

IN THE HIGH COURT OF SINDH, KARACHI

**C.P.No.D-1770 of 2013**

**PRESENT:**

Mr. Justice Khadim Hussain M. Shaikh  
Mr. Justice Arshad Hussain Khan

*Muhammad Nadeem Ahmed Khan*

*Vs.*

*The Director General, NLC and 02 others.*

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Petitioner            Muhammad Nadeem Ahmed Khan

Respondents        The Director General NLC  
No.1 & 2            Through Mr. Abdul Hameed Advocate

Respondent        Mr.Muhammad Nishat Warsi, DAG.  
No.3

Date of Hg:        06.03.2019

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J.** The Petitioner through instant constitutional petition has sought the following reliefs:-

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- i) To declare the impugned DISMISSAL ORDER FOR HIS JOB is ultra vires, illegal and against the principles of Natural Justice thus the same is liable to be set aside as there is no provision of law and without any justification.
- ii) To direct the Respondent to regularize the service of Petitioner as per Cabinet Circulars/Notifications/Memos with back benefits along with restoration of Residence Quarter facility, Children school facility, Family Medical Facility and any other designated facility under the relevant rules.
- iii) To declare the act of Respondents and their officials are against the Article 25 of the Constitution of Pakistan, 1973, because whosoever fulfilled the desires of the Respondents then those persons shall be appointed but the Petitioner was working since 2003 he did not become a permanent/Regular Employee.

- iv) To direct the Respondents to take immediate appropriate legal action against the concerned persons that why they dismissed the Petitioner from his job without giving any notice or opportunity.
- v) To direct the Respondents to sanction all back benefits to the Petitioner and to grant salary since the date of his illegal dismissal from the job till his legal entitlement.
- vi) To direct the Respondents to consider case of Petitioner on compassionate grounds, due to fact Petitioner has six school going children, out of which one girl is paralyzed and other girl child is severely burnt.
- vii) Any other relief or relives which may deems fit and proper under the circumstances of the case.”

2. Brief facts of instant petition are that the Petitioner was inducted on contract in the services of Respondent-NLC as Store Keeper (BPS-12) w.e.f. 26<sup>th</sup> March, 2003. It is stated that initially the Petitioner's contract was for two (2) years with probation period of three (03) months. After completion of probation period the Petitioner was posted at Karachi and then at Gujranwala Cantonment in the capacity of store keeper. It is also stated that the Petitioner served the Respondent-NLC to the entire satisfaction of his superiors throughout the service period, however, suddenly in the month of August 2012, service of the Petitioner was verbally terminated without assigning any reason or serving any notice. Where after, the official accommodation, provided to the Petitioner during his service tenure, was also got vacated on 11.09.2012. It is further stated that the Petitioner served the NLC for nine (9) years and six (6) months and his services were of permanent nature. It is also stated that the services of government employees appointed on contract basis in the organization like NLC were regularized under Federal Government Memorandum issued by the then Prime Minister Yousuf Raza Gilani, however, Respondent-NLC failed to consider the notification / Memorandum dated 29.08.2008, 13.06.2012 and 04.07.2012 issued by the Government of Pakistan Cabinet Secretariat Establishment Division. The NLC, in view of the above said memorandum / notification was bound to regularize the service of the Petitioner but instead he was terminated from the service. It is also stated that the Petitioner upon his dismissal from the service

preferred representations and departmental appeal but the same yielded no fruits. It is further stated that the impugned dismissal order of the Petitioner is illegal, against the principles of natural justice as well as in violation of Article 25 of the Constitution of Islamic Republic of Pakistan 1973 and as such the same is not sustainable in law. It is also stated that due to the impugned dismissal from the service, the Petitioner is facing hard time as he has no other means of earning and have to feed his large family, which include six children, and having no other remedy available to him filed the present petition.

3. Upon notice of the present petition, para-wise comments were filed on behalf of Respondents 1 and 2 wherein preliminary objections regarding maintainability of the petition were taken besides denying the allegations levelled in the memo of the petition. It has been stated that the Petitioner approached this Court with unclean hands by concealing the material fact that his service was not terminated but in fact his contract of service, upon expiry, was not renewed. It is stated that the Petitioner was a contract employee whose contract was extended subject to the need of NLC and his performance. Since the Petitioner's performance was found average as per SOP of NLC and the average performer is not allowed extension in his contract therefore, the contract of the Petitioner was not extended. It has been further stated that being a contract employee the Petitioner has no vested right to seek continuation of contract and/or regularization of his contract and the services of the Petitioner were governed by the principles of Master and Servant; that the Petitioner has raised disputed questions of fact, which cannot be decided in the writ jurisdiction of this Court. It has been stated that there is no violation of Article 25 of the Constitution and/or any fundamental rights as alleged in the petition; and that all the Respondents are stationed beyond the territorial jurisdiction of this Court and the Petitioner cannot seek writ against the Respondents. It has been also stated that the Respondent-NLC does not have any statutory rules of services, hence the relationship between the Petitioner and the Respondent-NLC is that of 'Master and Servant' and the Petitioner cannot seek reinstatement in service.

4. The Petitioner, through his counter affidavit to the reply of Respondents, while re-iterating the stance taken in the Memo of

Petition disputed and denied the facts mentioned in the para-wise comments.

5. On 26.02.2019 when the present matter was fixed before the Court, no one put appearance on behalf of the Petitioner, resultantly, as an indulgence, the case was adjourned to 06.03.2019 at 11.00 am with the note of caution that in the event if no one appears on behalf of the Petitioner on the next date, the matter will be heard and decided on the basis of material available on record. On 06.03.2019, when the matter was taken up for hearing, again no one appeared on behalf of the Petitioner. Consequently, keeping in view the fact that this is an old matter pending since 2013, we have heard the learned counsel for Respondents as well as learned DAG and with their assistance have gone through the material available on record.

6. Learned counsel for the Respondents during the course of arguments while reiterating the contents of reply to the petition has contended that the present petition is not maintainable on various counts viz. (i) Respondent-NLC having no statutory rules of services. Further the rules of service of NLC, which lay down the terms and conditions of service of their employees are in fact the instructions for internal control or management of NLC. It is argued that since the service rules of NLC are non-statutory in nature, hence relationship between the Petitioner and the NLC is that of "Master and Servant" and the Petitioner cannot seek reinstatement in service, therefore, present petition filed under Article 199 of the Constitution of Pakistan is not maintainable in law and is liable to be dismissed, (ii) The Petitioner has approached this Court with unclean hands by suppressing and concealing the facts that he was not dismissed from the service but his contract period, upon expiry, was not renewed hence he is not entitled to the relief claimed in the present petition and (iii) The Petitioner in this case has raised disputed questions of fact, which cannot be decided without leading evidence and that exercise cannot be gone into writ jurisdiction of this Court. Learned counsel further argued that the Petitioner has tried to gain sympathy of this Court by narrating the miseries of his family members and argued that since services of the Petitioner were dispensed with not on account of any disciplinary

action of the Petitioner but in fact the contract period of the Petitioner was expired and management of NLC, keeping in view the average performance of the Petitioner during his tenure of service, did not renew his contract, therefore, the question of issuing any charge sheet and/or personal hearing does not arise at all.

7. Learned DAG supports the contention of learned counsel for Respondents-NLC.

8. We have heard the learned counsel for the Respondents as well as learned DAG on the point of maintainability, perused the documents available on the record and have examined the relevant laws.

9. From the perusal of record, it appears that the Petitioner was inducted in the services of Respondent-NLC on 26.03.2006 as a contract employee for two years, through a contract agreement entered into between the parties. The said period was subsequently being renewed from time to time and lastly it was renewed on 26.04.2010 for a period of two years from 26.03.2010 to 25.03.2012. Record transpires that after expiry of the lastly renewed contract, the Petitioner's contract was never renewed. The NLC through its letter dated 31.08.2012 had informed the Petitioner that his contract was not extended/renewed and he was directed to get clearance from all the departments of NLC and in pursuance thereof the Petitioner got clearance and submitted the same in the office of NLC, where after on 12.09.2012, NLC issued a certificate to the Petitioner in respect of period he served with NLC.

10. From the perusal of the last extended contract, it appears that the service of the Petitioner was purely on contract basis and was to be governed by terms & condition of the contract.

11. Insofar as the question whether the Service Rules of the NLC are statutory or not is concerned, the Petitioner neither stated that the service rules of the NLC are statutory nor he disputed the stance of the Respondent in this respect. Furthermore, there is nothing available on the record, which could show that conditions of service of an employee in the NLC is regulated by Rules/Regulation framed under the Statue. Conversely, the SOP placed on record by the Respondent through its

reply, appears to be Instructions issued for its internal use. In absence of any documentary proof, it can be presumed that NLC does not have Statutory Service Rules. Furthermore, the Honourable Supreme Court of Pakistan in the case of MUHAMMAD ZAMAN and others v. GOVERNMENT OF PAKISTAN through Secretary, Finance Division (Regulation Wing), Islamabad and others (2017 SCMR 571) while dealing with issue of statutory and non-Statutory Rules of Service has held as under:

“7. .... 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.”

12. We have to add here that, where conditions of service of an employee are not regulated by Rules/Regulation framed under the Statue but only by Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and would be governed by the principle of ‘Master and Servant’. It is also well settled that non-statutory Rules cannot be enforced by means of a constitutional petition. Reliance in this regard is placed in the case of Abdul Wahab and others v. HBL and others [2013 SCMR 1383] wherein the Honourable Full Bench comprising of six members of the Hon'ble Supreme Court of Pakistan observed as under:-

"...It is settled law that, where a service grievance is agitated by a person/employee who is not governed by statutory rules of service, before the High Court(s), in terms of Article 199 of the Constitution, such petition shall not be maintainable, reference in this behalf can be made to PLD 2010 SC 676 (Pakistan International Airline Corporation v. Tanweer-ur-Rehman) and PLD 2011 SC 132 (Pakistan Telecommunication Co. Limited v. Iqbal Nasir)."

The above view was also endorsed by the Honourable Supreme of Pakistan in the case of PAKISTAN DEFENCE HOUSING AUTHORITY v. Lt. Col. JAVED AHMED [2013 SCMR 1707] as well as in the case Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others [2017 SCMR 2010].

13. In the present case, the relationship of the Petitioner being an employee of NLC, which have no statutory Service Rules, is governed by the principle of “Master & Servant” as observed in the preceding paras, and as such if the Petitioner is aggrieved of any action of the NLC he cannot resort to this Court under the writ jurisdiction.

14. Consequently, for the foregoing reasons, without touching the merits of the case, we hold that instant petition is not maintainable which is accordingly dismissed along with all pending applications.

JUDGE

JUDGE

Karachi;  
Dated: 22.03.2019