

**IN THE HIGH COURT OF SINDH AT
KARACHI**

CP No. D-8056 of 2019

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Arshad Hussain Khan

Imran Ali Jeelani Vs. Province of Sindh & others

Petitioner: Through Mr. Muhammad Arshad Khan Tanoli,
Advocate.

Respondents 1& 2: Through Mr. Shahryar Mehar, A.A.G.

Respondents 3& 4: Through Mr. Sarfaraz Ali Metlo, Advocate.

Date of Hearing: 14.10.2020.

JUDGMENT

ARSHAD HUSSAIN KHAN-J: Through instant constitutional petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner has made the following prayers: -

- A) To declare the Impugned Order dated 18.11.2019, where under the major penalty of “removal from service” is imposed against the Petitioner in violation of rule 4-A, 5(2)(3) of Sindh Civil Servant (Efficiency & Discipline) rules 1973, that too before 10 months to reaching his age of superannuation in arbitrary and malafide manner and without providing an opportunity of personal hearing which is violative to the principle of natural justice.
- A) To Direct the Respondents to reinstate the petitioner into his service with all consequential back benefits.
- B) To restrain the Respondents 3 & 4 from acting upon the impugned Order dated 18.11.2019 against the petitioners during the pendency of above petition.
- C) To grant any other relief which is deemed fit and proper by this Hon’able Court under the circumstances of the case.
- D) Cost of Petition be born from the Respondents.

2. The concise facts as per the memo of petition are that the petitioner was appointed as junior clerk (BPS-05), in respondent No.3, vide order dated 06.10.1981, at the time of appointment, petitioner was

intermediate, and thereafter, he was promoted as Assistant (BPS-11), on the recommendations of DPC, vide order dated 05.10.2001. It is stated that in pursuance of Finance Division (Regulation Wing) O.M dated 31.05.2013, the post of Assistant was upgraded from BPS-11 to 14, and accordingly the pay of petitioner was fixed along with other employees, vide order dated 23.11.2015. It is averred that the petitioner had performed his duties efficiently, honestly and with entire satisfaction of his superiors and did not earn any adverse remarks in his entire thirty-eight (38) years spotless career of service. It is further averred that the petitioner upon acquiring requisite length of service and eligibility for promotion against the post of Social Security Officer as provided under SESSI Regulation, 2006, as well as on recommendations of the DPC, was promoted against the post of Social Security Officer (BPS-16) vide order dated 24.02.2011. It has been stated that under the service regulations of respondent No.3, 25% of the posts of Social Security officer fall in BPS-17, which are to be filled by promotion amongst the members of service holding the posts of Social Security Officer (BPS-16) on seniority cum fitness basis. Consequently, petitioner after having been found eligible was considered by the DPC in its meeting held on 29.05.2019, and was cleared for promotion against upgraded post of Social Security Officer (BPS-17), and thereafter he was promoted vide Office Order dated 30.05.2019. It has been further stated that the petitioner was served with the show cause notice dated 29.10.2019, on the ground of misconduct and allegations setout therein. On 04.11.2019, the petitioner submitted his reply wherein he has stated that he has already submitted the original certificates of his academic qualification for verification and such process may take 1 ½ month time, however, he submitted the photo copies of his testimonials along with his reply, and requested to extend time for production of original verified testimonials. Respondent No.3, though is the competent authority but has shown his unnecessary haste and instead of appreciating reply of the petitioner and providing opportunity of personal hearing to him has proceeded to pass the impugned order where under major penalty of "Removal from Service" was imposed against the petitioner that too in violation of the mandatory provisions of rule 4-A, 5(2)(3) of Sindh Civil Servant (Efficiency & Discipline) rules 1973, as well as in

violation of the principle of natural justice. Hence, the petitioner has challenged the impugned order through instant constitutional petition.

3. Upon notice, respondents No.3 and 4 filed para-wise comments denying the allegations, sought dismissal of the present petition. In the comments, the respondents have taken the preliminary legal objections regarding maintainability of the petition on the ground that the employment of the petitioner is not governed by the statutory rules, hence the principle of master and servant will apply and as such the petitioner cannot invoke Article 199 of the constitution of Pakistan for his reinstatement in the service. It has been further stated that the petitioner has not availed the remedy of appeal before the Appellate Committee provided under Regulation 20 of the Sindh Employees' Social Security Institution (Revised) Service Regulation, 2006. It has been stated that on 16.10.1981, the petitioner illegally managed his purely temporary appointment to the post of junior clerk (BPS-05) which required 'Intermediate' Certificate through backdoor without advertisement and in violation of Sindh Employees' Social Security Institution Service Regulations, 1976, by an incompetent authority. It has been further stated that without regularization of his temporary appointment to the post of junior clerk, he managed his illegal promotion to the post of Assistant BPS-11 without even being eligible to be considered, in violation of Regulation 5(7)(d) & (e) of the Regulations 1976, after submitting a fake B.Com. degree. On 24-02-2011, he managed promotion to the post of Social Security Officer BPS-16, which required 'MA 2nd Class in Social Sciences having 3 years' experience' and subsequently his post was upgraded from BPS-16 to BPS-17 in violation of the Sindh Employees' Social Security Institution (Revised) Service Regulation, 2006. It has also been stated that in respondent No.3's exercise of verification of educational documents of all its employees without discrimination the petitioners, amongst others, provided his B.Com. degree, which was returned unverified by the HEC with an advice to send original degree and CNIC for verification. The Petitioner was accordingly directed to submit the original B.Com. degree and CNIC which he failed to do so, therefore, on 29-10-2019, a show cause notice was issued to him giving him further 14 days' time to provide original B.Com degree and CNIC.

However, when the petitioner failed to provide the requisite, respondent No.3, under the compelling circumstances, passed the impugned order dated 18.11.2019. It has been further stated that the petitioner through instant petition has attempted to protect his ill-gotten gains in circumvention of the constitution, law, binding decisions of Hon'ble Supreme Court and service regulations, which is untenable in law and the petition is liable to be dismissed with cost.

4. During the course of arguments learned counsel for the petitioner while reiterating the contents of the petition has contended that the impugned Office Order dated 18.11.2019, for petitioner's removal from service, is based on malafide and against the facts, equity, law, evidence and principles of natural justice. It is also contended that the impugned order has been passed in haste without considering the petitioner's reply and he was removed from 38 years spotless service merely for not submitting the original educational testimonials, which in fact were submitted by the petitioner for verification to the concerned authority and have come back on 02.12.2019. Learned counsel further argued that the impugned order was passed without affording an opportunity of personal hearing to the petitioner, which is violative to the principles of natural justice as well as law laid down by the Apex Court in various cases. It has been argued that respondents No.3 & 4 have failed to observe the proper procedure as contemplated under Sindh Civil Servant (Efficiency & Discipline) Rules 1973, which is mandatory in nature before imposing any minor or major penalties enumerated therein whereas in the present case neither the authorized officer was appointed nor in terms of rule 5(2)(3) of Sindh Civil Servant (E&D) Rules 1973, the officer concerned has decided to dispense with or hold an regular inquiry in the matter, which is sheer violation of law enunciated by the Apex Courts as well hence on this ground alone the impugned order is not sustainable in law. It is also contended that the plea of respondent No.3 that the petitioner does not possess the requisite qualification for holding the post of Social Security Officer (BPS-17) is absolutely misconceived and frivolous as the petitioner has earned all his promotion on the basis of eligibility criteria setout in the rules. It is argued that under the regulations of respondent No.3, the post of Social Security Officer (BPS-16) was to

be filled 50% by initial recruitment and 50% by promotion [40% from amongst Assistants and 10% from stenographer or Graduate Data Entry Operators having at least 10 years' service] on seniority cum fitness basis, hence the petitioner has fully met the said criteria provided under the rules and as such has been promoted. It is also argued that since respondent No.3, is an statutory body established under Section 3 of Sindh Employees Social Security Act 2016, and the petitioner is admittedly non-civil servants, and through this petition has been enforcing the statutory provisions of SESSI Act 2016 and rules as well as violation of principle of Natural Justice hence in view of well settled law by apex Court reported in 2013 SCMR 1707, where under it has been held that constitutional jurisdiction under Article 199 can be pressed into service by the aggrieved employee of statutory bodies with regard to issue relating to the terms and condition of his service as such this petition is maintainable and does not attract the bar including Article 212 of the constitution of Pakistan 1973. In support of the arguments, learned counsel has relied upon Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others [PLD 1994 SC 222], Muhammad Rafi and another v. Federation of Pakistan and others [2016 SCMR 2146], Muhammad Haleem and another v. General Manager (Operation) Pakistan Railways Headquarter, Lahore and others [2009 SCMR 339], **Unreported decisions** of this Court in CP-D No. 5349 of 2013 (Ghulam Rasool v. Federation of Pakistan and others) and Honourable Supreme Court of Pakistan in C.A. No.674-K of 2017 (Pakistan Defence Officers Housing Authority and others v. Federation of Pakistan and others).

5. Conversely, learned counsel for respondents No.3 and 4, in his arguments while reiterating the contents of para-wise comments to the main petition has supported the impugned order. It is, inter alia, argued that the petition is not maintainable as the employment of the petitioner is not governed by the statutory rules, hence the principle of master and servant will apply. Further the petitioner has approached this Court with unclean hands as his appointment was made by an incompetent authority in view of the Regulations 1976. It is also urged that the petitioner obtained his promotion on the basis of a fake Graduation

Degree and in violation of the Regulations 1976. It is further argued that the petitioner has failed to establish that he has any fundamental right to remain on the post of Social Security Officer BPS-17, who does not possess a genuine degree as such his B.Com. degree was not verified by HEC. It has been argued that in response to respondent No.3's exercise of verification of educational documents of all its employees without any discrimination, the petitioner, amongst others, provided his B.Com. degree which was returned unverified by the HEC with an advice to send original degree and CNIC for verification. The petitioner was accordingly directed to submit the original B.Com. degree and CNIC, which he failed to do so, therefore, on 29-10-2019, a show-cause notice was issued to him giving him further 14 days' time to provide original B.Com degree and CNIC, however, he failed to do so, resultantly, the impugned order dated 18.11.2019 was passed. In response to the petitioner's plea that he was not heard before issuance of the impugned order, learned counsel urged that such plea of the petitioner is untenable in law, because his very appointment was in violation of Article 25 of the Constitution of Pakistan and the Service Regulations made through backdoor channel, as such the same is ought to be terminated forthwith without hearing him. Lastly, learned counsel argued that instant petition is liable to be dismissed with cost. In support of his stance, he has relied upon the case of Ghulam Hafeez v. Province of Sindh and others [1991 PLC (CS) 530], Dr. Farah Naz v. Province of Sindh & Others [2011 PLC 153], Anwar Hussain v. Agricultural Development Bank of Pakistan and others [PLD 1984 SC 194], Pakistan Airline Pilots Association and others v. Pakistan International Airline and another [2019 SCMR 278], Abdul Wahab and others v. HBL and others [2013 SCMR 1383], M. H. Mirza v. Federation of Pakistan through Secretary, Cabinet Division, Government of Pakistan, Islamabad and 2 others [1994 SCMR 1024].

6. Learned AAG has adopted the arguments of learned counsel for respondents No.3 and 4.

7. We have heard learned counsel for the parties and with their assistance also perused the material available on the record as well as the case law cited at the Bar.

The fact of the matter transpires from the record is that the petitioner was a regular employee of respondent No.3 (SESSI), and had been performing his duties as Social Security Officer (BPS-17), was served with show-cause notice dated 29.10.2019, under rule 2(4) of Sindh Civil Servant (Efficiency & Discipline) rules 1973, which was replied by the petitioner on 04.11.2019, however, respondent No.3, removed the petitioner from service, vide impugned order dated 18.11.2019.

Since the respondents have raised the question of maintainability of the petition, therefore, it would be imperative to dilate upon this issue before proceeding further in the matter.

8. It has been settled that under Article 199 of the Constitution of Pakistan any person 'performing functions in connection with affairs of the Federation, a province or a local authority' is amenable to writ. Clause 5 of Article 199 of the Constitution describes the expression 'person includes anybody politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government'. Here the expression 'body politic' could be referable to the Government, itself. The inclusion of the expression 'corporate' is referable only to corporate authorities created by the Government to perform certain functions of a public nature either by Statute or otherwise.

9. The question whether a constitutional petition would lie for enforcement of the terms and conditions of service of employees of government controlled corporation and more particularly whether they could claim the relief of reinstatement rather than confining themselves to the traditional common law remedy of damages for termination of employment. In this context, the Honourable Supreme Court in numerous judgments has held that a distinction ought to be maintained between cases where terms and conditions of employment were protected or governed by statute or statutory rules framed by the Government and those where they were determined by regulations

framed by the corporate entities themselves for their internal use or by way of bilateral agreements. It was held that in the former category of cases the relief of reinstatement could be obtained but in the latter the only remedy available to an aggrieved employee was to seek damages for breach of agreement. Reliance in this regard can be placed on the case of Muhammad Dawood and others v. Federation of Pakistan and others [2007 PLC (C.S.) 1046] and Salahuddin and 2 others v. Frontier Sugar Mills [PLD 1975 SC 244].

However, the Honourable Supreme Court in case of Raziuddin v. Chairman, Pakistan International Airlines and 2 others [PLD 1992 SC 531], inter alia, has held as under:

"6. The legal position obtaining in Pakistan as to the status of employees of the Corporations seems to be that the relationship between a Corporation ' and its employees is that of Master and Servant and that in case of wrongful dismissal of an employee of the Corporation, the remedy, is to claim damages and not the remedy of reinstatement. However, this rule is subject to a qualification, namely, if the relationship between a Corporation and its employees is regulated by statutory provisions and if there is any breach of such provisions, an employee of such a Corporation may maintain an action for reinstatement."

And the Full Bench of this Court in the case of Muhammad Dawood and others v. Federation of Pakistan and others [2007 PLC (C.S.) 1046], while dealing with the cases of employees of statutory/corporate bodies, inter alia, has held as follows:-

“29. From the above somewhat detailed discussion, we have arrived at the following conclusions: -

(i) Irrespective of an employee of a State controlled corporation not being a civil servant the corporation themselves continue to remain amenable to the jurisdiction of this Court under Article 199 of the Constitution.

(ii) The rule of master and servant is inapplicable to cases where there is violation of statutory provisions or of any other law.”

Moreover, the Honourable Supreme Court of Pakistan, in the case of Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed [2013 SCMR 1707], while affirming the Judgment of this Court Muhammad Dawood (supra), inter alia, has held as under:

“The expression "violation of law" would not be confined merely to violation of any specific provision of a statute but the expression "law", as observed by Hamoodur Rehman, J., (as his Lordship then was) in *Government of West Pakistan v. Begum Agha Abdul Karim Sorish Kashmiri* PLD 1969 SC 14 at page 31 and ought to be considered in its generic sense as connoting all that is treated as law in this country including even the judicial principles laid down from time to time by the superior Courts. It means according to the accepted norms of legal process and postulates a strict performance of all the functions and duties laid down by law. It may, for instance, include the principles of natural justice, the public duty to act fairly and honestly and absence of mala fides in fact and law. In all such cases the Court would be competent to grant relief of reinstatement.”

49. While affirming the afore-mentioned judgment of the High Court of Sindh, this Court considered the effect of the Ordinance 2000 qua the jurisdiction of the High Court under Article 199 of the Constitution for the first time in *Civil Aviation Authority through Director-General v. Javed Ahmad* (2009 SCMR 956). The Court observed as under:-

"The learned High Court was fully empowered to consider whether the action complained of is in accordance with the Removal from Service (Special Powers) Ordinance, 2000. Therefore, the violation of law falls within the parameters of the constitutional jurisdiction and the petition was properly entertainable regarding punishment of compulsory retirement to Javed Ahmed. The right of individual by change of law cannot be closed as past transaction and the constitutional petition remains alive to agitate the rights guaranteed under the Constitution. The departmental action on the statement of allegations contained 23 allegations which include additional allegations, was passed on malice and pre-determined desire to get rid of Javed Ahmed. After abatement of his service appeal, there was no remedy available under the law in view of Mubeen-us-Salam's case and the petition before the High Court was maintainable".

50. The principles of law which can be deduced from the foregoing survey of the precedent case-law can be summarized as under:-

- (i) Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.
- (ii) 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 use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.
- (iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules / Regulations and unless those appointments are purely contractual, the principles of

natural justice cannot be dispensed with in disciplinary proceedings.

- (iv) Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.
- (v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.

[Emphasis supplied]

The Honourable Supreme Court in the case of Muhammad Rafi and another v. Federation of Pakistan and others [2016 SCMR 2146 SC] while interpreting the scope of para-50 of the afore-mentioned Judgment, inter alia, has observed as under:

“8. We, therefore, are of the considered view that issue in hand is fully covered by para-50 of the judgment referred to hereinabove, which provides that an aggrieved person can invoke the constitutional jurisdiction of High Court against a public authority if he satisfies that the act of the authority is violative of service Regulations even if they are non-statutory.”

10. In the present case, since the petitioner, a regular employee in BPS-17 of Respondent No.3 (SSESI), a statutory body and government controlled entity, has challenged his removal from 38 years of service, inter alia, on the ground that the respondents while imposing major penalty of removal from service has failed to adhere proper procedure as contemplated in Sindh Civil Servant (Efficiency & Discipline) Rule 1973, so much so neither any regular enquiry was conducted nor opportunity of personal hearing was accorded, which is violation of principle of natural justice. In the case of Mrs. Anisa Rehman v. P.I.A.C and another [1994 SCMR 2232], the Honourable Supreme Court, inter alia, held that the principles of natural justice had become part of the law in Pakistan and any action taken without following those principles would also amount to violation of law. The act of the respondents, on the touch stone of the above referred legal precedents, prima facie, give rise to the petitioner to invoke writ jurisdiction of this Court and as such, we are of the view that the present petition is maintainable.

11. Adverting to the case on merit, from the record, it also transpires that on 06.10.1981, the petitioner was appointed as junior clerk in Grade-5. On 18.09.2001, the Departmental Promotion Committee promoted the petitioner from junior clerk to the post of Assistant (BPS-11). And on 07.02.2011, upon the recommendation of DPC the petitioner was promoted from the post of Assistant to Social Security Officer (BPS-16). Thereafter, pursuant to the recommendation of Departmental Promotion Committee in its meeting held on 29.05.2019, the Petitioner along with other Social Security Officers was upgraded from BPS-16 to BPS-17 on the basis of 25% quota. Relevant portions of the said Minutes of the Meeting for the sake ready reference are reproduced as under:

“2) UPGRADATION OF SOCIAL SECURITY OFFICERS FROM BS-16 TO BS-17 ON THE BASIS OF 25% QUOTA

5. The Director Administration, SESSI informed to the Committee that as per decision Governing Body, SESSI taken in its 89th meeting held on 01.3.1992, 25% posts of Social Security Officer will be upgraded from BS-16 to BS-17. He further informed that due to promotion, death and retirement of Social Security Officers holding post of BS-17, Six (06) posts of Social Security Officers are lying vacant, besides 02 Social Security Officers (BS-17) have been promoted to the post of Deputy Director in this meeting. As such 08 posts of Social Security Officers are available for upgradation. As per seniority list of S.S.Os from serial No.1 to 29 except No.27 who has been expired have already been upgraded in BS-17. Therefore, 08 S.S.Os from serial No. 30 to 37 are entitled for upgradation from BS-16 to BS-17.

6. The committee examined the service record, verified degrees from H.E.C. and A.C.Rs. of the following Social Security Officers and took decision as under:

S.N.	Name of S.S.O	DECISION
1
2
3
4
5
6
7
8	Mr. Imran Ali Jeelani, Social Security Officer, V & S Cell, Head Office.	Cleared for promotion / up gradation in BS-17, subject to countersignature of ACRs for the years 2014 to 2018 from concerned Director.

12. Record also reveals that a show-cause notice dated 29.10.2019 was issued to the petitioner. Relevant portion whereof for the sake of ready reference is reproduced as under:

“From the facts enumerated above and the material placed before me, it is apparent that you have committed the following offences to till date constitute misconduct:

- (ix) willful insubordination or disobedience whether alone or in combination with others to any lawful and reasonable order of a superior (S.O. 21 (3) of Sindh Terms of Employment (Standing Order) Act 2015 read in the light of the Division Bench of the High Court of Sindh judgment in Dr. Farah Naz v. Province of Sindh through Secretary labour Sindh and others, 2011 PLC (Lab), and
- (x) conduct prejudicial to good order of service discipline (Section 2 (4) of the Sindh Civil Servants (E&D) Rules 1973, adopted by the institution)

You are finally required to submit your educational documents and CNIC to the competent Authority within 14 days of the receipt of this notice or show cause as to why disciplinary action should not be taken against you.

On your failure to do so within stipulated time it will be presumed that your certificate/degrees available/submitted with SESSI are fake and not genuine and that you did not and do not meet the criteria of academic qualification for your appointment/current post and that you have no defence to offer and plead guilty. Accordingly, you will be liable for ex parte action.”

The petitioner replied the show cause notice on 04.11.2019, relevant portion where of is reproduced as under:

“In compliance of the above referred Head Office letter I am submitting photo state copies of my educational documents have been submitted for verification. The verification process may take a period of above 1 ½ month.

It is further submitted that on attaining the age of superannuation i.e., (60) years I will stand retired from SESSI service on 12.10.2020. It is, therefore, very humbly requested to kindly allow me the requested time period of 1 ½ month for verification to save my (39) years SESSI, Service.”

Thereafter, through office order dated 18.11.2019 (impugned herein) respondent No.4 by imposing major penalty removed the petitioner from the service of respondent No.3.

13. It is an admitted position that prior to imposing major penalty of removal from service no opportunity of personal hearing was provided to the petitioner. In this regard, the stance of the respondents that since the very appointment of the petitioner was in violation of the service regulation of respondent No.3 and he managed his illegal promotion to

the post of BPS-11 by submitting a fake B.Com degree that too in violation of the service regulation, as such the petitioner was not required to be provided any personal hearing. We regret our inability to be persuaded by this contention for more than one reason. In the first instance, the show cause notice, which was made basis of removal from service of the petitioner, is completely silent about the allegations of petitioner's appointment, which is said to be in violation of the service regulation. Secondly, there is nothing available on the record, which could show that during the petitioner's 38 years long service he was ever issued any letter in respect of any [alleged] violation. Moreover, from the record, it appears that at the time of appointment on 06.10.1981 as junior clerk (Grade-5), the petitioner was intermediate, which was the required qualification for the said post as per Appendix-A to SESSI Service Regulation, 1976. The petitioner subsequently on the recommendations of DPCs was promoted to the post of PBS-11 on 18.9.2001 and PBS-16 on 07.02.2011. Thereafter, on the DPC's recommendation dated 29.05.2019 the post of the petitioner was upgraded from BPS-16 to 17 against 25% quota. The minutes of the meetings of DPCs, available on the record, clearly reflect that the promotions of the petitioner were being recommended by the DPCs upon examination of service record, verification of degrees and A.C.Rs. and as such the appointment and promotion of the petitioner cannot be questioned at the belated stage when the petitioner was on the verge of retirement. Besides above, the record is also silent about inaction of respondent No.3 for not taking steps against the alleged illegal appointment of the petitioner as well as his promotions. There is also nothing available on the record that respondent No.3 has taken any action against the persons allegedly involved in the petitioner's appointment as well as his subsequent promotions. The Honourable Supreme Court in the case of *Muhammad Rafi (supra)* while dealing with somewhat the identical issue, inter alia, has observed as under:-

“7. The ground that the process through which the person has passed in order to be awarded an appointment was not transparent, is not sufficient reason for the competent Authority to scrap the appointments of the Appellants who had passed through the proper recruitment process. The service Regulations of the Civil Aviation Authority do not suggest that once the offer letter has been issued and accepted, the Civil Aviation Authority can scrap the process on the ground that it was not transparent. There would have been some force in this contention of the Counsel for the Respondents

(Civil Aviation Authority) if it was brought on record that persons who initiated the said process were also proceeded against departmentally for misconduct but there is nothing on record that suggests this, rather the Counsel when put to this question also concedes that no action has been taken by the competent Authority against the persons who were involved in the process of appointment of the Appellants.

8. We, therefore, are of the considered view that issue in hand is fully covered by para-50 of the judgment referred to hereinabove, which provides that an aggrieved person can invoke the constitutional jurisdiction of the High Court against a public authority if he satisfies that the act of the authority is violative of the service Regulations even if they are non-statutory.”

14. In the instant case, in response to show-cause notice, whereby the petitioner was asked to submit educational documents, the petitioner though submitted the photocopies of his educational documents, yet he sought time to produce original documents as the same were submitted to HEC for verification purposes, however, respondent No.3 instead of allowing the time to the petitioner removed him from the service at the verge of retirement. There is nothing available on the record, which could show that the educational documents submitted by the petitioners either at the time of his appointment and/or subsequently were found either forged or fabricated. On the contrary, the petitioner filed his educational documents apparently having verified seal of HEC on 2.12.2019 along with the petition, which substantiates the stance of the petitioner seeking time in reply to show cause notice to submit verified documents from HEC.

15. It is also settled that under Rule 5 (2) (iii) of Sindh Civil Servant (Efficiency & Discipline) Rule 1973 an authorized officer has discretion to decide, whether in a disciplinary proceeding against a civil servant in response to his reply to the charge-sheet, a regular inquiry should be held or not. The above discretion is not controlled by any precondition or guide line but nevertheless this discretion is to be exercised fairly and reasonably and not arbitrarily or capriciously with the object to deny an employee the right of fair defence. Reliance is placed on the case of *Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others* [PLD 1994 SC 222].

16. It is also an admitted position that the petitioner was not afforded an opportunity of hearing. This is despite the fact that the petitioner, through his letter / reply to show-cause notice dated 04.11.2019 sought time to produce the original educational certificates as the same were under the process of verification with the HEC, however, he was removed from the service vide order dated 18.11.2019 [impugned herein]. It is now well settled proposition of law that the right of fair trial and due process is a fundamental right of every person under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, which in the present case is lacking. In the case reported as (PLD 2012 Supreme Court 553) Suo motu case No.4 of 2014, it was observed as under:-

“The principle of right to fair trial has been engaged and recognized by our courts since long and is by now well entrenched in our jurisprudence. The right to fair trial undoubtedly means a right to a proper hearing by an unbiased competent forum. It has been consistently held by the Hon'ble Supreme Court that principle of natural justice (right of hearing) shall be read in every situation even if not expressly provided or unless specifically excluded.”

It is also well settled that in all proceedings by whomsoever held, whether judicial or administrative, the principle of natural justice has to be observed if the proceedings resulted in consequences affecting the person or property or other rights of the parties concerned. Without participation of a party affected by an order or a decision amounts to an action without lawful authority. The requirement of *audi alteram partem* is not confined to proceedings before courts but extends to all proceedings by whomsoever held, which may affect a person or property or other rights of the parties concerned in the dispute. Reliance in this regard may be placed on the cases of Mrs. Anisa Rehman v. PIAC and another [1994 SCMR 2232], Abdul Majeed Zafar v. Governor of Punjab [2007 SCMR 330] and Ali Muhammad v. The State [PLD 2010 SC 623].

In somewhat on identical issue as that of the present case, the Honourable Supreme Court of Pakistan in the case of Muhammad Zaheer Khan v. Government of Pakistan through Secretary, Establishment and others [2010 SCMR 1554], while holding that the

appellant was condemned unheard and the order of his dismissal is suffered from mala fide of law, allowed the appeal and set aside impugned orders. In the said case it was also, inter alia, observed that fundamental principle laid down in FR. 54-A, postulates that the case of the appellant cannot be remanded to the authority for holding *de novo* proceedings after his superannuation and further he entitles to retire with full pensionary benefits and period of suspension is bound to be treated as period spent on duty.

The case law cited by learned counsel for the respondents have been perused and considered with due care and caution but are found distinguishable from the facts of instant case and hence the same are not applicable.

17. In view of the foregoing discussion, we are of the considered opinion that the impugned order whereby the petitioner was removed from service is not sustainable in law. Hence, we allow the petition and set aside the impugned order. Since the petitioner during pendency of the present petition has attained the age of superannuation and as such keeping in view of the ratio laid down by the Honourable Supreme Court in the case of *Muhammad Zaheer Khan* (supra) he may be deemed to be retired from the service and his full and final settlement dues may be paid accordingly.

The petition is disposed of.

JUDGE

JUDGE

Karachi;
*Dated*_____