

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hasan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 571 of 2015

Muhammad Mateen Khan.....Petitioner

V/s

Federation of Pakistan & 3 others.....Respondents

For hearing of CMA No.17009/2018
(For review or order dated 28.3.2018)

Date of hearing: 26.01.2019

Ch. Muhammad Ashraf Khan, advocate for the Applicant.
Ms. Durdana Tanweer, Assistant Attorney General.
Chaudhry Muhammad Farooq, Law Officer NADRA.

ORDER

The captioned Petition was disposed of by this Court vide judgment dated 28.03.2018, with the following observations:-

“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 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 is 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"

132 *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 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 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).

2. The aforesaid judgment was assailed before the Hon'ble Supreme Court of Pakistan in Civil Petition No.653-K/2018, which was dismissed as not pressed vide order dated 06.08.2018, with the following observation:-

“Learned ASC for the petitioner states that review petition has been filed by the petitioner against the impugned judgment which is pending in the High Court. He states that he does not press this petition and will approach this Court if the review petition is decided against the petitioner. The petition is dismissed as not pressed.”

3. On 14.4.2018 the applicant filed application under Order 47 read with Section 114 of Civil Procedure Code (CMA No.17009/2018) for review of the judgment dated 28.3.2018 passed by this Court.

4. We queried from the learned counsel for the applicant as to how the instant review application is maintainable, when the applicant before the Hon'ble Supreme Court did not press the Civil Petition No.653-K/2018.

5. Ch. Muhammad Ashraf learned counsel for the applicant in reply to the query has submitted that the applicant did not press his petition before the Hon'ble Supreme Court on the premise that review application is pending before this Court. On merits, he has submitted that the aforesaid petition has been dismissed by this Court on the sole ground that Petitioner is a contract employee, whereas he was not contract employee but a regular employee of NADRA, therefore, observation made by this Court regarding nature of service of the Petitioner in the impugned judgment is erroneous which requires reconsideration and the matter may be decided on merit. We posted another question that this Court has not decided the matter on the sole ground of the status of the

petitioner as a contractual employee, but we have decided the issue of statutory and non-statutory rules of the service of the Petitioner as well as on the issue of production of fake degree of Bachelor of Arts which was referred to the University of Peshawar Khyber Pakhunkhwa vide NADRA letter for its verification and the University vide its letter dated 10.10.2014 informed the Respondent-NADRA that the particulars were checked with relevant record of the University but they found the degree fake document. In reply to the aforesaid proposition, learned counsel has submitted that the Petitioner did not produce a fake degree of Bachelor of Arts while getting appointment in NADRA, then again we posted another question that since the disputed questions of facts were involved in the matter, therefore, we dismissed the aforesaid petition being not maintainable. He in reply to the query has submitted that there are no disputed question of facts in the matter, since the petitioner was condemned unheard on all the issues involved in the matter as the Petitioner was required to be dealt with in accordance with law by holding a regular enquiry into the allegations leveled against him, which procedure had not been adopted by the Respondent-NADRA. He next submitted that on the aforesaid submissions, the petitioner has a good case for review of the judgment passed by this Court. He lastly prayed for allowing the listed application and the matter may be decided on merit.

6. Conversely, Chaudhry Muhammad Farooq, Assistant Director, Legal representing NADRA has filed comments on the listed application which are taken on record. He further added that the Petitioner has misconstrued the judgment passed by this Court; that the matter has been decided on merit and every aspect of the case of petitioner has been considered in the impugned judgment; that the service of the Petitioner is not covered under

the statutory regulations therefore, the petition was rightly dismissed by this Court; that the judgment passed by this Court in the present matter was assailed before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 6.8.2018 dismissed the same as not pressed, therefore, no further indulgence of this Court is required to look into the listed application filed by the petitioner as the *lis* has ended up up-to the Hon'ble Supreme Court. He lastly prayed for dismissal of the listed application.

7. At this stage, learned counsel for the parties in their abortive attempt have tried to re-argue the matter on merit, which we cannot allow, as we are only concerned with the grounds of review as to whether the judgment dated 28.3.2018 passed by this Court needs to be reviewed?

8. We have heard the learned counsel for the Applicant on the listed application and have perused the material available on record and the grounds taken by him.

9. We have noticed that the review of the judgment can only be made by the party, if there is mistake or error apparent on the face of the record, as provided under Order XLVII (Section 114 CPC).

10. Upon perusal of the judgment dated 28.3.2018 passed by this Court, which explicitly show that we dismissed the captioned Petition being not maintainable in law as well as on merit.

11. We have also noticed that the Petitioner through the instant Review Application has attempted to call in question the validity of the impugned action of the Respondent-NADRA. The grounds taken by the Petitioner in the aforesaid petition were considered and the request of the Petitioner was declined vide judgment dated

28.3.2018 on merits; therefore, the question of reviewing the judgment does not merit consideration.

12. For the aforesaid reasons, we are not persuaded by the contention of the learned counsel for the Applicant that any case of Review is made out. This review application, therefore, merits dismissal as, in our view, our judgment dated 28.3.2018 was based on correct factual as well as legal position of the case and we do not find any inherent flaw floating on the surface of the record requiring our interference for the simple reason that the judgment passed by this Court was impugned in the Hon'ble Supreme Court and the judgment has not been set-aside, therefore, the question of calling in question the judgment by invoking the review jurisdiction is misconceived.

13. In the light of above facts and circumstances of the case, no case for review is made out, the listed application bearing (CMA No.17009/2018) is dismissed with no order as to cost.

JUDGE

JUDGE

Nadir/PA.