

## IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Aziz-ur-Rehman**

**Mr. Justice Adnan-ul-Karim Memon**

### C.P No.D-7319 of 2018

Ms. Shamim Naqvi ..... Petitioner

Versus

Pakistan Defence Officers Housing Authority  
& 04 others ..... Respondents

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**Dates of hearing:** 25.04.2019, 08.05.2019,  
14.5.2019, 22.5.2019 & 27.05.2019  
**Date of Decision:** 30.05.2019

Mr. Arshraf Hussain Rizvi, Advocate for the Petitioner.  
Mr. Faizan Hussain Memon, Advocate for Respondents No.1 to 4.  
Mr. Muhammad Nishat Warsi, DAG.

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### **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:** - Through the instant Petition, the Petitioner has called in question her Termination from Service Letter dated 17.08.2018 issued by the Respondent-DHA [**“Respondent-Authority”**]. Per Petitioner, the same is issued without holding proper Regular Inquiry proceedings and lawful justification.

2. As per record, the Petitioner was initially appointed as Teacher in BPS-14 in the Respondent-Authority’s Model High School for Boys and Girls, Khayaban-e-Hilal, Phase-VII, DHA Karachi on probation for a period of one year vide office Order dated 03.10.1993, however during her service tenure; she was

proceeded under Section 3(a)(2)(c) Chapter IV of DHA Service Rules 2008 for her willful absence from duty without leave, with effect from 27<sup>th</sup> March, 2018 to 15<sup>th</sup> April, 2018 [**20 days**] and 16<sup>th</sup> April, 2018 to 29<sup>th</sup> April, 2018 [**14 days**]. As per record, Petitioner submitted her reply to the aforesaid charges on 23.7.2018, which was later on found unsatisfactory, resultantly her case was recommended for disciplinary action for overstaying leave from 27.03.2018 to 15.4.2018 vide letter dated 20.2.2018 and finally, her services were terminated vide Impugned Order dated 17.08.2018. Petitioner being aggrieved by and dissatisfied with the Termination Order dated 17.08.2018, filed the instant petition on 15.10.2018, on the ground that the Termination Order dated 17.08.2018 issued by the Respondent-Authority was in gross violation of various Articles of the Constitution of the Islamic Republic of Pakistan, 1973; that the Respondent-Authority had wrongly terminated her services under DHA Service Rules 2008; that such termination of the Petitioner from service was not permissible under DHA Service Rules, without holding an independent inquiry; that the action on the part of the Respondent-Authority was arbitrary and whimsical, which negates the Principle of Natural Justice and provisions of the Constitution, thus nullity in the eyes of law; that the Petitioner was being victimized by the officials of the Respondent-Authority on the purported ground of her willful absence from duty; that the Petitioner had been condemned unheard on the issue involved in the matter; that the Petitioner had pleaded her justification on the aforesaid charges before the Competent Authority of DHA but the

Respondent-Authority terminated her service without reasonable cause; that she was at the verge of retirement, but her services in the meanwhile were terminated, which was unjustified action on the part of Respondent-Authority. She lastly prayed for allowing the instant Petition.

3. Conversely, Mr. Faizan Hussain Memon, learned counsel for the Respondent-Authority has raised the question of maintainability of the instant Petition and argued that the Respondent-Authority has not acted malafidely nor violated any provisions of law or prescribed service Rules in discharging their duties; that the Petitioner was given full opportunity to plead her case; that the aforesaid assertion of the Petitioner is misleading in order to achieve her favorable result from this Court, which disentitles her to the relief claimed for. Per learned Counsel the plea of the Petitioner that she was not heard and no Inquiry was conducted is against the facts available on record. He further stated that the Respondent-Authority has not violated any Provision of law as demonstrated by the Petitioner, therefore, the Petitioner is not entitled to be reinstated in service and she was dismissed from service vide Impugned order dated 17.08.2018, after complying all requisite formalities as provided under DHA Service Rules-2008, which are non-statutory in its nature; that after providing ample opportunities to the Petitioner to defend her case, but to no avail, the Counsel concluded on the aforesaid points. In support of his contention, he heavily relied upon the comments filed on behalf the Respondent-Authority and documents attached therewith.

4. Further, on the point of maintainability, he argued that the Respondent-Authority is Body Corporate, which is controlled and regulated by the President's Order No. 7 of 1980, having no statutory Rules of service. He further argued that by virtue of non-statutory rules of the Respondent Authority, employment of the Petitioner with the answering Respondent-Authority was purely contractual; hence, the Petitioner was governed by the principle of `Master and Servant`; that no action and/or inaction on the part of the Respondent-Authority impugned in this Petition has been taken in disregard of any of the procedural requirements and there is no violation of principle of Natural Justice; therefore, the Constitutional Jurisdiction of this Court under Article 199 of the Constitution, 1973 cannot be invoked and as such the interference by invoking writ jurisdiction of this Court cannot be asked for as prayed by the Petitioner. Learned counsel for the Respondent-Authority in support of his contention has relied upon the case of Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others [2017 SCMR 2010] and unreported Judgment dated 13.5.2019 passed in the cases of Major Retd. Syed Muhammad Tanveer Abbas vs. Federation of Pakistan through its Secretary, Ministry of Interior & others and connected Appeal (in **Civil Appeals No.26-K & 27-K of 2018**) and prayed for dismissal of the captioned petition.

5. On the other hand, Mr. Ashraf Hussain Rizvi, learned Counsel for the Petitioner, strongly refuted the claim of the Respondent-Authority and argued that, first of all the instant

petition is maintainable on the premise that the present Petition relates to the service of the Petitioner, who admittedly, is not a Civil Servant as defined under Section 2(1) (b) of Civil Servants Act 1973, but an employee of a Statutory Authority, thus cannot invoke the jurisdiction of the Service Tribunal, the only remedy if any, lies by way of filing the Constitutional Petition, in view of the decision rendered by Full Bench of this Court in Muhammad Dawood and others vs. Federation of Pakistan and others [2007 PLC CS 1046] and the Honorable Supreme Court in the case of Defence Housing Authority vs. Lt. Col Syed Jawaid [2013 SCMR 1707] and Muhammad Rafi and others vs. Federation of Pakistan and others [2016 SCMR 2146]. He next argued that the employees of a Statutory Authorities, who were proceeded under Disciplinary Rules, can invoke the jurisdiction of this Court under Article 199 of the Constitution. In support of his contention, he heavily relied upon the decision given by the Hon'ble Supreme Court in the case of DHA (supra) and argued that the right of Appeal is a substantive right as provided under the law and it was a statutory intervention, thus Constitutional Petition filed by the Petitioner, seeking enforcement of her fundamental right is maintainable. He next added that under the aforesaid statutory intervention, Petitioner had to be dealt with under the said law and not under their disciplinary service Rules of the Respondent-Authority. He is supported by the decisions of the Honorable Supreme Court in the case of Muhammad Ashraf Tiwana & others vs. Pakistan & others [2013 SCMR 1159], M/s. Airport Support Service vs. the Airport Manager, Quaid-e-Azam International Airport,

Karachi and others [1998 SCMR 2268]. He lastly prayed for allowing the instant Petition.

6. At this juncture, we asked from the learned counsel for the Petitioner, as to how he maintains the instant petition, in view of the latest decision rendered by the Hon'ble Supreme Court in an unreported case of Major Retd. Syed Muhammad Tanveer Abbas and other connected appeals vs. Federation of Pakistan through its Secretary, Ministry of Interior & others (in Civil Appeals No.26-K & 27-K of 2018) as cited supra, whereby the Appeals of the employees of the NADRA were dismissed by the Hon'ble Supreme Court vide Judgment dated 13.5.2019 on the premise that they have no statutory rules of service, therefore, Constitutional Petition under Article 199 of the Constitution is not maintainable. In reply, he relied upon the decision of this Court in the case of Lt. Col. Sayed Jawaid Ahmed V.s Pakistan Defence Officers Housing Authority and others [2009 PLC (CS) 753], and sought time to go through the aforesaid decision rendered by the Honorable Supreme Court and prepare his brief to assist this Court on the issue of maintainability of the instant Petition.

7. Today, the learned Counsel argued that the Petitioner is a regular employee and not contractual employee of DHA, therefore, the aforesaid decision is distinguishable from the facts obtaining in the present petition; that the present matter may be decided on the basis of Judgment passed by the Hon'ble Supreme court in the case of Pakistan Defense Officers Housing Authority vs. Mrs. Itrat Sajjad Khan and others [2017 SCMR 2010]. He next 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 was arbitrary and capricious thus untenable in law; that the Honorable Supreme Court in the case of Mrs. Itrat Sajjad Khan *supra* declared Rule 8(b) (1) of the Service Rules for the Employees of the Pakistan Defence Officers Housing Authority-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 Honorable Supreme Court in the said case directed the reinstatement of the employee of DHA, 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 challenged the termination of her service on the ground that it was arbitrary and had been made without giving any reason; that Section 24-A of the General Clauses Act, 1897, obliges every person exercising powers conferred by a statute, to act "reasonably, fairly, justly and for the advancement of the purpose of the enactment." It also stipulates that the person making any order under the power conferred by any enactment shall, so far as necessary or appropriate, "give reasons for making the order". Therefore, an unreasoned order of termination (without cause) is violative of section 24-A of the

General Clauses Act. In support of his contention, he relied upon the decision of the Honorable Supreme Court in the case of Government of Pakistan v. Farheen Rashid (2011 SCMR 1). He next submitted that there is no other efficacious and adequate remedy available with the Petitioner but to invoke the Constitutional Jurisdiction of this Court for the relief(s) as prayed in the Memo of Petition.

8. Mr. Muhammad Nishat Warsi, learned DAG has argued that the instant petition is not maintainable and further stated that the case law cited by the learned counsel for the Petitioner are distinguishable from the facts of this case, therefore, the Petitioner cannot claim similar treatment in this regard, whereas enforcement of non-statutory rules of service of statutory authority are altogether different and the same cannot be enforced through Constitutional Petition. He added that rule of *Master and Servant* is attracted in the present case. He invited our attention to the various decisions of this Court on the aforesaid proposition, whereby the Petitions were dismissed; therefore, no interference in the present matter is required by this Court. He lastly prayed for dismissal of the instant Petition.

9. We have heard the learned counsel for the parties on the question of maintainability of the instant petition and perused the material available on record and case law cited at the bar.

10. The issue of maintainability of the captioned Constitutional Petition has been raised, in view of the latest verdicts by the Honorable Supreme Court of Pakistan in an unreported case of



Major Retd. Syed Muhammad Tanveer Abbas and other connected appeals vs. Federation of Pakistan through its Secretary, Ministry of Interior & others (in Civil Appeals No.26-K & 27-K of 2018) and reported case of Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010), as such we would confine our self to that issue only and refrain ourselves to dilate upon the merits of the case, if we find the instant matter is not maintainable under the law.

11. Upon perusal of the pleadings and arguments extended thereon by the learned Counsel for both the parties, an important question of law requires our determination, whether the Respondent-Authority is a statutory authority, having non- statutory rules of service; hence the service matter of DHA is to be governed by the Principle of `Master` & `Servant`?

12. To appreciate the controversy in its proper perspective, we think it appropriate to have a glance on various Judgments rendered by the Honorable Supreme Court on the aforesaid proposition.

13. First decision of a five Member Bench of the Honorable Supreme Court in the case of Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed [2013 SCMR 1707] after examining the statute through which the Respondent-Authority and other statutory bodies were established and functioning, in Para-27 of its judgment held them to be statutory bodies performing some of the functions of the Federation/State and, therefore, "person" within the meaning of Article 199(1)(a)(ii) read

with Article 199 (5) of the Constitution and if their actions or orders are violative of the statute creating those bodies or of rules/regulations framed under a statute, the same could be interfered with by the High Court under Article 199 of the Constitution.

14. References are being made to the other decisions rendered by the Honorable Supreme Court in cases of Ramna Pipe and General Mills (Pvt.) Ltd. v. Sui Northern Gas Pipe Lines (Pvt.) [2004 SCMR 1274], Abdul Wahab and others Vs. HBL and others [2013 SCMR 1383], Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed and other connected appeals [2013 SCMR 1707], Khawaja Muhammad Asif v. Federation of Pakistan [PLD 2014 SC 206], Pir Imran Sajid and others Vs. Managing Director/General Manager Telephone Industries of Pakistan and others [2015 SCMR 1257], Pakistan Telecommunication Employees Trust vs. Muhammad Arif and others [2015 SCMR 1472], Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others [PLD 2016 SC 377], P.T.C.L. and others vs. Masood Ahmed Bhatti and others [2016 SCMR 1362], Muhammad Rafi and others Vs. Federation of Pakistan and others [2016 SCMR 2146], Muhammad Zaman etc. versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad [2017 SCMR 571], Pakistan Defence Housing Authority Vs. Mrs. Itrat Sajjad Khan and others [2017 SCMR 2010], Messrs State Oil Company Limited v. Bakht Siddique and others [2018 SCMR 1181], Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others

[**2019 SCMR 278**]. For the reasons given in the aforesaid Judgments, in our view, there can hardly be any doubt that Respondent-Authority is also a “person” within the meaning of Article 199(1) (a) (ii) read with clause (5) thereof.

15. Having dilated upon on the aforesaid proposition, the instant Petition relates to the service of the Petitioner, whereby Respondent Authority vide order dated 17.08.2018 dispensed with her service, on the allegations of willful absence from duty and during the inquiry proceedings, she was found guilty of the charges of unsatisfactory, negligent performance, which she is asking for setting aside, through the instant Petition. Petitioner, who admittedly, is not a Civil Servant as defined under Section 2(1)(b) of Civil Servants Act, 1973, but an employee of a statutory authority, having non-statutory rules of service, thus cannot invoke the jurisdiction of the Service Tribunal, the only remedy if any, lies by way of Civil Suit before the Civil Court pursuant to the Judgments rendered in the cases of Muhammad Mobeen-ul-Islam Vs. Federation of Pakistan and others [**PLD 2006 SC 602**] and Muhammad Idrees Vs. Agricultural Development Bank of Pakistan and others [**PLD 2007 SC 681**]. However, the Full Bench of this Court in case of MUHAMMAD DAWOOD and others v. FEDERATION OF PAKISTAN and others [**2007 P L C (C.S.) 1046**] found a way out for only the employees of a Statutory Corporation, Authorities, Bodies, etc. who were proceeded under Removal from Service Ordinance, 2000 to invoke jurisdiction of this Court under Article 199 of the Constitution.

16. Progressing on the aforesaid proposition put forwarded by the learned Counsel, we have to see as to whether there is any violation of Statutory Law, compelling the Petitioner to invoke the Constitutional Jurisdiction of this Court?

17. The record reveals that disciplinary proceedings were initiated against her and finally culminated in the dismissal from service vide order dated 17.08.2018. In our view, the disciplinary matters fall within the expression "Terms and Conditions of Service" and admittedly, the same are non-statutory rules of service, which is an internal matter of service of the Respondent-Authority, which in our view cannot be thrashed out in a Writ Petition.

18. The learned counsel for the Petitioner while arguing the case has heavily relied upon Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Javaid Ahmed (2013 SCMR 1707) to stress that in view of the Judgment of the Honorable Supreme Court, regardless whether rules are not approved by the Government, if the authority is Government owned organization and violation of statute, it can be enforced through Constitutional jurisdiction and rule of *Master and Servant* has been diluted. We have carefully gone through the aforesaid judgment of the Honorable Supreme Court, the *ratio decidendi* in this judgment is, where employees of Government owned and statutory organization are removed from service under Removal from Service (Special Power) Ordinance, 2000, the Constitutional Petition will be maintainable.

19. For the aforesaid reasons, we are of the view that the relationship of *Master and Servant* exist between the Petitioner and the Respondent-Authority, hence, her grievance pertains to the terms and conditions of service which cannot be enforced through a Writ. As to the Service Rules, these are non-statutory and mere instructions for internal control and management of the employees of the Respondent-Company. Guidance could be taken from the Hon'ble Apex Court's judgment enunciating the test of Statutory Rules and non-Statutory Rules [Shafique Ahmed Khan and others v. NESCOM through Chairman Islamabad and others (PLD 2016 SC 377)] and Muhammad Zaman etc. v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (2017 SCMR 571).

20. Applying the aforesaid principles of law to the case of the Petitioner, we feel no hesitation in drawing inference that the Respondent-Authority is statutory entity and Petitioner is not governed under statutory rules of service, hence contractual terms and conditions of service are not enforceable through Constitutional Petition. The case of Petitioner is neither covered under enforcement of terms of **RSO-2000** nor is violation of rule of natural justice attracted in absence of infringement or any vested rights of the Petitioner or any disciplinary proceedings undertaken against her under any statutory rules of service. These service rules are non-statutory, therefore, for all intent and purpose, these are contractual terms for internal use, hence, the law laid down by the Honorable Supreme Court in Pakistan Defence Officers

Housing Authority case (supra), does not support the case of the Petitioner as there has been no violation of statutory rules of service.

21. We, thus, are of the view that it is for the Respondent-Authority to place its employees in accordance with its Service Rules and Regulations, which is an internal matter of the Respondent-authority, thus does not need any Constitutional interference, at this juncture. Our view is supported by the latest decision announced on 13.5.2019 by the Honorable Supreme Court in an unreported case of Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals (Civil Appeals No.26-K & 27-K of 2018). The Honorable Supreme Court, in the aforesaid Appeals has provided guiding principles on the issue of statutory and non-statutory rules of service (NADRA) and its enforcement, contractual service of employees (NADRA) and their remedy and finally the issue of maintainability of Constitutional Petition in like matters.

22. To understand the term statutory and non-statutory Rules, we seek guidance from the decision rendered by the Honorable Supreme Court in the case of the Principal Cadet College, Kohat and another v. Mohammad Shoab Qureshi (PLD 1984 SC 170). The Honorable Supreme Court has held that unless rules of service of a statutory body are made or approved by the Government, such rules could not be regarded as statutory but mere instructions for guidance. However, in the case of Shafique Ahmed Khan v. NESCOM through Chairman, Islamabad (PLD 2016 SC 377) as well as in the case of Muhammad Zaman and others v. Government of Pakistan (2017 SCMR 571), the Honorable Supreme

Court while widening the scope of such criterion held that "the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires approval of the Federal Government or not, rather it is the nature and area of efficacy which determine their status. Rules dealing with instructions for internal control or management are treated as non-statutory while those, whose area of efficacy is broader and/or complementary to the parent statute in the matter of crucial importance, are statutory.

23. We seek further guidance from the decision of the Honorable Supreme Court on the point whether the service rule of the Respondent-Authority is non-statutory. The Honorable Supreme Court has held in the case of Mrs. Itrat Sajjad Khan supra as under:-

“In this perspective scrutiny of President's Order No. VII of 1980 through which the appellant Authority was created as well as its service rules of 2008 would reveal that the Management of the Authority vest in the governing body of the Authority comprising of Secretary, Ministry of Defence, Government of Pakistan as its Chairman and as many Members as detailed in section 5 of the Order, 1980. For its day to day working, the Authority has an executive board comprising of a President who is the Corp Commander posted at Karachi and other Members as detailed in section 5(2) of the Order, 1980. The Executive Board of the Authority has the power to acquire land under the law, undertake any work in pursuance of any scheme or project; no master plan, planning or development scheme can be prepared by any local body or agency for the specified area without prior consultation with, and approval of the Executive Board. The Authority through the Executive Board has the power to raise funds for the purpose of its working, capital in a manner the Board may think proper, through loans or levy of any charges which may be prescribed by it under the Rules. The Administrator functions in accordance with the policy laid down by the Governing Body. All schemes/projects/works carried out by the Authority are deemed under the law to be schemes for public purposes. The Authority in terms of section 13 of Ordinance, 1980 may appoint such officers, functionaries, employees, experts, consultants and advisors as it may consider necessary for the performance of its functions under the Order and in such manner and on such terms and conditions as may be prescribed by the Rules. The employees of the Authority are deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code. The Governing Body, as provided under section 22 of the Order, 1980 may, by notification in official gazette, make rules for carrying out the purpose of the Order, 1980 whereas the executive

board has the power to make regulations not inconsistent with the provisions of the Order and the Rules as it may consider necessary or expedient for the administration and management of the affairs of the Authority. 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.”

24. Our view is further strengthened by another decisions of the Honorable Supreme Court rendered in the cases of Syed Nazir Gillani v. Pakistan Red Crescent Society (2014 SCMR 982) and Abdul Wahab and others v. HBL and others (2013 SCMR 1383). The Honorable Supreme Court held that where a service grievance is agitated by a person/employee who is not governed by the statutory rules of service, before this Court, in terms of Article 199 of the Constitution such petition shall not be maintainable. Likewise in the case of Muhammad Zaman and others v. Government of Pakistan (2017 SCMR 571), the Honorable Supreme Court has reiterated principle regarding incompetency of a writ by an employee of a body having non-statutory rule as non-statutory rules could not be enforced through a writ.

25. Now coming to main issue involved in the present Petition, we seek further guidance from the decision rendered by the Honorable Supreme Court in the case of Mrs. Itrat Sajjad Khan supra. The Honorable Supreme Court has held as under:-

“No doubt the employees of statutory corporations in absence of violation of law or any statutory rules of service cannot press into service constitutional jurisdiction of the High Court and after we have come to the conclusion that the service rules framed by the



appellant were not statutory but for their internal guidance and, therefore, their enforcement through writ jurisdiction does not appear to be in consonance with the law settled by this Court. The directions imparted through the impugned judgment by the High Court to initiate proceedings against the respondent in terms of Removal from Service (Special Powers) Ordinance, 2000 after its repeal in the year 2010 vide Removal from Service (Special Powers) (Repeal) Act, 2010 also appear to be result of poor assistance. However, the question which escaped the attention of the High Court and needs our consideration is as to whether Rule 8(b)(1) of the Service Rules framed by the appellant in 2008 for their employees which authorizes the Administrator to dispense with the services of an employee by giving him one month's notice or a month's pay in lieu thereof without assigning any reason or providing an opportunity of hearing is violative of the principle of natural justice, which always has been treated as violation of law. The said rule further appears to be against the principles of public policy which requires the public functionaries to maintain transparency and to exercise their powers in good faith in the public interest and not on the basis of personal likes or dislikes or on the basis of whims and fancies and, therefore, it needs to be examined as to whether such rule could be allowed to be retained in the service rules (though non-statutory) of the appellant a statutory body. Rule 8 of the Service Rules 2008 of the appellant is reproduced below for the sake of convenience:-

"8. Termination/Resignation/Dismissal from Service

a. Termination / Dismissal

- (1) Termination. Termination of service of an employee under the clause of 'Misconduct' as per DHA Rules Chapter IV. An employee terminated due to absence from duty under this clause will be entitled for gratuity and other emoluments under normal rules.
- (2) Dismissal. In case an employee commits an offence of a serious nature as determined by the competent authority, he/she will be dismissed under relevant DHA Rules. Such an employee will not be eligible for gratuity and other benefits except provident fund (his/her share only).

b. Rules for Governing Termination/Dismissal / Resignation

- (1) The Administrator may dispense with the services of an employee by giving him one month's notice or one month's pay in lieu thereof. Similarly, an employee may resign from service by giving one month's notice or by paying one month's pay in lieu thereof.
- (2) Withdrawal of an Employee's Resignation
  - (a) Before acceptance by the Administrator - the resignation shall be deemed to have been withdrawn.
  - (b) After its acceptance, but before the employee is relieved - the Administrator may allow/disallow withdrawal based on the merits of the case.
- (3) An un-confirmed/temporary, daily wager, trainee, part time employee and visiting faculty shall not be entitled to any notice or salary in lieu thereof on termination of service. Similarly, such employee may resign without any advance notice.
- (4) A regular employee shall not be removed or dismissed from service on disciplinary grounds without a prior 'show cause' notice.

(5) An employee who absents himself/herself without leave or overstays leave, he/she will be served with three notices each after every ten days to rejoin duty. In case of failure to report for duty, his/her services will be dispensed with under 'Misconduct'.

(6) In case of retrenchment/closure of a Section/Department/Project/work area, services of an employee can be dispensed with being surplus/no longer required".

26. We are cognizant of the fact that the Honorable Supreme Court in the case of Mrs. Itrat Sajjad Khan supra has declared the Rule 8(b)(1) of DHA Service Rules 2008 as ultra vires the Constitution and has held as under:-

“The provisions of Rule 8(b)(1) which empower a statutory corporation/public functionary to terminate the services of its employees without cause, of course, clearly violates the principle of natural justice/law and, therefore, its retention in the service rules of the appellant cannot be allowed being ultra vires the Constitution and the law.

18. In view of what has been discussed above and the fact that we have declared the provision of Rule 8(b)(1) as ultra vires the Constitution, therefore, declare the letter dated 11th September, 2012 whereby the services of the respondent were dispensed with, as illegal and without lawful authority. The respondent would be deemed to be in service and entitled to all consequential benefits. However, the appellant would be at liberty to initiate proceedings, if deemed fit, against the respondent in terms of Rule 8(b) (4) or any other provision but strictly in accordance with law. The appeal in above terms stands decided.”

27. However, the Honorable Supreme Court in the case of Major Retd. Syed Muhammad Tanveer Abbas vs. Federation of Pakistan through its Secretary, Ministry of Interior & others and another connected Appeal (in Civil Appeals No.26-K & 27-K of 2018) vide judgment dated 13.5.2019 has clarified the the issue involved in the present proceedings and has held as under:-

“9. We now turn to consider the DHA case. The employee was inducted into service by DHA in 1999. After some years certain differences arose and her services were “dispensed” with in 2012. The Service Rules 2008, which applied to the employee, provided as follows in material part:

“8. Termination/Resignation/Dismissal from Service ...

b. Rules for Governing Termination/Dismissal/Resignation

(1) The Administrator may dispense with the services of an employee by giving him one month's notice or one month's pay in lieu thereof. Similarly, an employee may resign from service by giving one month's notice or by paying one month's pay in lieu thereof. ...”

In this Court, two questions were considered: firstly, whether DHA was a “person” within the meaning of Article 199(1)(a)(ii), read with clause (5) thereof, of the Constitution; and if so, whether the 2008 service rules were statutory in nature or otherwise. The first question was answered in the affirmative, which meant that the writ petition in the High Court was maintainable. As regards the second, it was concluded that the service rules were non-statutory in nature. It was then observed as follows (emphasis supplied):

“15. No doubt the employees of statutory corporations in absence of violation of law or any statutory rules of service cannot press into service constitutional jurisdiction of the High Court and after we have come to the conclusion that the service rules framed by the appellant were not statutory but for their internal guidance and, therefore, their enforcement through writ jurisdiction does not appear to be in consonance with the law settled by this Court.... However, the question which escaped the attention of the High Court and needs our consideration is as to whether Rule 8(b)(1) of the Service Rules framed by the appellant in 2008 for their employees which authorizes the Administrator to dispense with the services of an employee by giving him one month's notice or a month's pay in lieu thereof without assigning any reason or providing an opportunity of hearing is violative of the principle of natural justice, which always has been treated as violation of law. The said rule further appears to be against the principles of public policy which requires the public functionaries to maintain transparency and to exercise their powers in good faith in the public interest and not on the basis of personal likes or dislikes or on the basis of whims and fancies and, therefore, it needs to be examined as to whether such rule could be allowed to be retained in the service rules (though non-statutory) of the appellant a statutory body....” It was noted that the employee, after completing her period of probation, served DHA as a “regular employee for almost two decades”, but that her “services were dispensed with without assigning any reason or providing an opportunity of hearing” (para16). It was further observed as follows (ibid): “The contention of the ASC for the appellant [i.e., DHA] that the respondent was a contract employee and as per her appointment letter her services could be terminated on one month's notice as recorded in the leave granting order is against the record/appointment letter of the respondent. 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. Additionally this ground was not raised before us by the ASC for the appellant and admitted her to be regular employee whose services were dispensed with under Rule 8(b)(1). The admitted fact on record reflected that both the appellant as well as the respondent had grievances against each other ... There is nothing on record to show nor the learned counsel for the appellant was able to disclose that in view of a specific provision available in the service rules for initiating disciplinary proceedings against the regular employee in the shape of Rule 8(b)(4) why the Administrator had to resort to the provision of Rule 8(b)(1) if there was no bias of personal likes or dislikes or that such decision was not based on whims and fancies or carried no mala fide. The provisions of Rule 8(b)(1) which empower a statutory corporation/public functionary to terminate the services of its employees without cause, of course, clearly violates the principle of natural justice/law and, therefore, its retention in the service rules of the appellant cannot be allowed being ultra vires the Constitution and the law.” After citing from the case of Muhammad Ashraf Tiwana v. Pakistan and others 2013 SCMR 1159, it was finally concluded as follows:

“18. In view of what has been discussed above and the fact that we have declared the provision of Rule 8(b)(1) as ultra vires the Constitution, therefore, declare the letter dated 11th September, 2012 whereby the services of the respondent were dispensed with, as illegal and without lawful authority. The respondent would be deemed to be in service and entitled to all consequential benefits. However, the appellant would be at liberty to initiate proceedings, if deemed fit, against the respondent in terms of Rule 8(b)(4) or any other provision but strictly in accordance with law. The appeal in above terms stands decided.”

10. When the DHA case is compared with the appellants' case, there are certain obvious similarities, the first and most important being of course that both involved situations of termination from service. Apart from that, in our view, as held by this Court in relation to DHA, there can hardly be any doubt that NADRA is also a “person” within the meaning of Article 199(1)(a)(ii) read with clause (5) thereof. Equally, it is also clear that the 2002 Regulations, like the DHA service rules of 2008, were non-statutory in nature. It also cannot be in doubt that the termination clauses involved in the present appeals are in all material respects the same as Rule 8(b)(1) of the DHA service rules. This is apparent on a bare reading of the said provisions. The crucial question therefore is whether the termination clauses involved here can be treated in the same manner as Rule 8(b)(1), and the same or similar relief accorded the present appellants?

11. It will be recalled that learned counsel for NADRA, seeking to distinguish the DHA case, laid emphasis on the fact that, according to him, the present appellants were only contractual employees whereas the respondent in the cited decision was a “regular” employee. The basis for this submission is clearly para 15 of the DHA case, which has been reproduced above in material part. The options offered to the NADRA employees in terms of the 2012 scheme were contained in its letter of 06.03.2012 (also set out in para 3 of the NADRA case). The subject was “Regularization of NADRA Employees” and para 1 of the scheme stated as follows:

“The regularization of NADRA contractual employees has been approved by Competent Authority with effect from 29 February 2012”. Reading the contents of the scheme as a whole, we are of the view that by regularization was meant those employees who took Option II. The employees, such as the appellants, who took Option I remained, as before, contractual employees. It follows that the equivalence, if any, between the respondent in the DHA case and the NADRA employees would be with those who took Option II, and not those who selected Option I. We are therefore, with respect, unable to agree with learned counsel for the appellants that their case was at par with that of the respondent in the DHA case.

12. Learned counsel for the appellants had also sought to rely on the fact that the revised terms of the contract as per Option I made the contract “open ended” (see para 2 herein above), i.e., without any fixed term or duration. It was also submitted that in the letter of 06.03.2012, above the table setting out the respective terms an conditions of the two options, it was stated as follows: “NADRA is offering employment till superannuation under following two options for all those contractual employees hired on/before 28 February 2011”. Relying on this sentence learned counsel submitted that the intent even as regards Option I was that under all normal circumstances the employee was to be retained till the age of retirement and that the termination clause had therefore to be applied accordingly. More precisely, it was submitted on the foregoing basis that a termination without notice or assigning any reasons was impermissible. We have carefully considered this submission,

which is certainly not without apparent merit or plausibility. In the end however, it cannot be accepted. The reason is that the contract did have a terminus. It was simply that it was not set out (as is otherwise customary) with reference a particular period of time (i.e., specific years etc.). The period was however there: the age of superannuation. The "open ended" nature of the contract cannot, with respect, be construed in the manner as submitted by learned counsel.

13. As noted above, learned counsel also relies on a decision of the Lahore High Court, Samina Kanwal v. Director Punjab Forestry Research Institute Faisalabad 2011 PLC (CS) 1553. We may note that a leave petition was filed in this Court against the aforesaid decision, being CA 980/2011. It was disposed of by order dated 20.02.2014. The challenged judgment was set aside and the matter remanded to the Lahore High Court for decision afresh. It appears that the matter (ICA 281/2010) is still pending in that Court. In such circumstances it will not be appropriate for us to comment upon the same here.

14. In view of the foregoing discussion, our conclusion ultimately is that the appellants cannot be granted relief in terms of the proceedings and remedy (i.e., constitutional petition) as sought by them. Whether they would have had a case sounding in a civil suit, with appropriate injunctive or other remedy being sought there, is a point not in issue here, and which therefore need not be considered in these appeals.

15. Accordingly, these appeals fail and are hereby dismissed. There will be no order as to costs."

28. In the light of forgoing decisions of the Honorable Supreme Court, admittedly, the service rules of the Respondent authority are non-statutory and non-statutory Rules cannot be enforced by means of a Constitutional Petition in terms of Article 199 of the Constitution.

29. 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.

30. In view of the foregoing discussions, we are of the considered view 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 Honorable Court in above referred cases.

31. In the light of above discussion and case law referred, we are not inclined to interfere in the terms and conditions of the service

of the Petitioner, in Constitutional Jurisdiction, when the Respondent-Authority has non-statutory Rules of Service. The instant petition, in view of the above, stands dismissed along with pending application[s], however, with no order as to costs.

**JUDGE**

**JUDGE**

**Nadir/-**