

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-571 of 2016

Muhammad Mateen Khan Petitioner

Versus

Federation of Pakistan and others Respondents

Date of hearing: 12.03.2018

Mr. Muhammad Nishat Warsi, Advocate for the Petitioner.

Mr. Abdul Wasay Khan Kakar, DAG

Mr. Choudhary Muhammad Farooq,

Assistant Director (legal) RHO, NADRA, Karachi.

J U D G M E N T

ADNAN-UL-KARIM MEMON-J. Through the instant
petition the Petitioner has sought following relief(s):-

- a) ***Declare that the petitioner is not a civil servant neither a government servant, therefore, E&D Rules are not applicable to him and the show cause notice, as well as dismissal order both are without lawful authority, jurisdiction, void and of legal effect;***
- b) ***Declare that the petitioner has not obtained the employment by submitting forged document nor he obtained any other benefit on any such document rather he produced the documents which have***

been verified from the concerned Board and the University;

- c) Declare that the Degree and the other documents are not relevant as there was no prescribed qualification for the appointment as Net Work Administrator and no such condition has been imposed either before the appointment or at the time of appointment;***
- d) Set aside the dismissal order and reinstate the Petitioner with all consequential benefits and continuity of service.***

2. Brief facts of the case as per averments of the parties are that the Petitioner was initially appointed as Network Administrator on lump sum monthly payment of Rs. 16,000/- at Provincial Headquarter, National Database and Registration Authority (NADRA) Sindh on contractual basis vide NADRA offer letter dated 12.06.2001. The petitioner has submitted that the Respondent-Authority (NADRA) nominated the Petitioner for various training courses, conducted in collaboration with some International / Semi – International, local educational Professional Training Institutes, which he completed satisfactorily. Besides, the petitioner acquired Bachelor's degree in year 2000 in Business Administration from Al-Khair University Azad Jammu and Kashmir (AJ&K) and Master's Degree in Information Technology in the year 2006 from PIMST. The Petitioner has claimed that he performed significant duty with zeal and courage and during his service he was awarded certain benefits by the Respondent-Authority as recognition of his services. The Petitioner has submitted that Respondent-Authority vide letter dated 29.8.2013 allowed BPS employment option and placed him in BPS-18 as Deputy Director with effect from the date of joining the service in NADRA. The

Petitioner has further submitted all of a sudden he was served with a show cause notice dated 07.11.2014 alleging that he produced a fake Degree of Bachelor of Arts, purportedly obtained by him from University of Peshawar. The Petitioner has further added that he replied to the said show cause notice vide letter dated 23.11.2014 and denied the allegations on the premise that the name of the Petitioner is Muhammad Mateen Khan son of Muhammad Alim Khan, but the verified fake Degree shows the name of the Petitioner as Mateen Khan son of Aleem Khan, which document was neither produced by the Petitioner nor acknowledged by him. But, the Respondent-Authority instead of resolving the controversy arrived at a wrong conclusion and initiated action against the Petitioner. The Petitioner contends that some officials of the Respondent Authority manipulated the unfounded issue and managed his dismissal from the service vide impugned letter dated 13.07.2015. The Petitioner being aggrieved by and dissatisfied with the impugned dismissal letter/order dated 13.07.2015 filed the instant petition on 11.12.2015.

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

4. Mr. Muhammad Nishat Warsi, learned Counsel for the Petitioner contended that termination order dated 13.07.2015 issued by the Respondent-Authority is in gross violation of Sections 24-A of General Clause Act, and NADRA Employees Service Rules, 2002 and he has been illegally removed from the service on the basis of false allegations by stigmatizing his

personality; thus, the Petitioner has been condemned unheard and removed from service without holding proper inquiry into the allegations leveled against him, which is against the principles of administration and natural justice and is mala fide act of the Respondent-Authority. He further argued that the Petitioner is a regular employee and is entitled to a fair opportunity to be heard to explain his case as required under Article 4, 10-A and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. As such, this Court has jurisdiction to interfere in the matters involving infringement of constitutional rights of citizens State Functionaries. He further contended that the Respondent-Authority has not taken any decision in terms of the NADRA Employees (Service) Regulation, 2002, and termination of his service order passed by the Incompetent Authority, which is against the law. The Counsel for the Petitioner continued and stated that it is a well settled principle that such draconian and arbitrary actions by the Respondent Authority cannot provide an independent and conducive working environment to its employees, which is very much required good governance in the institution. He next contended that the impugned order dated 13.07.2015 being contrary to the relevant rules are violative of Articles 9, 10-A, 14, 18 and 25 of the Constitution of the Islamic Republic of Pakistan 1973, hence, are void ab-initio. In support of his contention, he relied upon unreported order dated 07.03.2012 passed by the learned Single Member Bench of Islamabad High Court in writ Petition No. 326 of 2012, unreported order dated 13.01.2012 passed by the learned Single Bench of Peshawar High Court in writ

Petition No. 2161-P of 2016, unreported order dated 10.03.2016 passed by the learned Single Member Bench of Islamabad High Court in Writ Petition No. 3784 of 2015, unreported order dated 07.02.2017 passed by the learned Single Bench of Islamabad High Court in Writ Petition No. 448 of 2016, unreported order dated 14.07.2016 passed by the learned Single Member Bench of Islamabad High Court in Writ Petition No. 99 of 2015 and in the case of Muhammad Rafi & others Vs. Federation of Pakistan and others (2016 SCMR 2146) and concluded that the Petition is maintainable for interference of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973. Learned counsel has further relied upon unreported order dated 23.01.2018 passed by this Court in C.P. No. D- 4221 of 2015 and argued that the matter of the Petitioner can be reconsidered by the Director General, NADRA afresh. He lastly prayed for allowing the instant Petition.

5. Ch. Muhammad Farooq, learned Counsel for the Respondent-Authority has raised the question of maintainability of the instant Petition on the ground that the Petitioner was appointed as Network Administrator against advertised vacancies on temporary basis for 11 months vide letter dated 12.06.2001 and pursuant to that his services were hired on 22.06.2003 against the post of System Administrator and basic qualification for the post of System Administrator was MCS/BCS from Recognized University and at the time of his appointment he provided the following educational certificates:-

- i). Secondary School Certificate from Peshawar Board, Session 1986.**
- ii) Intermediate and Secondary Education Board....Session 1988.**
- iii) B.A from University of Peshawar. Session 1992.**
- iv) Provisional Certificate from PIMSAT dated 13th June, 2001 for MS(IT)**

6. He next contended that educational qualifications of the petitioner was verified from the University of Peshawar and the ownership of such B.A Degree has not been denied by the Petitioner till his removal from his service. He further contended that the Petitioner was provided an opportunity of personal hearing as per law and re-verification of the subject B.A Degree was also done, which was found fake. He argued and stated that the Government Servant (E&D) Rules have been adopted by NADRA under Regulation 23 of NADRA Employees Service Regulation 2002, which are applicable to the employees of NADRA; that the departmental appeal of the Petitioner was considered and the same was rejected vide order dated 18.1.2016; that the Respondent-Authority is a Body Corporate controlled and regulated by the NADRA Ordinance, 2000, and Service Regulations, 2002, which are not Statutory Service Rules; hence, he argued that the Constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot be invoked by the Petitioner. In support of his contention, he placed reliance upon the case of Deputy District Officer (Revenue) Kasur & others Vs. Muhammad Muneer Sajid (2013 SCMR 279), Province of Punjab & others Vs. Raja Muhammad Saleem & others (2006 SCMR 740), Supreme Court (AJ&K) Ahsan Ur Rehman & 10 others Vs. Arshad Ali Khan & 5 others) 2012 PLC (C.S) 795),

Raees-uddin Vs. Naseer Anwar & others (2011 SCMR 98), Noor Muhammad Lambardar Vs. Member Board of Revenue Punjab Lahore & others (2003 SCMR 708), Ch. Fayyaz Akbar Vs. Delight House Ltd (PLD 1988 SC 76), A. R. Khan Vs. P.N. Boga through Legal heirs (PLD 1987 SC 107), Matloob Khawar & others Vs. Karan Elahi & others (1986 SCMR 1254), District Officer Shikho pura & others Vs. Tariq Mehmood (2013 SCMR 859). He lastly prayed that the instant petition being not maintainable is liable to be dismissed.

7. In rebuttal, Mr. Muhammad Nishat Warsi, learned counsel for the Petitioner argued that as Respondent Authority waived condition of qualification for the post of System Administrator, the issue stood closed and agitation of the Respondent-Authority relating to the qualification, including verification of the degree is not sustainable in law and is manifestation mala fide on their part. Moreover, he stated that the Petitioner had not produced copy of the Bachelor's Degree from the Peshawar University for the Session of 1992 and the documents submitted by the Petitioner submitted were endorsed by the concerned officer at the relevant time, who having seen the original returned to the Petitioner. He contended that Section 45 of the Ordinance, 2000, authorizes NADRA to frame the service reregulation and accordingly the same were framed vide SRO No. 118-KE- 2002 dated 1.11.2002; that as per Regulation No. 23-Govt. of Pakistan Efficiency and Discipline Rules, 1973 were made applicable/adopted; therefore, this Court has

jurisdiction to entertain the instant Petition, he concluded. Besides, Degree attributed to the petitioner was not submitted by him and no enquiry in terms of Rules 5 and 6 Government of Pakistan Efficiency and Discipline Rules, 1973 was conducted to unearth the truth and an arbitrary and unjust action of termination of services of the Petitioner was taken, which is against the cannon of justice. As such, the Respondent Authority proceedings against the Petitioner are nullity in law and infringement of his Fundamental right protected under the Constitution, 1973.

8. Mr. Abdul Wasay Khan Kakar, learned DAG supported the stance taken by the learned Counsel for the Respondent-Authority.

9. We have heard the learned counsels for the parties, perused the material available on record and case law cited at the bar.

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

11. Upon perusal of the pleadings and arguments of the learned counsels for both the parties, an important question of law requires determinations, which is discussed as follows:-

- (i) Whether NADRA Employees (Service) Regulations, 2002 are Statutory and Writ Petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973?**

(ii) Whether, Petitioner, at the time of his appointment in National Database and Registration Authority provided B.A Degree under bearing Roll No. 48592, Registration No. 91-PC-1255, Session Annual 1992 was found fake and Petitioner was entitled to retain his post on the basis of fake documents?.

12. To proceed with the question of maintainability of the Petition, 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 purpose 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 the 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. Regulation 23 of the NADRA Employees (Service) Regulation, 2002 stipulates that the

Government Servants (Efficiency & Discipline Rules, 1973 are made applicable to NADRA employees. The service rules of the Respondent-Authority lay down the terms and conditions of service of their employees. We may observe here that mere adoption of statutory rules of the Government or their application by reference will not automatically lend a statutory cover or content to those rules. In this context, the Honorable Supreme Court of Pakistan has already settled this principle in *M.H. Mirza v. Federation of Pakistan through Secretary, Cabinet Division, Government of Pakistan, Islamabad and 2 others* (1994 SCMR 1024). The aforesaid service rules are basically instructions for the internal control or Management of Respondent-Authority and are therefore non statutory.

13. 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, any violation thereof cannot be enforced through writ jurisdiction of this Court.

14. Touching to the merits of the case, the Petitioner was initially appointed as Network Administrator in NADRA, thereafter appointed as System Administrator in NADRA, the basic qualification for which was MCS/GCS from a recognizing university. The basic allegation against the Petitioner is that he obtained his job with Respondent Authority on the basis of B.A Degree, which was found fake on its verification from the University of Peshawar, Khyber Pakhtunkhwa vide their letter dated 10.10.2014. Therefore, the case of the Petitioner falls within

the ambit of Section 2 (4) of The Government Servants Efficiency & Discipline Rules, 1973 adopted by NADRA.

15. We are of the considered view that no appointment can be obtained on the basis of fake documents. Perusal of the show cause notice issued to the Petitioner on 07.11.2014 by the Respondent Authority, prima facie shows that it was alleged that the Petitioner produced a fake Degree of Bachelor of Arts, which was referred to the University of Peshawar Khyber Pakhtunkhwa vide NADRA letter for its verification and the University vide its letter dated 10.10.2014, informed the Respondent Authority that the particulars were checked with relevant record of the University; but, they found the Degree as fake document. The Respondent University contended that an opportunity of personal hearing was provided to him and the Competent Authority after fulfilling the codel formalities, awarded major penalty of his dismissal from the service vide order dated 13.07.2015.

16. The record reveals that the Petitioner submitted the documents listed at para 05 supra at the time of his initial appointment on contract basis.

17. The basic appointment of the Petitioner is a contractual appointment. The record does not show whether the contract service of the Petitioner was regularized by the Respondent Authority as provided under the law. We are of the view that such appointment would be terminated on the expiry of contract period or any extended period on the choice of employer or Appointing Authority. The case of the Petitioner is governed by

the principle of “Master and Servant”, therefore the Petitioner does not have any vested right to seek reinstatement in service. It is well settled law that contract employee cannot claim any vested right, even for regularization of service. The Hon’ble 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) has held that the writ or Constitutional jurisdiction of High Court under Article 199 of the Constitution cannot not be invoked by a contractual employee of a statutory organization, such as NADRA. 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.” (Emphasis added)

18. Reverting to the claim of the Petitioner that he has been condemned unheard by the Respondent Authority on the basis of unfounded allegation of producing a fake document of Bachelor’s Degree. Record reflects that though the Petitioner was contract employee of Respondent Authority, however he was issued show cause notice, which was replied to by the Petitioner. Perusal of the Regulation 11 (5) of NADRA Employees Service Regulations, 2002 provides that a candidate for initial appointment must possess the prescribed qualification and experience and must be within the age limit laid down for the post advertised by the Respondent Authority. Regulations provide that a show cause notice can be issued to the regular employees of the Respondent Authority, but the Respondent Authority provided him an opportunity to rebut the allegation, but he failed to do so.

19. In view of the above Provision of law that the service of contract employee can be terminated on the 14 days’ notice or pay in lieu thereof, the Respondent Authority have no ostensible reason to put false allegation of submission of forged Bachelor’s Degree against the Petitioner. During the course of arguments both the parties leveled allegations and counter allegations against each other. It is well settled law that the disputed facts cannot be adjudicated upon in Constitutional jurisdiction of this Court. In the present case no material has been placed before us, by which we could conclude that impugned order dated 13.07.2015 has

been unlawfully issued by the Respondent Authority. The Petitioner has failed to establish that he has any fundamental, vested right to remain on contractual post. Therefore, the argument of the Petitioner that he was not heard before issuance of impugned order dated 13.07.2015 is not tenable in the eyes of law. This Court has already decided the case of similar nature vide common Judgment dated 12.03.2018 passed in the case of Major (R) Syed Muhammad Tanveer Abbas and Mansoor Pasha in Constitution Petition No. D-6555 of 2017 and C.P. No. D-931 of 2016. The relevant portion of the judgment is reproduced as follows:-

“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.”

20. The case law relied upon by the learned counsel for the Petitioner are distinguished from the facts and circumstances of the case.

21. In view of the above facts and circumstance of the case, the instant Constitution Petition is not maintainable in law as well as on merit, hence is dismissed along with listed application(s).

Karachi
Dated:-

JUDGE

JUDGE