

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-201 of 2012

**PRESENT:**

Mr. Justice Khadim Hussain M. Shaikh

Mr. Justice Arshad Hussain Khan

*Abdul Rashid*

Vs.

*Pakistan Defence Officers Housing Authority, Karachi, through its  
Administrator and 02 others.*

Petitioner Abdul Rashid  
Through Mr. Muhammad Azam Khan, Advocate.

Respondents Pakistan Defence Officers Housing Authority, through  
No.1-3 its Administrator  
Through M/s. Malik Naeem Iqbal & Faizan Hussain  
Memon, Advocates

Date of Hg: 27.02.2019.

**JUDGMENT**

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

- a) To declare that the termination order dated 08 July 2011 is illegal, unlawful against the principles of natural justice and void ab-initio and order reinstatement of Petitioner in service from the date of passing of impugned order with grant of entitled back benefits upto reinstatement including termination period under the service Rules of the Respondent-Authority. Any other relief or reliefs which the Honourable Court may deem fit and proper in circumstances of the case may also be granted.

2. Brief facts of the petition as averred therein are that the Petitioner after retirement from Pakistan Army as Naik, Joined DHA Karachi on 02.08.2006, and posted in its Transfer & Record Branch. It is stated that the Petitioner was inducted on contract for a period of ten (10) years subject to confirmation after probationary period of one (1) year and the Petitioner's services were confirmed, vide DHA letter dated 29.06.2007. It is also stated that the Petitioner served the Respondent-Authority to the entire satisfaction of his superiors throughout the service period. The Petitioner was shocked to receive

letter dated 08.07.2011 from the Respondent-Authority whereby services of the Petitioner was terminated on the pretext that Petitioner's services were no longer required under chapter-III, Para 8b(1) of Service Rules of DHA, 2008, and para-2 of contract agreement. The Petitioner, upon receipt of the aforesaid termination letter, filed a departmental appeal dated 14.07.2011, to the President Executive Board, DHA, Commander 5 Corps Karachi. However, the DHA, vide its letter dated 26.07.2011 informed the Petitioner that the appeal had been turned down by the President Executive Board. It is further stated that after rejection of Departmental Appeal the only recourse was left with the Petitioner to file an appeal to the Chairman, Governing Body of the Respondent-Authority and accordingly the Petitioner sent an appeal to the Secretary Defence on 22.8.2011 through TCS but no reply has been received, consequently the Petitioner having no other remedy filed the present petition.

3. Upon notice of the present petition, counter affidavit to the main petition has been filed on behalf of the Respondent-Authority denying the allegations levelled in the Memo of Petition, it has been stated that the petition is misconceived and liable to be dismissed as it seeks relief, which is not maintainable in law and the entire petition is based on the erroneous hypothesis. It is further stated that the Petitioner has approached this Court with unclean hands by concealing the material facts, hence he is not entitled for any relief. It has also been stated that the Respondent-Authority does not have any statutory rules of services, hence relationship between the Petitioner and the Respondent-Authority is that of 'Master and Servant' and the Petitioner cannot seek reinstatement in service. It is further stated that the petition is also hit by laches and the Petitioner has also failed to disclose any cause of action for filing the petition and as such the petition is liable to be dismissed on this score too.

4. Since learned counsel for Respondent-Authority has challenged the maintainability of the present petition, therefore, this Court on 06.10.2017, directed the learned counsel for the Petitioner to satisfy this Court on the point of maintainability of the petition.

5. Learned counsel for the Petitioner during the course of his arguments while re-iterating the contents of the petition has contended that the Petitioner served the Respondent-Authority with best of his ability from the date of induction till termination of service and during this period he was never issued any warning and/or show cause notice. It is argued that neither any specific charge was levelled against the Petitioner nor any show cause notice was issued and nor any inquiry was ordered against him. It is also argued that the power used by Administrator of the Respondent-Authority against the Petitioner is against the law and the principles of natural justice and the Service Rules have been amended by the Executive Board, DHA, without having powers to do so. Learned counsel for the Petitioner further argued that the Petitioner was deprived of the opportunity of personal hearing and it is well settled law that no one should be condemned unheard, hence the rule of audi alteram partem has been completely ignored in the Petitioner's case. It is also argued that the impugned termination order is in gross violation of Article 10-A of the Constitution of Islamic Republic of Pakistan 1973. Further that the action on the part of Respondent-Authority is arbitrary and capricious thus untenable in law. It is also argued that the Honourable Supreme Court in the case of *Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and other* (2017 SCMR 2010) declared Rule 8(b)(1) of the Service Rules for the Employees of the Pakistan Defence Officers Housing Authority, Karachi 2008, which provides dispensation of service of an employee by giving him/her one month's notice or one month's pay in lieu thereof, as ultra vires of the constitution and law. Learned counsel while relying upon the case of *Mrs. Itrat Sajjad Khan* [supra] has also contended that the Honourable Supreme Court in the said case directed the reinstatement of the contractual employee, who was terminated in violation of principles of natural justice. He further argued that the case of the present Petitioner and *Mrs. Itrat Sajjad Khan* [supra] are on the same footings hence the Petitioner is entitled to be reinstated in the service. Lastly, learned counsel for the Petitioner argued that the Petitioner has come to this Court for injustice perpetuated by the officials of Respondent-Authority by depriving him from the meager salary and there is no other remedy available with the Petitioner but to invoke the constitutional jurisdiction

of this Honourable Court for the relief(s) as prayed in the Memo of Petition.

Learned counsel in support of his stance in the case has relied upon the cases of *Nazir Ahmed Panwar v. Government of Sindh* [2005 SCMR 1814], *Pakistan International Airlines Corporation [PIAC] v. Nasir Jamal Malik and others* [2001 SCMR 934], *Federal Land Commission v. Rais Habib Ahmed* [PLD 2011 SC 842], *WAPDA v. Muhammad Naveed Iqbal* [2003 PLC (CS) 1270], *Naseem Ahmed v. WAPDA* [2003 PLC 1348], *Chairman Pakistan Broad Casting Corporation v. Nasir Ahmed* [1995 SCMR 1593], *Fazal Elahi Rana v. WAPDA* [2003 SCMR 1949], *M/s. Pakistan State Oil v. Muhammad Tahir Khan* [PLD 2001 SC 980], *General Tyre and Rubber Company v. Sindh Labor Appellate Tribunal* [1992 PLC (Lab) 1028] and *National Bank of Pakistan v. Malik Manzoor Ahmed* [NLR 1995 Ser. 129] as well as an *unreported judgment of the Honourable Supreme Court of Pakistan passed in Civil Appeal No.135-K of 2010*.

6. On the other hand, learned counsel for Respondents-Authority during the course of his arguments while reiterating the contents of counter affidavit has contended that the petition as framed and filed is not maintainable in law. It is argued that the Respondent-Authority is a Body Corporate, which is controlled and regulated by President's Order No. 7 of 1980, having no statutory rules of services. Further the service rules of Respondent-Authority lay down the terms and conditions of service of their employees and, in fact, the service rules are instructions for internal control or management of Respondent- Authority. It is also argued that since the service rules of Respondent-Authority are non-statutory in nature hence relationship between the Petitioner and the Respondent-Authority is that of "Master and Servant" and the Petitioner cannot seek reinstatement in service, therefore, the petition filed under Article 199 of the Constitution of Pakistan is not maintainable in law and is liable to be dismissed. Learned counsel further argued that the Petitioner was not terminated but in fact the competent authority in exercise of Rule 8b(1) of Service Rules, 2008 dispensed with the service of the Petitioner as no longer required. Further argued that the Petitioner is trying to gain sympathy of this Court as he himself agreed for termination of service without assigning

any reason on one month's notice or one month's pay in lieu thereof. It is also argued that since services of the Petitioner were laid off strictly in accordance with the terms and conditions of the contract of service entered into between the Respondent-Authority and the Petitioner as such the question of filing departmental appeal does not arise and the said appeal was considered at appropriate level and declined. He has further argued that since the services of the Petitioner was not dispensed with on disciplinary grounds therefore, question of issuing any charge sheet and or personal hearing does not arise at all. Learned counsel also contended that the case of the Petitioner is different from the case of *Mrs. Itrat Sajjad Khan* [supra] and as such the Petitioner cannot take any advantage of the said decision of the Hon'ble Supreme Court as the Honourable Supreme Court in that case, inter alia, has held: "*The respondent of course was a regular employee as the only condition in her letter of appointment was of successful completion of probationary period of one year which was completed by her in the year 2000.*" Whereas the Petitioner was a contractual employee and his service was never regularized.

Learned counsel in support of his stance in the case has relied upon the following case law: *Pakistan Defence Housing Authority v. Mrs. Itrat Sajjad Khan and others* [2017 SCMR 2010], *Abdul Wahab and others v. HBL and others* [2013 SCMR 1383], *Pakistan Defence Housing Authority v. Lt. Col. Javed Ahmed* [2013 SCMR 1707] as well as an unreported judgment of this Court passed in [CP No.D-1595 of 2017].

7. We have heard learned counsel for the parties on the point of maintainability, perused the documents available on the record and have examined case law cited at the bar as well as the relevant laws.

8. At the very outset, we would like to address the question of laches as raised by learned counsel for the Respondent-Authority. It is well settled principle of law that fundamental right cannot be denied, infringed or curtailed on the ground of laches. No Court could dismiss a lis on the ground of laches if it defeated the cause of justice and thereby perpetuated an injustice. Reliance in this regard can be placed in case of *Umar Baz Khan through legal heirs v. Syed Jehanzeb and others* [PLD 2013 SC 268]. Laches *per se* is not a bar to the constitutional

jurisdiction and question of delay in filing would have to be examined with reference to the facts of each case. Reliance in this regard can be placed in the case of *Jawad Mir Muhammadi v. Haroon Mirza* [PLD 2007 SC 472]. The question of laches in the writ petition is always considered in the light of the conduct of the person invoking the constitutional jurisdiction of this Court and the degree of his negligence if any and that if by grant of relief being sought by him no injustice is caused to the opposite party, the constitutional petition should not be dismissed merely on the ground of laches without examining the dictates of justice. Reliance can be placed in the case of *Farzand Raza Naqvi and 5 others v. Muhammad Din through Legal Heirs and others* [2004 SCMR 400].

9. Record transpires that services of the Petitioner were dispensed with by the Respondent-Authority on 08.07.2011 against which the Petitioner preferred departmental appeal on 14.07.2011. The said appeal was turned down by Respondent-Authority, vide its letter dated 26.07.2011. The Petitioner upon rejection of his appeal preferred representation to the Secretary Defence on 22.08.2011, thereafter, he has filed the present petition on 21.09.2011.

10. On the touchstone of the dicta laid down by the Honourable Supreme Court as mentioned in para-8 above, when we examined the conduct of the Petitioner in the preceding para, we did not find any negligence, which could be attributed towards the Petitioner in approaching this Court. In the circumstances, we are of the opinion that no laches is involved in the present case.

11. As regards the question of maintainability of the petition on the ground that the Petitioner under the constitutional jurisdiction of this Court cannot seek enforcement of the terms and conditions of non-statutory service rules is concerned, it appears that the Petitioner was inducted in the services of Respondent-Authority on 31.06.2006 through a contract agreement entered into between the parties, relevant portions whereof for the sake of ready reference are reproduced as under:-

“1. Nk/Clk (R) Andul Rashid S/o Taj Din, H. No. D-46, Block-A, Gulshan-e-Ghazi, Baldia Town, Karachi, has been inducted in DHA on contract for a period of 10 years wef: 22

Jun 2006 extendable up to the age of 60 years based on performance on pay of Rs. 6251/-pm (BPS-7) which includes basic pay, House Rent, Utility, Medical & Conveyance allowances subject to medical fitness. Various allowances under the existing policy & practice shall be admissible on the discretion of the competent authority.

2. Following terms & Condition will while employed on contract:-

a. This contract is for period of 10 years and may be extended for such further period as the competent Authority may deem fit. The employment offered to you is purely temporary. It will, however, not confer on you any right or claim for permanent retention. Your appointment will be on probation for a period of One Year. During the probationary period if your services are found satisfactory only then you will confirmed.

(1) Your services may be terminated at any time without assigning any reason by giving a notice for a period not less than 30 days or payment in lieu of notice period, of a sum equivalent to pay of 30 days or for the period by which the notice falls short of 30 days, such notice shall not however, be required in case of termination of service on disciplinary grounds. In case you desire to terminate the contract without the prescribed notice, you shall deposit with the Authority your pay for one month which you will be drawing at the time of termination of contract, but you will remain on duty until the competent Authority accepts your request for termination of contract.

(3) .....

[Emphasis supplied]

12. From the perusal of the contract agreement of the Petitioner, it appears that service of the Petitioner was purely on contract and was to be governed by terms & condition of the contract as well as services rules of Respondent-Authority. Furthermore, there is nothing available on the record, which could show that the services of the Petitioner were ever regularized. In this regard, the only document available on the record is letter dated 29.06.2007 in respect of the confirmation of service of the Petitioner after completing the probation period, issued

by Respondent-Authority as per the terms of the Petitioner's service contract dated 31.06.2006.

13. Insofar as the question whether the Service Rules of the Respondent-Authority are statutory or non-statutory is concerned, the Honourable Supreme Court in the case of *Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others* [2017 SCMR 2010], while dealing with the issue has held as under:

“9.....It appears that in exercise of the power as conferred under section 22, service rules for the employees of the Pakistan Defence Officers Housing Authority in term of section 13 were framed in the year 2008 which though were duly approved by the governing body of the Authority but have not been notified in the official gazette. The service rules of the appellant lay down the terms and conditions of service of their employees such as policy of appointment, leave, entitlement and discipline. The rules though are made under the statutory power conferred on the Governing Body by section 22 read with section 13 of the Presidential Order of 1980 which do not require the approval of the Government. In the circumstances, it is to be seen as to whether the rules framed by the appellant-Authority while exercising statutory powers under section 22 of the Presidential Order of 1980 which do not require the approval of the Federal Government could be termed statutory. This question was raised in the case of Syed Nazir Gillani v. Pakistan Red Crescent Society (2014 SCMR 982) by arguing that "the service rules framed by the Pakistan Red Crescent Society are statutory as they were framed under section 5 of the Red Crescent Act" and this Court while rejecting such argument held that such rules were non-statutory. Lastly, the area of efficacy of such service rules also is neither broader nor complementary to the parent statute in the matter of crucial importance and, therefore, the service rules of the appellant on such count also could not be termed as statutory.

[Emphasis supplied]

14. In view of the above, it is clear that the service rules framed by the Respondent-Authority are non-statutory. It is now 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 *Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others* [2017 SCMR 2010].

15. The case law cited by learned counsel for the Petitioner have been perused and considered with due care and caution but are found distinguishable from the facts of instant case and as such the same are not applicable. Whereas the pronouncements relied upon by learned counsel for the Respondents-Authority support their stance and applies to the present case.

16. In view of the foregoing discussions, we are of the considered opinion that the Petitioner being the employee of Respondent-Authority, which have non-statutory Service Rules, aggrieved of actions taken under the said Rules cannot resort to this Court under the writ jurisdiction. The relationship of the Petitioner with the Respondent is governed by the principle of "Master & Servant" as held by the Honourable Court in above referred cases. In the circumstances, the petition being not maintainable in law is dismissed.

JUDGE

JUDGE

Karachi

Dated: 19.03.2019