Dr. Anwar Ali Sehto but also the established practice of the respondent company as well as Article 25 of the Constitution. The learned counsel for the Petitioners argued that these petitions are maintainable before this Court as the Respondent Company falls within the ambit of “person” under Article 199 (5) of the Constitution. He further argued that a writ can be issued against the Respondent No.2 directing them to place the case of the Petitioners in Grade VI, as has been done with other Doctors. The learned counsel further argued that the Respondent-Company is Government Entity and being managed and controlled by the Federal Government as such Writ Petition is maintainable under the law, as the Respondent No.2 has violated their own service Rules. He lastly argued that this is a case of violation of the Ordinance/Act as well as the fundamental rights of the petitioners and the authority to check such violations is vested in this Court in pursuance of Article 199 of the Constitution. In support of his contention learned counsel relied upon unreported case of Dr Anwar Ali Sahto and others versus Federation of Pakistan and others, Salahuddin and others versus Frontier Sugar Mill and Distillery Ltd, TOKHT Bhai and others (PLD 1975 SC 244), Federal Government Employees Housing Foundation through Director General Islamabad and others versus Muhammad Akram Ali Zai Deputy Controller PBC Islamabad (2002 PLC CS 1655), M/s Huffaz Seamless Pipe Industries Ltd versus Sui Sothern Gas Pipe Line Ltd (1998 CLC 1890), Captain Salim Bilal versus Pakistan International Airline Corporation (PIAC) through Managing Director (PIAC) and others (2013 PLC CS 1212), SSGC versus Saleem Mustafa Shaikh (PLD 2001 SC 176), Defence Housing Authority versus Lt. Col Syed Jawaid (2013 SCMR 1707), Muhammad Rafi and other versus

Federation of Pakistan and others (2016 SCMR 2146), Mrs. Aneesa Rehman versus PIAC and others (1994 SCMR 2232), Muhammad Dawood and others versus Federation of Pakistan and others (2007 PLC CS1046).

9. Mr. Mehmood Baloch, advocate for the Petitioners in C.P. No.D-6708/2014 has adopted the arguments of Mr. Salahuddin Ahmed, advocate.

10. On the other hand the learned counsel for the Respondent No.2 Mr. Asim Iqbal stated that SSGCL is a public limited company, which was incorporated under the Companies Act, 1913 (now the Companies Ordinance, 1984) and is engaged in the business of transmission and distribution of natural gas to the Province of Sindh and Baluchistan and is being managed by a autonomous Board of Directors for Policy guidelines and overall control under the provisions of Companies Ordinance, 1984 and has its own Memorandum and Articles of Association respectively. He next contended that SSGCL does not perform functions connected with the affairs of Federation, Province and Local Authority. According to him the disputed facts involved in the instant Petitions require recording of evidence, which cannot be done in a Constitutional Petition. In addition, the applicable SSGCL Service Rules are not statutory and the Petitioners are not covered by Section 2(1)(b) of Civil Servant Act, 1973, as such the relationship between "SSGCL" and the Petitioners is that of "master and servant". The learned counsel further stated that the services of the Petitioners were terminated, however, subsequently they were reinstated to complete the remaining period of contract and it was the prerogative of the respondent

company either to terminate their services after expiry of the contract period or to regularize their services in accordance with the "Act". He stated that Petitioners were appointed as Medical Officers and no Grade was assigned to the Petitioners in their appointment letters, as such the Petitioners were accommodated in Grade III, as per their contract and no discrimination was meted out to them by the Respondent company. According to him the Petitioners cannot claim that they had a vested right to be placed in Grade VI. He further argued that the Petitioners cannot rely upon C.P No.D863/2007 to which they were not the parties and cannot ask for any relief which has been given to some other person whose cases were different from the claim of the Petitioners. He next argued that the Petitioners filed C.P No.D-2062/2006 before this Court and pursuant to the "Ordinance", the Petitioners were reinstated in the service and having been satisfied with such re-instatement, they withdrew their petitions vide order dated 22.09.2010 and after lapse of six years they have filed the instant petitions, hence according to him, the doctrine of latches is fully attracted in the present case. He further argued that the respondent company has complied with the "Ordinance" and there is no violation of the sections of the "Ordinance" and/or "Act" and the Petitioners were placed in Grade III by regularizing their services. He further argued that this is not a case of demotion, as alleged by the Petitioners, as the Petitioners were initially appointed as Medical Officers without any grade. He further argued that the promotion and seniority is not a vested right of the Petitioners, as the Respondent company is fully entitled to treat them in accordance with their own service rules so the grievance of the Petitioners is not tenable under the law. He further contended that it is the prerogative of the company to enhance the

qualification and to award grade as per service rules. So far as the promotion is concerned the Petitioners cannot claim any fundamental/vested right in this behalf. The learned counsel further argued that the case of Dr. Anwar Ali Sehto is different from the case of the Petitioners, as he was given the regular cadre employment as per Judgment of the Hon'ble Apex Court whereas the Petitioners were reinstated as per the terms of the "Ordinance". He further emphasized that the cases of Dr. Humaira Shaheen, Dr. Munawar Hayat and Dr. Anwar Ali Sehto, Irum Sagheer and Muhammad Ali Tariq are not applicable to the instant Petitions since the said cases pertain to different cadres, therefore, the same are distinguishable from the case of present Petitioners and no claim on equal footing could be made. He lastly argued that the instant petitions are not maintainable. He also relied on the order dated 26.04.2012 passed by the Hon'ble Apex Court in Cr. M. A. No.698/2010 in Cr. O. P. No.21/2009 (Ghulam Abbas and others v. Humair Khan and others) and argued that the Petitioners in the earlier round of litigation never claimed one step promotion from backdate, hence, they cannot ask for the same through these Petitions after lapse of couple of years, which even otherwise, cannot be allowed under the law.

11. The learned counsel relied upon the cases of Nagina Bakery versus Sui Southern Gas Ltd and Others (2001 CLC 1559), Abdul Wahab and others versus HBL and others (2013 SCMR 1383), Saleemullah Khan versus Shahid Hamid and others (2010 PLC CS 888), Abdul Hameed versus Ministry of Housing and Works Government of Pakistan, Islamabad and others (PLD 2008 SC 395),



Mumtaz Ali Narai versus Chief Secretary Government of Sindh and others (2008 PLC CS 255), Muhammad Zakir Khan versus Government of Sindh and others (2004 SCMR 497), Government of Pakistan through Establishment Division Islamabad and others versus Hameed Akhter Niazi, Academy of Administrative Walton Training Lahore and others (PLD 2003 SC 110), Dr. Ilyas Qadeer Tahir versus Secretary M/O Education (Now M/O CADD, Islamabad and others (2014 SCMR 997), Pakistan International Airlines Corporation and others versus Tanveer-ur-Rehman and others (PLD 2010 SC 676), Syed Nazeer Gillani versus Pakistan Red Crescent Society and others (2014 SCMR 982), Defence Housing Authority Versus Lt. Col Syed Javaid Ahmed ( 2013 SCMR 1707), PIA Corporation versus Syed Suleman Alam Rizvi and others (2015 SCMR 1545).

12. The learned DAG representing Respondent No. 1 has adopted the arguments of the learned counsel for the Respondent No.2 and further stated that the Petitioners were appointed on contract basis and were reinstated under Section 6 of the “Act” as Section 3 of the said “Act” is not applicable to their case. He further argued that the Petitioners are not entitled to any up-gradation as the same is the domain and policy matter of the Respondent Company.

13. The learned counsel for the Petitioners, in exercising of his right of rebuttal has argued that the case cited by the learned counsel for the Respondents No.2 as Abdul Wahab versus HBL (2013 SCMR 1383) and Nagina Bakery versus SSGC ( 2001 CLC 1559) are distinguishable from the facts of the present case as a majority shareholding in HBL Board was not of the Government but of a private entity and HBL was not a

person owned and controlled by the Government nor was it carrying on essential State Functions. He next argued that the judgment passed by this Court in Nagina Bakery's case is "per incurium" as this Court has already allowed various writ petitions against limited companies, incorporated under the Companies Ordinance 1984. So long as the majority ownership and control of such companies vests with the Government and in support of his contention he relied upon the cases of Ramna Pipes and General Mills versus SNGPL (2004 SCMR 1274) and PTCL versus Muhammad Zahid (2010 SCMR 253). The learned counsel further contended that the issue of maintainability was raised in the case of Ramesh Kumar Ukrani versus Federation of Pakistan (2016 CLC 1152) but the contention was emphatically rejected by the Division Bench of this Court by holding that Judgment of the Hon'ble Supreme Court on this point were to be preferred to the judgment in the Nagina Bakery case. The learned counsel argued that the question of statutory or non-statutory Rules of Service does not arise as the Respondent company has violated Section 3 and 6 of "Ordinance" therefore, the petitions are maintainable. In support of his claim he has relied upon the case of Zaen Aziz Qureshi versus PIAC (2016 PLC CS 272) and argued that the question of statutory and non-statutory rules of service is irrelevant when violation of the statutory provision takes place. The learned counsel has also relied upon in the case of I.A Sherwani and others versus Govt. of Pakistan (1991 SCMR 1081). The learned counsel next contended that the most of the case law cited by the learned counsel for the Respondents No.2 relate to promotion and seniority of Civil Servants and the issue in hand is not akin to that, as such are distinguishable. Learned counsel for the Petitioners lastly argued that the Petitioners

want similar treatment as meted out with his peers in Grade-VI rather than Grade-III.

14. We have heard learned counsel for the Petitioners, learned counsel for the Respondent No. 2 and learned DAG for the Respondent No.1 and perused the material available on record minutely with their assistance as well as the decisions relied upon by them.

15. Upon perusal of the pleadings and arguments extended thereon by the learned counsel for both the Parties, three basic primordial questions require our determination, which are as follows:

- (i) Whether or not a writ could be issued against the Respondent-Company under Article 199 of the Constitution?
- (ii) Whether "SSGCL" is a "person" and is owned and controlled by the Federal Government, by virtue of the fact that its majority shares are held by the Government of Pakistan?
- (iii) Whether there is any violation of the operative sections of the Ordinance to invoke Writ Jurisdiction of this Court?

16. Firstly with regard to the question of maintainability, reference may usefully be made to the case of Ramesh Kumar Ukrani vs. Federation of Pakistan (2016 CLC 1152), where this Court, where SSGCL was a party held that:-

- "24. In view of the dicta laid down in the aforesaid judgments, particularly the principle laid down with regard to maintainability of a petition under Article 199 of the Constitution against the Respondents No.2 and 3 by the Hon'ble Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) reported in 2004 SCMR 1274, we are of the fortified view that the instant petition is maintainable against the Respondents No.2 and 3

under Article 199 of the Constitution of Pakistan, 1973. The Respondent No.2 is indeed a Company which is performing function in connection with affairs of Federation and as such, is amenable to Constitutional jurisdiction of High Court. Mere fact that company is a Limited Company, registered under the Companies Ordinance, 1984, limited by shares, is not sufficient to hold that Constitutional petition could not be maintained against it. Even if companies are registered under the Companies Ordinance but are funded by the Federal or Provincial Government and are under the dominative control of the State, the jurisdiction under Article 199 of the Constitution 1973, would lie against such companies.

25. We, therefore, hold that the instant Constitutional petition is maintainable under Article 199 of the Constitution of Pakistan, 1973.”

17. For the reasons given in the said judgment, we concur with view that the Petitions are maintainable against SSGCL.

18. Having decided on the maintainability, the instant Petitions relate to the award of Grade in Group-VI to the Petitioners, which they are claiming through the instant Petitions. Looking at the background of the SSGCL, as given in the case of Khawaja Muhammad Asif vs. Federation of Pakistan (PLD 2014 SC. 206), the Honourable Supreme Court has held that:-

“SSGCL is a State enterprise incorporated under the Companies Ordinance, 1984. SSGCL has an authorized capital of Rs.10 billion of which Rs.6.7 billion is issued and fully paid up. The Government alongwith State entities owns more than 67% of the shares of SSGCL. In 2003, when the aforesaid contract was awarded all 14 Directors on the Board of SSGCL were government appointees. Today, 11 out of 14 Directors are nominees of the Government. SSGCL is a Public Limited Company listed on the Karachi Stock Exchange.”

19. As per the profile of SSGCL, it is a State Enterprise. The Government owns the majority of shares which is presently over 70%. The Managing Director/Chief Executive of the Company is nominee of Government of Pakistan and has been delegated with such powers by the Board of Directors as are necessary to effective conduct of the business of the Company. In view of the above background and status of SSGCL, the same can ordinarily be regarded as a 'Person' performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution, thus, the High Court has an entry point to interfere in the subject affairs of SSGCL under the Constitution.

20. Now, the question raised by the learned counsel that the Respondent-Company is not established under the Statutes, but incorporated as a Company under the Companies Ordinance, 1984, as such no writ can be issued. Since important question of law is involved in the present proceedings, therefore, we have to see whether the test laid down by the Honourable Supreme Court in the case of Pakistan Defence Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), is applicable in the present case. The Honourable Supreme Court while discussing status and the functions of various authorities held as under:-

"Keeping in view the Statutes which established and the functions of the appellants' authorities, and having considered in the light of "function test", we hold and declare that these are statutory bodies, performing some of the functions which are functions of the Federation State and through the exercise of public power, these bodies create public employments. These bodies are therefore "persons" within the meaning of Article 199(1)(a)(ii) read with Article 199(5) of the

Constitution. If their actions or orders passed are violative of the Statute creating those bodies or of Rules/Regulations framed under the Statute, the same could be interfered with by the High Court under Article 199 of the Constitution. (Emphasis added)"

The aforementioned test is applicable on SSGCL, which mostly follow the policies laid down by the Government of Pakistan regarding supply of gas under its controlled area, being a Public Utility Company providing basic amenities to the public at large. Therefore, we have no hesitation to hold that SSGCL is a body corporate performing functions in connection with the affairs of the State, since the involvement of Government is not limited to the fact that its majority shares are held by the Government of Pakistan. It may further be of relevance to point out the fact that subscription of major shareholding is a part of capital of the Government, which is public money, which establishes control of Government over the affairs of the Respondent-Company too. The functions of Company have element of public authority, public duties to perform and carry out its transaction for the benefit of the public and not for private gain or benefit, making the Company will be amenable to judicial review under Constitutional jurisdiction.

21. A reference has been given by the learned counsel for the Respondent-Company to the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383), where he attempted to demonstrate that the Respondent-Company is not "person" as defined under Article 199 (5) of the Constitution. In this context, the august Supreme Court has held that two factors are most relevant i.e. the extent of financial interest of the State/Federation in an institution and the dominance in the controlling affairs thereof. In Salahuddin v. Frontier Sugar Mills and

Distillery Ltd. (PLD 1975 SC 244), the august Supreme Court laid down similar test to assess whether a body or authority is a person within a meaning of Article 199 of the Constitution and observed:---

"The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Government; and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not." (Emphasis added)

22. The aforesaid view was further affirmed in Aitcheson College, Lahore through Principal v. Muhammad Zubair (PLD 2002 SC 326), the august Supreme Court laid down as follows:---

"Applying the above test on the facts of the instant cases, we feel no hesitation in drawing inference that the Board of Governors, Aitcheson College, Lahore headed by the Governor of the Province as its President along with other officers i.e. Secretaries Education, Finance and General Officers Commanding as well as unofficial Members are involved in providing education which is one of the responsibility of the State and by taking over its management and control the board, exercises sovereign powers as well as public powers being a statutory functionary of Government who in order to provide it full legal/Constitutional protection had brought it into the folds of its Education Department by amending the Provincial Rules of Business as back as in 1994 and even if for the sake of arguments if it is presumed that no financial aid is being provided to the College from the Provincial Public exchequer, even then, the College remains in dominating control of the Provincial Government through Board of Governors. Therefore, the above test stands fully satisfied and we are persuaded to hold that organization of the Aitcheson College, Lahore falls within the definition of a person."

23. In the light of the dicta laid down by the Honourable Supreme Court, our view that the Respondent-Company falls within the definition of “person” as given under Article 199 (5) of the Constitution is further cemented. Thus, in view of the above discussion, we do not find any substance in the claim of the learned counsel for Respondent-Company that the jurisdiction to this Court is barred on the ground that the Respondent-Company is not a “person” as discussed above. To further strengthen the above proposition that has been answered in the case of *Pakistan International Airlines v. Tanweer-ur-Rehman* (PLD 2010 SC 676), the august Supreme Court has endorsed the three pronged test, therefore, we are fortified in our view that the instant Constitutional Petitions are maintainable against the Respondent-Company.

24. On merits, the present Petitions relate to the service of the Petitioners, who admittedly, are not Civil Servants as defined under Section 2(1) (b) of Civil Servants Act 1973, but employees of a non-statutory Company, they having non-statutory rules of service thus cannot invoke the jurisdiction of Service Tribunal, the only remedy if any, lies by way of Civil Suit before the Civil Court pursuant to the Judgment rendered in the case of *Muhammad Mobeen-ul-Islam* (supra) and in the case of *Muhammad Idrees* (supra). However, the Full Bench of this Court in *Dawood’s* case (supra) found a way out for the employees of a Statutory Corporation, Authorities, Bodies etc. who were proceeded under Removal from Service Ordinance, 2000 to invoke jurisdiction of High Court under Article 199 of the Constitution. The Hon’ble Apex Court in the case of *DHA* (supra), has held as under:



- “57. The right of appeal is a substantive right. The respondents were deprived of the said right not by an legislative amendment, but by a judicial opinion and that too on the analogy of the law laid down in Mubeen us Islam’s case (PLD 2006 SC 602) and Muhammad Idrees’s case (PLD 2007 SC 681). In both these cases, the effect of the Ordinance 2000 and that it was a statutory intervention was not a moot point. It is well established that an appeal is continuation of trial. Would it be a fair trial if an accused is shorn off his right of appeal? Would the deprivation of right of appeal not amount to judicial sanctification of all the orders passed by the departmental authorities awarding various penalties to the employees and would it not be violative of the fundamental right to a “fair trial and due process” as ordained in Article 10A of the Constitution? Could the respondent-employees not invoke Article 199 of the Constitution to seek due compliance of the Ordinance, 2000 for ensuring fair trial and due process? If the constitutional scheme and the purpose of law are kept in view, the answer to all these queries has to be in the affirmation and the constitutional petitions filed by the respondents seeking enforcement of their said right would be maintainable.
60. It was not disputed before this Court by appellants learned counsel that the respondent-employees were “persons in corporation service” within the meaning of section 2(c) of the Ordinance, 2000 and except in the case of N.E.D University, they were proceeded against under the said law. This was a ‘statutory intervention and the employees had to be dealt with under a said law. Their disciplinary matters were bang regulated by something higher than statutory rules i.e. the law i.e. Ordinance, 2000. Their right of appeal (under section 10) had been held to be ultra vires of the Constitution by this Court as they did not fall within the ambit of the Civil Servants Act, 1973, [(in Mubeen us Islam’s case (PLD 2006 SC 602) and Muhammad Idrees’s case (PLD 2007 SC 681)]. They could in these circumstances invoke constitutional jurisdiction under Article 199 of the Constitution to seek enforcement of their right guaranteed under Article 4 of the Constitution which inter alia mandates that every citizen shall be dealt with in accordance with law. The judgment of this Court in Civil Aviation Authority (2009 SCMR 956) supra is more in consonance with the law laid down by this Court and the principles deduced there from as given in para 50 above.”

25. Progressing further as to whether there is any violation of Statutory Law, compelling the Petitioners to invoke the Constitutional Jurisdiction of this Court, the Petitioners’ counsel vehemently emphasized on “Ordinance” claiming that Section 3 and 6 of the Ordinance have been violated, which is a statutory law as such the Petitions are maintainable in the light of P.D.H.A case (supra). In this regard, the relevant portion of the Ordinance is reproduced as under:-

ORDINANCE II OF 2009  
SACKED EMPLOYEES (REINSTATEMENT)  
ORDINANCE, 2009

- “1. -----
- 2. -----
- 3. Reinstatement of employees.---Notwithstanding anything contained in any law for the time being in force, judgment of any tribunal or a Court including the Supreme Court and the High Court, contract or terms and conditions of service, all persons appointed in corporation or government service, during the period from the 1<sup>st</sup> day of November, 1993 to the 30<sup>th</sup> day of November, 1996 (both days inclusive) and dismissed, removed or terminated or given forced golden hand shake during the period from the 1<sup>st</sup> day of November, 1996 to the 31<sup>st</sup> day of December, 1998 (both days inclusive) shall be reinstated immediately in service on one scale higher to their substantive scale of the post at the time of termination of service and report for duty to their respective departments or organizations.”

Provided that in case of change in scale or structure of any post or cadre by the competent authority after the 31<sup>st</sup> day of December, 1998, the persons in corporation or Government service on reinstatement shall be placed on, one scale higher than the revised or existing scale of the post:

Provided further that any person in corporation or Government service who was dismissed, removed or terminated from service on account of closure of organization or absence from duty, misappropriation of Government money or stock or medical unfitness may

prefer petition to the Review Board as provided in section 5.

4. -----

5. -----

6. Reinstatement of contract employees.--- (1) A person in corporation or Government service who held the post on contract against a regular post and his contract was extended at least once and he was subsequently dismissed removed or terminated from service shall be reinstated immediately and adjusted against regular post.

(2) A person in corporation or Government service appointed on contract against a temporary post and who was dismissed, removed or terminated before the completion of his contract period shall be reinstated immediately for the remaining portion of his contract.”

26. The record reveals that the contractual services of the Petitioners were terminated, but upon promulgation of the “Ordinance”, the Petitioners were reinstated in service to complete their remaining period of contract with the conditions that the same shall remain valid up to 30<sup>th</sup> April 2009 and thereafter it shall automatically stand withdrawn and the Respondent No.2 shall not owe any concession to the Petitioners. Thus, the reinstatement letters do not show the pay and scale. The Petitioners accepted the terms of reinstatement letters which were issued in compliance of the “Ordinance” and subsequently they withdrew their Petitions bearing No.D-2062/2006 on 22.09.2010 being satisfied that their grievance redressed. Thus, the compliance of the Ordinance had been made and no grievance could be agitated after compliance of the terms and conditions of service of Respondent-Company and no further claim be made that sections of the Ordinance have been violated. Subsequently, if the addendum letter dated 11.09.2009 issued by the Respondent No. 2 would be a fresh cause of action if any, that can be

termed violation of contractual obligation to be challenged before the proper forum as available under the law. At this juncture, we are of the view that the Petitioners cannot claim statutory violation of Section 3 and 6 of the "Ordinance", in a writ jurisdiction, in order to bring the case within the test laid down by the Full Bench of this Court in Dawood's case (supra) and P. D. H. A. case (supra). The Grade and Pay Scale, promotion, demotion and seniority fall within the expression "Terms and Conditions of Service" of the Respondent No.2, which is an internal matter of service of the Respondent No.2, which in our view cannot be raised in a Writ Petition. So far as the claim of the Petitioners that they have been discriminated as the colleagues of the Petitioners were placed in Grade No. VI and the Petitioners have been ignored and demoted to Grade III is concerned, suffice to say that the Petitioners were appointed on contract basis and no Grade was assigned in their terms of contract and subsequently, when they were reinstated in their service again no Grade was assigned. Hence, it was for the Respondents to decide against which grade and pay scale they have to place the Petitioners and no claim can be made by the Petitioners on the basis of Article 25 of the Constitution in this regard. The case laws cited by the Petitioners including the case of Dr. Anwar Sahto and others are thus different from the facts and circumstances of the instant case. So far as seniority, promotion of the Petitioners are concerned, again it is a settled principle of law that in the above matters the employees cannot claim any fundamental/vested right in promotion, in determination of eligibility criteria of promotion was essentially an administrative matter falling within the exclusive domain and policy decision making of the Employer. It is also a well settled law that the Competent Authority is entitled to

make rules in the exigency of service and to remove anomalies in service rules. It is the Service Rules Committee, which has to determine eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Competent Authority and interference in such matters by the Court in our view is not warranted. The above principle of law is laid down in the case of Government of Khyber Pakhtunkhwa vs. Hayat Hussain and others (2016 SCMR 1021). The Petitioners, thus, have the remedy under the law, in our view, as per judgment passed by the Honourable Supreme Court in Mubeenul Islam's case (supra). Thus, we do not see any violation of the Provisions of "Ordinance" on the ground that once in compliance of the Ordinance, the services of the Petitioners were restored and accepted the terms and conditions of service and enjoyed their posting, subsequent action of the department could not be governed by the Ordinance/Act. We also do not find any substance in the argument of the learned counsel for the Petitioners that the Section 3 & 6 of the Ordinance were violated by demoting the Petitioners from Grade-VI to Grade-III, since the Petitioners are governed as per the terms of their contract appointment letters and terms and conditions of service attached thereto, therefore, there is no violation of the Ordinance and if there is any breach of contract including the terms and conditions of the service the same is not enforceable being neither a statute nor conferring any statutory protection to the Petitioners.

27. The learned counsel for the Petitioners while arguing the case has heavily relied upon Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Javaid Ahmed (2013 SCMR 1707) to stress that in

view of the recent Judgment of the august Supreme Court, regardless whether rules are not approved by the Government, if the authority is Government owned organization and violation of statute Ordinance, it can be enforced through constitutional jurisdiction and rule of Master and Servant has been diluted. We have carefully gone through the aforesaid judgment of the august Supreme Court, the ratio decidendi in this judgment is, where employees of Government owned and statutory organization are removed from service under Removal from Service (Special Power) Ordinance, 2000, the constitutional petition will be maintainable. The relevant observation of the august Supreme Court is as under:---

"It was not disputed before this Court by appellants learned counsel that the respondent-employees were "persons in corporation service" within the meaning of section 2(c) of the Ordinance, 2000 and except in the case of N.E.D. University, they were proceeded against under the said law. This was a 'statutory intervention and the employees had to be dealt with under the said law. Their disciplinary matters were being regulated by something higher than statutory rules i.e. the law i.e. Ordinance, 2000. Their right of appeal (under section 10) had been held to be ultra vires of the Constitution by this Court as they did not fall within the ambit of the Civil Servants Act, 1973, (in Mubeen us Salam's case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC 681). They could in these circumstances invoke constitutional jurisdiction under Article 199 of the Constitution to seek enforcement of their right guaranteed under Article 4 of the Constitution which inter alia mandates that every citizen shall be dealt with in accordance with law. The judgment of this Court in Civil Aviation Authority (2009 SCMR 956) supra is more in consonance with the law laid down by this Court and the principles deduced therefrom as given in Para 50 above."

28. In the aforesaid judgment, the Larger Bench of august Supreme Court has deduced and summarized the following principles of law:---

- (i) Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.
- (ii) Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof, cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.
- (iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.
- (iv) Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.
- (v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.

29. Applying the aforesaid principles of law to the case of the Petitioners, we feel no hesitation in drawing inference that the Respondent-Company is non-statutory entity and Petitioners are not governed under statutory rules of service hence terms and conditions of service are not enforceable through Constitutional Petition. The case of Petitioners is neither covered under enforcement of terms of Ordinance nor violation of rule of natural justice is attracted in absence of infringement or any vested rights of the Petitioners or any disciplinary proceedings undertaken against them. These rules are not statutory, therefore, for all intent and purpose, these are contractual terms for

internal use, hence, the law laid down by the august Supreme Court in Pakistan Defence Housing Authority (supra), does not support the case of the Petitioners as there has been no violation of Section 3 and 6 of the Ordinance.

30. Now referring to the question with respect to the implementation of the judgment/orders of the Honourable Supreme Court in the unreported judgment dated 31.08.2009 passed in CPLA No.609/2009 (Anwar Ali Sehto vs. Federation of Pakistan and others) (available at P-149) is concerned, the Honourable Supreme Court has already dilated upon the issue in question in the case of Ghulam Abbas and others v. Humair Khan and others, vide order dated 26.04.2012 passed in Cr. M. A. No.698/2010 in Cr. O. P. No.21/2009 in Paragraph No.6 of the unreported order:

*“Having heard leaned counsel for the parties at some length and having considered the submissions made, we find that a perusal of the judgment of the learned Service Tribunal dated 05.04.2002 would indicate that the applicants never claimed promotion or seniority from the back date; that even before this Court, the afore-referred aspect was neither agitated by the applicants nor adverted to by this Court. It is not disputed that so applicants nor adverted to by this Court. It is not disputed that so far as the salary aspect and other financial benefits relatable to “consequential benefits” are concerned, the judgment of this Court stands fully complied with. However, their belated claim for retrospective promotions, inter se seniority and consequential benefits pursuant thereto would not be tenable, first because this aspect was never agitated earlier on either before the Service Tribunal and secondly, this Court would not like to widen the scope of back benefits as so to violate the mandatory provisions of the relevant rules to which reference has been made by the respondent’s learned counsel and thirdly, having accepted the judgment compliance of which is sought, they cannot claim a relief beyond the said judgment through this contempt application. Besides, such an exercise is likely to affect several in service employees. Even otherwise the question of contempt is a matter between the Court and the alleged*



*contemnor. In the facts and circumstances of the case and for the reason alluded to above, we are no minded to proceed any further in these proceedings. The application having no merit is accordingly dismissed”.*

31. For the aforesaid reasons, we are of the view that the relationship of Master and Servant exists between the Petitioners and the Respondent-Company and hence, their grievance pertain to the terms and conditions of service cannot be enforced through a Writ. As to the Service Rules, since there are non-statutory and mere instructions for internal control and management of the employees of the Respondent No.2. Guidance could be taken from the Hon’ble Apex Court’s judgment enunciating the test of Statutory Rules and non-Statutory Rules [Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others (PLD 2016 SC 377)] and Muhammad Zaman etc versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (un-reported Judgment dated 21.02.2017) in Civil Appeal No.1313 of 2017 where in Paragraph-7 following was held:-

“According to the Judgment delivered in Civil Appeal No.654/2010 etc. titled Shafique Amed Khan, etc Vs. NESCOM through its Chairman, Islamabad, etc. the test of whether rules/ regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to Section 54(1) of the Act and Section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [while saving the generality of the power under Section 54(1) of the

*Act]. Out of all the matters listed in Section 54(2) of the Act, clause (j) is the most relevant which pertains to the “recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank’s contribution, for the officer and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift”. A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition.*

Since it has been held above that the Regulations are non-statutory, therefore, we do not find it necessary to dilate upon the point of laches. In the light of the above, this appeal is dismissed.” (Emphasis Added)

32. We, thus, are of the view that it is for the Respondent-Company to place its employees in accordance with its Service Rules and Regulations, which is an internal matter of the Respondent-Company, thus devoid of any Constitutional interference.

33. In the light of above discussion and case law referred, the instant petitions merit no considerations and the same are accordingly dismissed along with pending application(s), with no order as to costs.

JUDGE

JUDGE