

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6555 of 2016

Major ® Syed Muhammad Tanveer Abbas Petitioner

Versus

Federation of Pakistan and others Respondents

C.P No.D-931 of 2017

Mansoor Pasha Petitioner

Versus

Federation of Pakistan and others Respondents

Date of hearing: 06.03.2018

Mr. Malik Naeem Iqbal, Advocate for the
Petitioners in both the Petitions

Mr. Mr. Abdul Wasay Khan Kakar, DAG
Ghulam Hassan Advocate.

Mr. Choudhary Muhammad Farooq,
Assistant Director (legal) RHO, NADRA, Karachi.

J U D G M E N T

ADNAN-UL-KARIM MEMON-J. The above referred
Constitutional Petitions are being disposed of vide this Single
Judgment, as common question of law and facts are involved
therein.

C. P. No.D-6555/2016

2. Petitioner was appointed as Manager Admin at Regional Headquarters NADRA, Sukkur on contractual basis vide offer letter dated 15.07.2010. Petitioner has submitted that Respondent-Authority (NADRA) initiated regularization scheme and in response thereto Petitioner was offered an option to either opt for regular service in BPS Scheme or NADRA Pay Scale (NPS). Petitioner has averred that he agreed and signed the option-1 (Employment under O / T Scale) open ended contract till the age of superannuation. Petitioner has claimed that he performed significant duty and was promoted to the post of Director in BS-19/ 0-9 vide office order dated 15.10.2012. Petitioner has further added that Respondent-Authority settled the terms and conditions of his service vide letter dated 13.10.2014 as a confirmed employee of the Respondent Authority, subsequently he was recommended for another promotion vide office order dated 19.04.2016. The grievance of the Petitioner is that due to his untimely posting and posting order as Director Regional Head office Sargodha vide order dated 24.08.2016, he approached to the Chairman of Respondent Authority against such transfer order but the grievance of the Petitioner could not be redressed, however he devolved differences with Director General Karachi, consequently his service was terminated vide impugned letter dated 24.10.2016. Petitioner being aggrieved by and dissatisfied with the impugned termination letter dated 24.10.2016, has filed the instant Petition on 30.11.2016.

C. P. No.D-931/2017

Petitioner was appointed as Supervisor, at Regional Headquarters NADRA, Sukkur on contractual basis vide appointment letter dated 16.12.2004. Petitioner has submitted that he was promoted as System Engineer vide letter dated 19.10.2005 and further promoted as Senior System Engineer (T-5) vide office letter dated 27.1.2009 and his salary was further increased vide letter dated 23.8.2010. Petitioner has averred that Respondent-Authority initiated regularization scheme in the year 2012 and in response thereto Petitioner was offered an option to either opt for regular service in BPS Scheme or NADRA Pay Scale (NPS). Petitioner has averred that he agreed and signed the option-I (NPS) of open ended contract till the age of superannuation. Petitioner has claimed that he performed significant duty and was promoted to the post of Assistant Director (T-6) vide office order dated 19.4.2016. Petitioner has further added that Respondent-Authority called explanation from him regarding absence from emergency meetings convened on 24.9.2016 and 2.10.2016 respectively. As per Petitioner he replied the explanation letter on 10.10.2016, but of no avail. The grievance of the Petitioner is that his service was terminated vide letter dated 24.10.2016 without assigning any reason. Petitioner being aggrieved by and dissatisfied with the impugned termination letter dated 24.10.2016, has filed the instant Petition on 14.2.2017.

3. Upon notice, Respondent-Authority filed para-wise comments and denied the allegations.

4. Mr. Malik Naeem Iqbal learned counsel for the Petitioners has contended that the both the termination orders dated 24.10.2016 issued by Respondent-Authority are in gross violation of Sections 24-A of General Clause Act; that the Petitioners have illegally been removed from service upon false allegations and by stigmatizing their personality; that the Petitioners have been condemned unheard and removed from service without holding proper inquiry into the allegations leveled against the Petitioners, which is unwarranted under the law; that the act of Respondent-Authority is based on malafide intention and personal ego; that the Petitioners though appointed on contract basis but subsequently their services were confirmed by the Respondent Authority are entitled to a fair opportunity to clear their position in terms of Article 4, 10-A and 25 of the Constitution of the Islamic Republic of Pakistan 1973; that this Court has jurisdiction to interfere in the matters involving denial of such rights of citizens of this Country by the State Functionaries. He has further contended that the Respondent-Authority has not taken their decision in terms of the NADRA Employees (Service) Regulation 2002; that if the Termination Order conveys a message of a stigma the employ cannot be ousted from service without resorting the procedure as provided under the Government Servants (Efficiency and Discipline) Rules 1973; that in the matter of the Petitioners, no procedure was adopted but they were removed from the

employment against the law and procedure; that it is a principle of law that when a person is to be condemned for the misconduct and even if he is employed on contract basis or probation, he is entitled to fair trial and sufficient opportunity to clear his position; but in the instant matter not only the Petitioners were condemned unheard but, their earlier stigmatized removal had disintitiled them for future appointment; that the Respondent- Authority cannot be allowed to punish its employees for the illegal acts of its own. He has further contended that the impugned orders dated 24.10.2016 are without lawful authority, unconstitutional, illegal, arbitrary, mala fide, discriminatory and in violation of principles of natural justice, equity and also in violation of NADRA Employees (Service) Regulations, 2002, which do not provide for termination of services in the aforesaid manner; that regulations 18 to 20 and 56 provide for termination of service without any notice or assigning any reasons, however the same relate to officers/employees on probation; that similarly, regulation provides for termination of service on the recommendation of Performance Assessment Committee. In the case of the Petitioner, firstly, there is no recommendation of the said committee and secondly, the same is also violative of the dictum laid down by Honorable Supreme Court in the case of Muhammad Ashraf Tiwana and others Vs. Pakistan and others (2013 SCMR 1159). He next contended that the Petitioner's terms of contract stood revised vide letter dated 13.10.2014, whereby, the Petitioners were liable to serve until the date of his superannuation, as such, their services cannot be terminated without any reason or justification; that the

clause 15 of the contract of the Petitioner's service stands abated, even otherwise, the same is violative of fundamental rights of the Petitioner as guaranteed by the Constitution of Pakistan. He has further contended that it is well settled law that such a draconian employment policy cannot possibly foster an independent and lawful institutional environment and if employees do not have safeguards against arbitrary or mindless termination; that in a civilized dispensation, which is rule based and is aimed at good governance, such whimsicality cannot be countenanced. He next contended that the impugned order dated 24.10.2016 and clause 15 of the contract of the Petitioner is violative of Articles 9, 10A, 14, 18 and 25 of the Constitution of Pakistan, hence, are void ab-initio. He lastly prays for allowing the instant Petition. Learned counsel for Petitioner in support of his contention, has placed reliance upon the cases of Pakistan Defence Housing Authority Vs. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010), Muhammad Ashraf Tiwana and others Vs. Pakistan and others (2013 SCMR 1159), Abdul Wahab and others Vs. HBL and others (2013 SCMR 1707), Pakistan Defence Officers Housing Authority Vs. Lt. col. Syed Jawed Ahmed (2013 SCMR 1707) and Muhammad Rafi and others Vs. Federation of Pakistan and others (2016 SCMR 2146).

5. Mr. Ch. Muhammad Farooq learned counsel for the Respondent-Authority has raised the question of maintainability of the instant Petitions; that since the Petitioner was hired on contract basis and as per clause 15 of the contract of the Petitioner, his appointment was liable to be terminated on 90 days'

notice on either side or payment of pay in lieu thereof, without assigning any reason; that the Rule of “Master and Servant” is applicable in the case of Petitioners; that all employees having entered into contract of service on the same or similar terms and conditions has no vested right to seek extension in contract regarding their employment, which is discretionary with the Respondent-Authority and have no right to invoke Constitutional jurisdiction of this Court, where their services were terminated/dispensed with as per terms and conditions set forth in their contract employment; that the Authorities of the answering Respondents have not acted malafidely nor violated any provisions of law or prescribed Rules in discharging their duties; that Petitioners concealed the material facts from this Court, which disentitled them to the relief claimed for; that the Respondent-Authority is a body corporate, which is controlled and regulated by the NADRA Ordinance 2000, and service regulations, 2002, which are not Statutory Rules of Service; that the Constitutional jurisdiction of this Court in cases of contractual Employees of a statutory organization having no statutory rules of service cannot be invoked under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In support of his contention he has placed reliance upon the case of Muhammad Musa Vs. Habib Bank Limited and others (2012 SCMR 979), Iqbal Hussain Sheikh and 2 others Vs. Chairman Federal Board of Revenue and another (2013 SCMR 281), Government of Balochistan Department of Health through Secretary Vs.Dr. Zahida Kakar and 43 others (2005 SCMR 642), Chief Secretary Government of Sindh and others Vs. al-Haj

Professor Syed Sibte Hassan Zaidi (2005 SCMR 646), Trustees of the Port of Karachi Vs. Saqib Samdani (2012 SCMR 64), Tehsil Municipal Officer and another Vs. Gul Fraz Khan (2013 SCMR 13), Ameer Solangi and others Vs. WAPDA and others (2016 SCMR 46), Mubashar Majeed Vs. Province of Punjab and 3 others (2017 PLC (C.S) 940), Saeed Ahmed Sethar Vs. Province of Sindh and others (2016 PLC (C.S) 589, Miss. Mehwish Asif Vs. Vice Chancellor Shaheed Benazir Bhutto University and 2 others (2016 MLD 95), Lt. col. (Retd.) Sultan Zeb Khan Vs. Board of Governors, Fazle Haq College Mardan and 5 others (2015 PLC (C.S) 1385), Chairman NADRA and others Vs. Muhammad Ali Shah (2017 SCMR 1979), PIA Corporation Vs. Syed Suleman Alam Rizvi & others (PLD 2015 SC 1545) and Pakistan Telecommunication Vs. Iqbal Nasir & others (PLD 2011 SC 132). He lastly prays that Petition being not maintainable is liable to be dismissed.

6. Mr. Abdul Wasay Khan Kakar, learned DAG, on court notice has supported the stance taken by the learned Counsel for the Respondent- Authority.

7. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

8. Foremost, we would address the question of maintainability of the instant Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

9. Upon perusal of the pleadings and arguments extended thereon by the learned counsel for both the parties, an important question of law requires our determinations, which is as follows:-

(i) Whether, National Database and Registration Authority Employees (Service) Regulations, 2002 are non-statutory rules of service and a writ could be maintained in respect of service grievance by an employee?

10. The issue of maintainability of the captioned Constitutional Petitions has been raised, in view of the latest verdict by the Honorable Supreme Court of Pakistan in the case of Chairman NADRA, Islamabad through Chairman, Islamabad and another Vs. Muhammad Ali Shah and others (2017 SCMR 1979).

11. To commence with, we have noticed that the National Database & Registration Authority is the creation of a statute established under Section 3 of the NADRA Ordinance, 2000. Section 35 of the Ordinance empowers the authority and its officers and employees on such terms and conditions as it may deem fit in order to carry out the purposes of this Ordinance. While Section 44 empowers the Federal Government to make Rules for carrying out the purpose of Ordinance and Section 45 empowers Authority to make regulations by Notification for carrying out its functions under the Ordinance and any other matter. Sub-Clause (2) of 37 and 45 clarifies that such regulations may provide for appointment of officers mentioned in Section 35. The authority, pursuant to Section 35, 37 and 45 notified its Regulations on

1.11.2002 vide S.R.O. 118 (KE)/2002. According to Regulation No.3 of the Regulations, employees of the authority are to be governed by these regulations with regard to their terms and conditions of service. Regulation No.4 of the Regulations empowers the authority to sanction, create, re-designate or abolish any post, discipline or cadre with the authority as it may deem fit. The service rules of the Respondent-Authority lay down the terms and conditions of service of their employees. The aforesaid service rules are basically instructions for the internal control or management of Respondent-Authority and are therefore non statutory. Our view is supported by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Chairman NADRA, Islamabad through Chairman, Islamabad and another Vs. Muhammad Ali Shah and others (2017 SCMR 1979) The relevant portion of the Judgment passed by the Hon'ble Supreme Court of Pakistan is reproduced herein below:-

“10. NADRA had opposed the petitions before the High Court. NADRA also took a specific plea that the NADRA Ordinance, and in particular section 35 thereof did not envisage outside interference in the affairs of NADRA and NADRA itself in alone competent to employ people, and this is required to be done in accordance with the prescribed mythology. NADRA had also raised the legal objection with regard to the jurisdiction of the High Court. Surprisingly, these legal questions did not receive and answer from the High Court.”

11. Pursuant to the powers conferred by section 45 read with sections 35 and 37 of the NADRA Ordinance, NADRA had enacted the Regulations. The Regulations attend to the method of appointment and qualification of employees (Regulation 8), designate the appointing authority (Regulation 9), specify the Selection Boards and Selection. Committee (Regulation 10), set out the procedure for initial appointment (Regulation 11), require that merit and provincial quota be observed (Regulation 12), require candidates to be medically fit (Regulation 13) and require verification of the character and antecedents of potential employees (Regulation 14).

It is not clear whether the prescribed procedure for the selection and appointment (as mentioned in the Regulations) was followed, however, NADRA had elected to regularize all contractual employees and there is no challenge to such regularization. NADRA, the appellant herein, is aggrieved by the impugned judgment which has struck down NADRA's letter dated March 6, 2012 "to the extent of equivalency table" attached, therewith and given directions to "re-designate their [the petitioners before the High Court] pay scales as mentioned in the Notifications No. F&A/ NADRA/ HQ/2002-2003, dated 21.6.2003 with all consequential benefits".

12. The referred to NADRA's letter dated March 6, 2012 had enclosed " Option Form" which was required to be "filled by all eligible employees" and the Option Form was to be submitted "latest by 22nd March 2012". The regularization process initiated by NADRA would proceed towards completion after the eligible contractual employees had submitted their Option Forms. However, before the submission of his/ her Option Form a contractual employee would continue as such, that is remain a person who was employed on contract by NADRA. The private respondents therein, who were the petitioners before the High Court, however, challenged certain terms./ components of NADRA's letter dated March 6, 2012; in doing so they undermined their own status of becoming regular or permanent employees of NADRA. If they did not accept NADRA's letter dated March 6, 2012, or any part thereof, they would remain as contractual employees of NADRA. The High Court could not renegotiate, alter and / or amend the terms of regularization that were offered by NADRA for the simple reason that the High Court did not have jurisdiction to do so. Therefore, till such time that the employees were regularized they would continue to be governed by the terms and conditions of the contract which they had with NADRA. The writ or constitutional jurisdiction of High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization, such as NADRA (see Pakistan Defence Officers Housing Authority v. Jawaid Ahmed reported as 2013 SCMR 1707, Pakistan Telecommunication Co. Ltd. v. Iqbal Nasir reported as PLD 2011 Supreme Court 132 and P.T.C.L v. Masood Ahmed Bhatti reported as 2016 SCMR 1362). It was only after the terms and conditions as offered by NADRA had been accepted and the Option Form had been submitted that the status of a contractual employee would convert to that of a regular employee of NADRA. Before accepting the terms offered by NADRA and submitting the Option Form the status of a contractual employee would remain as such and he/she would not be able to seek recourse to the constitutional jurisdiction of the High Court.

13. Therefore, for all the reasons mentioned shows, both these appeals are allowed and the impugned judgment dated March 6, 2014 of the Peshawar High Court is set aside and the petitions (W.Ps. Nos. 3210 and 3437 of 2012) filed before the Peshawar High Court are dismissed.”

12. On the issue referred to hereinabove, involved in the present proceeding, our view is further strengthened by the decision rendered by the Hon’ble Supreme Court of Pakistan in the case of Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010).

13. The next question for our consideration would be the maintainability of a writ filed by an employee of Authority against a statutory body having non statutory rules of service, seeking enforcement of the terms and conditions of his service rules. We are of the considered view that if a service grievance is agitated by a person/employee, who is not governed by the statutory rules of service, in terms of Article 199 of the Constitution; such petition shall not be maintainable. Our view is supported by the case law decided by the Honorable Supreme Court of Pakistan in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383).

14. Our view is further strengthened by the case decided by the Honorable Supreme Court of Pakistan in the case of Muhammad Zaman and others v. Government of Pakistan (2017 SCMR 571). The Hon’ble Supreme Court has dilated upon the issue of statutory and non-statutory Rules of Service and held as follows:-

“the test of whether rules/regulations were statutory or otherwise was not solely whether their framing required the approval of the Government or not, rather it was the

nature and efficacy of such rules/regulations. Court had to see whether the rules/regulations in question dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute in matters of crucial importance, in which event they would be statutory.”

15. In the light of above dicta laid down by the Honorable Supreme Court of Pakistan, we are of the considered view that 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 uses, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.

16. In view of the foregoing, the Constitutional Petitions in hand are not maintainable, hence, are dismissed with no order as to cost.

Karachi
Dated

JUDGE

JUDGE