

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan Iqbal Chaudhry

C.P. No. D-162 of 2018

Rashid Ali Khan
Versus
Institute of Business Administration Karachi

Date of Hearing: 24.10.2019

Petitioner: Through Mr. Ch. Muhammad Ashraf Khan and
Mr. Aamer Latif Advocates

Respondent No.1: Through M/s. Malik Naeem Iqbal, Faizan H.
Memon and Malik Altaf Javed Advocates.

Respondent No.2: Through Mr. Ali Safdar Depar, Assistant
Advocate General.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner has impugned termination order dated 08.12.2017, claimed to be in dissonance with the service rules framed by the respondent i.e. Institute of Business Administration.

2. Brief facts of the case are that petitioner was appointed as LDC in February 1985 and with the passage of time he lastly promoted in BPS 17 as Manager Transport vide letter dated 25th June 2012. He claimed to have been transferred vide letter dated 26.12.2014 and took over responsibilities as Manager Admin for Aman Tower in JS Group of Buildings in IBA.

3. Petitioner was issued a show-cause notice dated 10.10.2017. Same was replied whereupon he was called to appear before the Committee comprising of six employees where certain questions were raised by the Inquiry Committee. The Inquiry Committee, being dissatisfied, called a written explanation. It is claimed that without following the procedure and observing the settled norms, impugned

termination letter dated 08.12.2017 was issued. The petitioner filed a representation on 13.12.2017, which was not responded hence he has filed this petition.

4. Mr. Ch. Muhammad Ashraf, learned counsel for petitioner, submitted that respondent is a creation of Institute of Business Administration Act, 1994 and in pursuance of Section 13, the Board was empowered to appoint teachers and other officers/staff of the Institute in BPS 16 and above and to determine the terms and conditions of their services and that to prescribe the terms and conditions of teaching and non-teaching employees of the Institute including their qualification, experience and eligibility for appointment. It is further the case of the petitioner that in terms of the aforesaid provision the Board was empowered to suspend, punish and remove the employees from services, in prescribed manner, appointed by the Boards. The rules claimed to have been framed by the Human Resources Department of the respondent set a mechanism for dismissal of an employee.

5. It is the case of the petitioner that such rules were seriously violated and not adhered to in the present case. The dismissal procedure required that if the employee denies the allegations and/or if the reply to the charge is found to be unsatisfactory, the Director HR or the authorized person shall appoint an inquiry officer or panel to conduct the inquiry proceedings for the alleged offence in fair and impartial manner who shall call upon in writing, any relevant employee for investigation. The Inquiry Officer shall not be in any case a person affected by the employee or belonging to the same department.

6. It is claimed that the inquiry proceedings required an inquiry officer to record in writing statement of the employee and/or his/her witnesses and of the complainant and/or his/her witnesses. Mr. Ch. Muhammad Ashraf Khan, learned counsel for petitioner, submitted that

since these rules and regulations of the Human Resources Department is offshoot of Section 13 of the IBA Act, the same, for all intent and purposes, are statutory to maintain this petition. In the alternate, learned counsel submitted that even if the rules are not considered as statutory, it is a violation of Section 13 of the IBA Act as the prescribed manner, contained therein, was not followed.

7. Learned counsel for petitioner further submitted that since it is violation of the IBA Act, the remedy in terms of Article 199 of the Constitution could be invoked for the redressal of the grievances. In this context, learned counsel has relied upon the case of Shahid Mehmood Usmani v. House Building Finance Corporation reported 2010 PLC (CS) 1360 and the case of Pakistan Defence Officers Housing Society v. Lt. Col. Syed Javaid Ahmed reported in 2013 SCMR 1707, specially paragraph 50 of the later judgment.

8. Petitioner's counsel has further relied upon the case of Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan reported in 2017 SCMR 2010 insofar as the violation of principle of natural justice is concerned. Next learned counsel for petitioner relied upon the case of Muhammad Rafi v. Federation of Pakistan reported in 2017 PLC (CS) 1270 where aggrieved persons' petition was maintained on the strength that the act/action of authority was violative of service regulations, even though they were non-statutory.

9. Lastly learned counsel for petitioner has also relied upon the case of Pakistan Red Crescent Society v. Syed Nazir Gillani reported in PLD 2005 SCMR 806. This judgment was cited by learned counsel for petitioner on the count that the petition would not be maintainable in the absence of violation of law or of any statutory rules. Since it is claimed that there is a violation of law, therefore, as per learned counsel, the petitioner could maintain this lis.

10. On the other hand, Malik Naeem Iqbal, learned counsel appearing for respondent No.1, has seriously objected to the maintainability of this petition on the ground that there are no rules which could be termed as statutory and the rules and regulations, as relied upon, are only a procedure set by the respondent to regulate their domestic issues and affairs. He submitted that the law, as far as non-statutory rules of a statutory corporation or organization is concerned, is set at rest by the recent pronouncements of the Hon'ble Supreme Court. In this regard, he has relied upon the case of Syed Muhammad Tanvir Abbas v. Federation of Pakistan reported in 2019 SC 984 which decided the case of NADRA employees. Learned counsel submitted that in the case of Pakistan Defence Officers Housing Authority v. Itrat Sajjad (Supra), case of Pakistan Defence Officers Housing Society v. Lt. Col. Syed Javaid Ahmed reported in 2013 SCMR 1707 was considered by the Bench and consequently the petition was dismissed as the employees/appellants could not have been granted relief (in terms of proceedings and remedy i.e. Constitution Petition), as sought by them.

11. The next case relied upon by learned counsel for respondent is of Pakistan International Airlines Pilots Association v. Pakistan International Airline reported in 2019 SCMR 278. This case once again sets the controversy at rest that where conditions of service of employees were not regulated by statutory provision then such employees were to be governed by principle of master and servant and in such a situation the employees were amenable to rule of master and servant. Article 199 of the Constitution could not be invoked.

12. Learned counsel for respondent No.1 further argued that in the case of Shafique Ahmed Khan v. NESCOM reported in PLD 2016 SC 377 however a view was framed that the approval of such rules by the Federal Government to give them statutory attire in view of Rule 14 of

Rules of Business, is misconceived as when the Statute itself does not provide for the approval of the rules by the Federal Government then the Court cannot supply omission in the act on the basis of Rule 14 of Rules of Business.

13. Malik Naeem Iqbal submitted that above view of the Hon'ble Supreme Court was taken into consideration in the case of Muhammad Usman v. Government of Pakistan reported in 2017 SCMR 571. In paragraph 7 of the judgment the Hon'ble Supreme Court expressed its view that according to judgment in Shafique Ahmed's case the test whether rules and regulations are statutory or otherwise is not solely whether their framing requires approval of the government or not, rather it is in the nature of efficacy of such rules and regulations. The Hon'ble Supreme Court further deliberated that it is to be seen whether the rules and regulations in question deal with the instructions for internal control or management or they are broader than and are complementary to the parent Statute in the matters of crucial importance. The former was considered non-statutory whereas the latter as statutory. On the basis of the definition/finding it is provided that in the subject case the regulations were basically instructions for the internal control or management of State Bank of Pakistan and were therefore non-statutory. This, per learned counsel, apparently is the last recognized test available.

14. Learned counsel for respondent lastly relied upon the case of Abdul Wahab v. HBL reported in 2013 SCMR 1383 consisting of seven Member Judge which set the matter at rest that where a service grievance was agitated by a person/employee who was not governed by statutory rules of service, before High Court in terms of Article 199 of the Constitution, such petition shall not be maintainable.

15. We have heard the learned counsel and perused the material available on record.

16. Discussion of above case law will thus lead to an irresistible conclusion that a writ would not be maintainable for an employee relating to his service grievances against a corporation or an autonomous body whose services rules are not statutory. The tool to ascertain whether the rules are statutory, in the cases of Shafiq Ahmed Khan v. NESCOM reported in PLD 2016 SC 377 and Muhammad Zaman v. Government of Pakistan reported in 2017 SCMR 571, there are the yardsticks provided by Hon'ble Supreme Court. The exceptions were however provided in the case of DHA v. Itrat Sajjad where violation of fundamental right or that of principle of natural justice were expressed.

17. So, therefore, two tests are required to be performed to test the maintainability; one whether the subject case is one where principle of natural justice and fundamental rights were violated and the other whether the rules and regulations have passed the test prescribed by Hon'ble Supreme Court in the two aforesaid judgments in the case of Shafiq Ahmed Khan and Muhammad Zaman supra. Let us deal with the first issue if any fundamental right has been violated.

18. In terms of the Rules & Regulations a show-cause notice was issued on 10.10.2017 specifying the charges in respect of fuel consumption. The allegation were further narrowed down to November 2002 to December 2014. This was responded by a reply of 12th October 2017. The show-cause notice was routed on the basis of IBA Internal Audit Department, Special Audit of Transport Department which focuses on fuel consumption. The reply was not found to be satisfactory by the Committee.

19. By virtue of order of this Court a statement along with entire proceedings of the inquiry were placed on record. The objections taken

by learned counsel for the petitioner in this regard was that prior to the statement of petitioner a number of drivers and other employees were called and were either interviewed or asked to file statement. This process of interview of drivers and employees concerning the allegations and charges was considered by petitioner as to cause prejudice to his rights and more importantly in violation of prescribed procedure as ensured in the IBA Act. As far as the violation of fundamental right or the violation of natural justice is concerned, the petitioner cannot claim any set procedure to safeguard his fundamental rights or natural justice.

20. The IBA Act, under consideration, ensured the suspension, punishment or removal from service in the manner which may not cause prejudice to the rights of an employee. Even if the prescribed procedure, as claimed to have been set by the rules and regulations, is taken into consideration we have noticed that it calls for an inquiry in case the allegation is denied and the reply was found unsatisfactory. The inquiry in the instant matter has not been denied. What was denied is the manner in which it was conducted. The inquiry officer and/or committee ought to have been constituted once the reply was found unsatisfactory and not before that. It requires that the inquiry committee may call in writing any relevant employee for investigation. This is ensured in terms of Sub-Rule 'h' of Rule IV of the Rules & Regulations. Similarly Sub-Rule 'l' of Rule IV ensured the notification of inquiry officer, date, time and location where inquiry proceedings were to be conducted. The inquiry proceedings include the recording of statements of employee and/or his/her witnesses and of complainant and/or his/her witnesses and at the conclusion of the inquiry, the committee has to forward findings on the basis of record of inquiry. There is nothing to suggest that any of the sub-rule of Rule IV was violated. In case of a domestic inquiry and/or discreet inquiry, if some

of the employees were called before formally charging the petitioner this would not amount to taking away any right of the petitioner.

21. The petitioner thus failed to pass the test, as provided in the case of DHA v. Itrat Sajjad reported in 2017 SCMR 2010 whereby the petition could be maintained by an employee in case of gross violation of the fundamental rights and that of violation of natural justice.

22. The second hurdle is of statutory rules. The respondent is an institute of business administration and that power and functions of the Institute include platform for teaching Business Administration and related fields as it may deem fit, and to make provision for research management, development programmes, consultancy and for the advancement and dissemination of knowledge in such manner as it may determine. Such courses were required to be conducted by it and its affiliated institutions. The powers further include holding of examination and to award and confer degrees, diplomas, certificates and other academic distinctions. While performing such they may affiliate or disaffiliate educational institutions. It was further empowered to create posts of teaching, research, training, consultancy, administration and other related purposes; to establish centers for learning for development of teaching and research; to promote cooperation with government, national and international organizations and universities and to do all such acts and things, whether incidental to powers aforesaid or not, as may be necessary.

23. The broad object of the institute when seen under yardstick provided in the two judgments i.e. Shafiq Ahmed Khan v. NESCOM and Muhammad Zaman v. Government of Pakistan, it goes to show that no doubt there is no provision that enables the respondent to seek approval of the federal government to give such rules statutory frame but at the same time the Hon'ble Supreme Court itself rationalized the test by

complementing the rules with the parent Statute. These rules and regulations undoubtedly are instructions for internal control and management and in no way broader than the parent Statute. The importance of the Statute lies within Section 5 of the IBA Act which deals with the powers and functions of the Institute. These are broader than the rules and thus only highlight procedure set for the internal mechanism to be routed and not one which could be termed as statutory attire.

24. With these analyses based on the observations of Hon'ble Supreme Court we are of the view that neither any violation of fundamental right or of natural justice are shown to have been violated nor the tests suggest that rules and regulations, as relied upon, are statutory. Thus, we consider that this petition is not maintainable against the respondent on the aforesaid counts and consequently the same was dismissed vide short order dated 24.10.2019 of which the above are the reasons.

Dated:

Judge

Judge