

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

C.P. No. D-968 of 2010

*Before: Muhammad Shafi Siddiqui, J*  
*Zulfiqar Ahmad Khan, J*

Kamran Khan

Versus

Governor of Sindh & others

Date	Order with signature of Judge
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1. For hearing of Misc. No.5320/10
2. For hearing of main case.

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Date of Hearing: 16.12.2019  
Petitioner: Through Mr. Ahmed Ali Ghumro Advocate  
Respondents No.2 to 4: Through Mr. Khalid Javed a/w Ms. Farkhunda Shaheen and Mr. Yousuf

**ORDER**

**Muhammad Shafi Siddiqui, J.**- Petitioner in the matter was compulsorily retired on 16.2.2002 from the employment of University of Karachi on account of misconduct. He challenged such order by filing an appeal before the Sindh Service Tribunal as Appeal No.178/2002 which remanded the matter to hold fresh enquiry against the petitioner. The judgment of the Tribunal was assailed before the Hon'ble Supreme Court by the petitioner as he preferred CPLA No.-242-K/2006. The petition for leave to appeal was dismissed on 04.7.2006 and the order of the Tribunal was maintained. Though the question regarding joining of the petitioner in pursuance of the order of the Tribunal has remained contested one, a charge sheet dated 09.8.2006 along with statement of allegations was served upon the petitioner. This charge sheet was followed by a reply which was found unsatisfactory by the competent authority. The authority appointed Professor Dr. Kaleem Raza Khan, Chairman Department of English, University of Karachi as Enquiry Officer in terms of Section 3 of the University of Karachi Employees (Efficiency & Discipline) Ordinance, 1962. It is claimed that the statements of the

prosecution witnesses were recorded in presence of the petitioner whereas petitioner did not lead evidence to defend himself. The Enquiry Officer submitted his report holding the petitioner guilty which was followed by a final show cause notice dated 07.2.2007 along with enquiry report and he was accordingly directed to appear before the Syndicate for personal hearing. Though, the personal hearing was delayed for one reason or the other, the final notice was issued on 12.4.2007 for appearance of the petitioner who marked his presence before the Syndicate on 21.4.2007. The petitioner was heard and after examining the entire record, the Syndicate decided that the Deputy Registrar and Legal Advisor of the University shall place the matter before the Judge of this Court who remained Member of the Syndicate for his expert opinion. On 29.8.2009 the Syndicate after consideration decided to compulsorily retire the petitioner. On 09.10.2009 the decision of the Syndicate retiring the petitioner compulsorily, was issued. Though the petitioner filed a review application challenging the order of the Syndicate and also an appeal before the Chancellor, both are attached as annexures T & V but he remained unsuccessful. The order of review, however, was not challenged in this matter and prior decision of the Syndicate dated 09.10.2009 was impugned.

2. Mr. Khalid Javed learned Counsel for the respondent/University has raised question regarding maintainability of this petition since it is claimed that the relationship of the petitioner with the respondents was not governed by the statutory rules of service and hence petitioner could not have maintained this petition.

3. We have heard the Counsel on all issues including but not limited to preliminary issue of non-statutory rules of service. The issue of non-statutory rules of service remained a long discussed issue. Previously there was a long standing principle that the employees of statutory

corporations which do not enjoy statutory rules of service cannot be subjected to litigation under Article 199 of the Constitution of Islamic Republic of Pakistan.

4. If we scratch the history of last 20 years, the first case that we came across is of Ejaz Hussain Sulehri vs. Registrar & another reported in 1999 SCMR 2381 wherein a three member bench held that the High Court was right in holding that the employees of the universities were neither holders of statutory posts nor their terms and conditions were governed by statutory rules with the result that the constitution petition was not maintainable. Reliance, however was placed on the case of University of Punjab & others vs. Ch. Sardar Ali (1992 SCMR 1093).

5. Counsel then cited a judgment in the case of Abdul Wahab vs. HBL & others reported in 2013 SCMR 1383 where it is held that “Where a service grievance was agitated by a person/employee who was not governed by statutory rules of service, before the High Court(s), in terms of Article 199 of the Constitution, such petition shall not be maintainable.” Reference in this behalf was made to PLD 2010 SC 676 Pakistan International Airline Corporation & other vs. Tanveer-ur-Rehman and PLD 2011 SC 132 (PTCL VS. Iqbal Nasir) (The question, however with reference to Article 199(1)(c) of the Constitution was deferred).

6. Mr. Khalid Javed learned Counsel for the respondents then cited a judgment passed in number of appeals which were commonly disposed of by a judgment reported as 2013 SCMR 1707 having leading case law of Pakistan Defence Officers Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed. Relevant para of the judgment is reproduced as under:-

*“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 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 (27<sup>th</sup> 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."*

7. In the case of Syed Nazir Gillani vs. Pakistan Red Crescent Society reported in 2014 SCMR 982, the Hon'ble Supreme Court on the basis of judgment of Pakistan Defence Officer Housing Authority referred above maintained that since the rules framed by the Pakistan Red Crescent Society are non-statutory hence on that account writ petition is not maintainable.

8. In the case of PIAC Vs. Tanveer-ur-Rahman reported in 2010 SC 676 the Hon'ble Supreme Court in terms of para-12 concluded as under:-

*“12. Now let us see what is meant by the expression ‘performing functions in connection with the affairs of the Federation’. The expression clearly connotes governmental or State functions involving an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order or they may be functions concerning economic development, social welfare, education, public utility services and other State enterprises of an industrial or commercial nature. Generally, these functions are to be performed by persons or agencies directly appointed, controlled and financed by the State; either by Federation or a Provincial Government. On the other hand, private organizations or persons, as distinguished from Government or Semi-Government agencies and functionaries, cannot be regarded as a person performing functions in connection with the affairs of the Federation or a Province, simply for the reason that their activities are regulated by laws made by the State. The primary test must always be:*

*(i) whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power;*

*(ii) whether the control of the organization vests in a substantial manner in the hands of Government; and*

*(iii) whether the bulk of funds is provided by the State.*

*If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province, otherwise not.”*

9. Learned Counsel for the respondent cited a judgment of the Hon’ble Supreme Court in the case of Pakistan Airline Pilots Association & others vs. Pakistan International Airline Corporation & another reported in SBLR 2017 Sindh 31 to argue that this was the consistent approach of the Benches by declining to interfere in the cases where the rules are non-statutory and the relationship was governed by master and servant rule.

10. The Hon’ble Supreme Court in the case of Shafique Ahmed Khan & others vs. NESCOM & others reported in PLD 2016 SC 377 minutely observed the cases referred to the Hon’ble Bench, which embarked upon the maintainability of the petitions on the basis of statutory and non-

statutory rules of service. The Hon'ble Supreme Court then rationalized all the relevant case laws and held as under:-

*“13. ----- It would rather be naïve and even myopic to equate the rules dealing with the matters of crucial importance having so wide a scope and area of efficacy with the instructions meant for internal management and thereby deprive them of their statutory status. We, thus, hold that the Rules made by the Authority under Sections 7, 9 and 15 of the Act cannot be confused or even compared with the Rules and Regulations framed under other enactments without the approval of the Federal Government. The argument that the judgments rendered earlier on the similar proposition could not be ignored by subsequent benches with the same number of Judges is no doubt correct but we don't think any of the judgments cited at the bar decided similar questions. The argument that approval of such rules by the Federal Government to give them statutory attire in view of Rule 14 of the Rules of Business is also a must, is misconceived because when the statute itself did not provide for the approval of the rules by the Federal Government, we cannot supply omission in the Act on the basis of Rule 14 of the Rules of Business. The argument that the judgments rendered in the cases of Rector National University of Science and Technology (NUST) Islamabad and others v. Driver Muhammad Akhtar and Muhammad Zubair and others v. Federation of Pakistan thr. Secretary M/o Defence and others (supra) holding the rules statutory are per incuriam or sub silentio is not correct as they have been rendered after due consideration of the statute and the case law. The judgments rendered in the cases of Muhammad Tariq Badr and another v. National Bank of Pakistan and another (2013 SCMR 314), Zarai Taraqati Bank Limited v. Said Rehman (2013 SCMR 642), Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), Shoua Junejo v. PIA (2012 SCMR 1681), Muhammad Nawaz v. Civil Aviation Authority and others (2011 SCMR 523), Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir (PLD 2011 SC 132), Abdul Rashid Khan v. Registrar, Bahauddin Zakaria University, Multan (2011 SCMR 944), Pakistan International Airline Corporation v. Tanweer-ur-Rehman (PLD 2010 SC 676), State Bank of Pakistan v. Muhammad Shafi (2010 SCMR 1994), Asad Bashir v. Chairman Board of Intermediate and Secondary Education, Lahore and 2 others (2006 PLC (CS) 110), Pakistan Red Crescent Society v. Syed Nazir Gillani (PLD 2005 SC 806), Zia Ghafoor Pirach v. Chairman, Board of Intermediate and Secondary Education, Rawalpindi (2004 SCMR 35), Muhammad Ishaq Waheed Butt v. Chairman, Bank of Punjab (2003 PLC (C.S.) 963), Pakistan International Airlines Corporation (PIAC) v. Nasir Jamal Malik (2001 SCMR 934), Ijaz*

*Hussain Suleri v. The Registrar and another (1999 SCMR 2381), Chairman, Pakistan Council of Scientific and Industrial Research, Islamabad v. Khalida Razi (1995 SCMR 698), Chairman WAPDA v. Jameel Ahmed (1993 SCMR 346), Raziuddin v. Chairman, PIA CORPN. (PLD 1992 SC 531), Karachi Development Authority v. Wali Ahmed Khan (1991 SCMR 2434), Abdul Ghaffar v. WAPDA (1990 SCMR 1462), Sindh Road Transport Corporation Chairman v. Muhammad Ali G. Khohar (1990 SCMR 1404), Principal Cadet College v. Muhammad Shoaib Qureshi (PLD 1984 SC 170), Anwar Hussain v. ADBP (PLD 1984 SC 194), Muhammad Yusuf Shah v. Pakistan International Airlines Corporation (PLD 1981 SC 224) and R.T.H. Janjua v. National Shipping Corporation (PLD 1974 SC 146) being distinguishable are not germane to the case in hand. It thus follows that the rules framed under Sections 7, 9 and 15 of the Act are statutory on all accounts and by every attribute. They are thus declared as such. Let the appeals and petitions filed in the Court be listed before the Benches for decision in the light of this judgment.”*

11. Thus the yardstick to adjudge the rules being statutory/non-statutory were stretched. It is to be seen, on the touch stone of reasoning provided therein, that when statute itself does not provide for approval of the rules by the Federal Government then the omission cannot be applied to the Act on the basis of Rule 14 of the Rules of Business. The Hon’ble Supreme Court held that “it would rather be naïve and even myopic to equate the rules dealing with the matters of crucial importance having so wide scope and area of efficacy with the instructions meant for internal management and thereby deprive them of their statutory status.”

12. Learned Counsel for the respondent then came to the judgment passed in the case of Muhammad Zaman & others vs. Government of Pakistan & others reported in 2017 SCMR 571. The conclusion in relation to the question under discussion discussed in para-7 which is as under:-

“7. According to the judgment delivered in Civil Appeal No.654/2010 etc. titled *Shafique Ahmed Khan, etc. v. NESCOM through its Chairman, Islamabad, etc. the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and*

*efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to section 54(1) of the Act and section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [while saving the generality of the power under section 54(1) of the Act]. Out of all the matters listed in section 54(2) of the Act, clause (j) is the most relevant which pertains to the "recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank's contribution, for the officers and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift". A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition."*

13. Thus, on the basis of the above principles, we would now consider the University of Karachi Employees (Efficiency & Discipline) University Ordinance, 1962 whether it would come within the frame, as carved out in the two judgments, one commonly called NESCOM reported in PLD 2016 SC 377 and the other Muhammad Zaman v. Government of Pakistan reported in 2017 SCMR 571.

14. The subject *ibid* Ordinance came under discussion in the aforesaid cases. It was argued before the Division Bench heard the aforesaid cases that the *ibid* Ordinance was protected under section 48(2)(b) of the University of Karachi Act, 1972, commonly called University of Karachi Act to the effect that the aforesaid Ordinance, if not inconsistent to the provisions of the Act, are to be deemed to be statutes/regulations/rules under the Act of 1972, which in fact were framed under the University of



Karachi Ordinance, 1962. The procedure for making statutes is laid down in Section 28(2) and for making regulations, the provision is made in Section 29(2).

15. These rules/regulations in the shape of Ordinance 1962 is to cater every person in the employment of University of Karachi. The word “Ordinance”, as attributed to it, may distract the attention however these (rules/regulations) were originally framed under University of Karachi Ordinance 1962 and when it was repealed under University of Karachi Act, 1972, Section 48 saved the University of Karachi Employees (Efficiency & Discipline) University Ordinance, 1962. These rules in shape of Ordinance were thus protected under University of Karachi Act, 1972.

16. The above rules are comprehensive and deal with the issues such as misconduct, penalty, inquiry procedure in the cases of subversion, inquiry procedure in other cases, power to order medical examinations as to the mentally or bodily infirmity, appointment procedure of inquiry officer, notice of proposed penalty given to accused, reference to the Selection Body, pension, provident funds, gratuity etc., reinstatement, appeal and powers of the Syndicate to issue instructions. On the basis of the yardstick, as framed in the two cases referred above, i.e. NESCOM and Muhammad Zaman (supra), we can safely conclude that the regulations/rules, under discussion, are comprehensive.

17. In another judgment in the case of Muhammad Zahid Maqsood v. University of Karachi in CP No.D-1577 of 2011, the Division Bench of this Court also considered the effectiveness of this Ordinance, however, these were held as non-statutory. Thus, the yardstick, as framed by Hon’ble Supreme Court in the two cases i.e. NESCOM and Muhammad Zaman, was not available for consideration in the case of Muhammad Zahid Maqsood and now since the new yardstick is available, it cannot avoid attention for consideration in case they are being violated, under

Article 199 of the Constitution of Islamic Republic of Pakistan. In the case of Amir Jamil v. University of Karachi reported in 2018 PLC (CS) 542, the test of NESCOM's case that government approval was not necessary, was not applied.

18. As far as merit is concerned, the service of show-cause notice and subsequent departmental action of the University under the law are not denied by the petitioner. The charge sheet has been served upon the petitioner in terms of the judgment pronounced by Sindh Service Tribunal, as maintained by Hon'ble Supreme Court. Petitioner's reply to the aforesaid show-cause notice/charge sheet was considered and the inquiry was conducted and the penalty was accordingly inflicted upon petitioner as per decision and approval of the Syndicate, after hearing the petitioner.

19. It appears that the competent authority of the University has provided full opportunity to the petitioner to defend himself in the proceedings, discussed above. There is apparently no issue of fundamental rights or natural justice, being violated. The charge sheet of 09.08.2006 and statement of allegations are available and filed with the counter-affidavit to the memo of petition. The charges, leveled against the petitioner in the charge sheet and the statement of allegations, summarized separately, are as under:-

- “1. *You have used abusive language in writing against the University teachers, your colleague at the Department of Geography and officials such as Chairperson of the Department of Geography, Dean Faculty of Science and the Vice Chancellor, University of Karachi.*
2. *You have misbehaved with your colleagues in the Department of Geography and threatened them on telephone on different occasions.*
3. *You have leveled unfounded allegations of immorality and corruption against the Vice Chancellor, academic staff (including the Chairperson) and the students of the Department of Geography.*
4. *You have borrowed expensive books from the Library and equipment from the store, but till date you have not returned these items.*

5. *That after the decision of the Service Tribunal dated 29.03.2006 you did not report yourself for duty to the Chairperson, Department of Geography, so that disciplinary proceedings be drawn against you.*
6. *That after your reinstatement order on 02.08.2006. You are avoiding the proceedings as ordered by the learned Tribunal.*

20. Above was replied on 16.08.2006 and 21.08.2006. In the reply it was claimed that the exparte inquiry was initiated on the basis of an anonymous letter and the purpose was to defame the petitioner. The reply however was silent as to the seriousness of the allegations raised in the charge sheet/statement of allegations. These allegations were not specifically denied by the petitioner that could have ended the controversy on the basis of the reply, hence the inquiry commenced. The inquiry report provided a background of the allegations raised against the petitioner. The inquiry discussed the events prior to the passing of the judgment of the Sindh Service Tribunal however on remand by the Sindh Service Tribunal for conducting fresh inquiry, the report also highlighted the events subsequent to it as are available on pages 9 onwards, of the file. Since the allegations were not replied to the satisfaction of the inquiry officer, petitioner was called to appear on 05.09.2006 at 11:00 a.m. and instead of recording his statement, petitioner handed over another letter to inquiry officer and left the office. The observation of the inquiry officer is as under:-

- (i) *The first charge against Mr. Kamran Khan is that he used (and still uses) abusive language in writing against the University teachers, his colleague at the Department of Geography and officials such as Chairperson of the Department of Geography, Dean Faculty of Science and the then Vice Chancellor, University of Karachi He did not answer his charge. In most documents that Mr. Kamran Khan has written and presented here as record, he has used words such as "corrupt", "fraud", "criminal", etc.*
- (ii) *He has misbehaved with his colleagues in the Department of Geography and threatened them on telephone on different occasions. He did not reply to this charge as well.*

- (iii) *He has leveled unfounded allegations of immorality and corruption against the Vice Chancellor, academic staff (including the Chairperson) and the students of the Department of Geography. He actually reiterates all of these accusations over and over again. They are considered unfounded because Mr. Kamran Khan has never produced any proof of any of his allegations.*
- a. *He accused them of stealing his mail from the Department (Vide Appendix "D") but did not prove it.*
  - b. *He accused them of committing criminal conspiracy and fraud (Vide Appendix "T" (b))*
  - c. *He has stated that moral corruption was common on campus. But there is no evidence for it (Vide Appendix "T" (b)).*
  - d. *Mr. Kamran Khan accused the Vice-Chancellor of University of Karachi of immoral practices. In his own words (Vide Appendix "J"); "because of my initiative a poor girl was rescued and her made photographs with the late VC were destroyed." However, Mr. Kamran Khan never produced the proof of such a huge allegation against such a great man. It seems that Mr. Kamran Khan does not respect those who do not fulfill his wishes and desires.*
  - e. *In the same letter (Appendix "J") he stated that he was being punished because he had exposed the moral crimes of the Chairperson, Department of Geography and her cronies and that she was doing all that to get her service extended as she was approaching her age of retirement. Accusing someone of committing a crime is not exposure. Exposure is always a result of hard evidence.*

*Amazingly, Mr. Kamran Khan, in his documents, appears to level serious allegations against his colleagues, which are unfounded and baseless. He has not responded to this charge as well.*

- (iv) *Mr. Kamran Khan has borrowed expensive books from the Library and equipment from the store, but till date he has not returned these items (Vide Appendix "U"). He is silent about this matter as well in his "written answers".*
- (v) *After the decision of the Service Tribunal dated 29.03.2006 he did not report himself for duty to the Chairperson, Department of Geography (Appendix*

*“P”). To this he stated that he was waiting for the judgment of the Supreme Court of Pakistan.*

*(vi) That after his reinstatement order on 02.08.2006, he was avoiding the proceedings as ordered by the Learned Tribunal. It looks that Mr. Kamran Khan did not want to face the above charges.*

*Finally I would like to state that Mr. Kamran Khan failed to clear the above mentioned charges.”*

21. The action was thus recommended under University of Karachi Employees (Efficiency & Discipline) University Ordinance, 1962 as petitioner was guilty of misconduct. Section 3 of the Efficiency & Discipline Ordinance, 1962 provides that where a university employee, in the opinion of the authority or, in respect of clause (e), of the Chancellor, is guilty of misconduct, the authority or the Chancellor, as the case may be, may impose on him one or more penalties.

22. The grievance of the petitioner was that his case would come under section 3(e) and thus it is the Chancellor who is supposed to take action and not the authority. The word “misconduct”, as defined in Blacks Law Dictionary 6<sup>th</sup> Edition is that it means “*A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.*”

23. The allegations raised against the petitioner would thus come within the frame of 3(c). Even the statement of allegations shows that in response to commission of the referred misconduct under University of Karachi Employees (Efficiency & Discipline) University Ordinance, 1962, the proceedings were initiated. The allegations, as summarized in the charge sheet and a separate carved out statement of allegations, are nothing but misconduct under the ibid Ordinance of 1962 and hence the reference of Section 3(e) of the Ordinance of 1962 does not take away or

dilute guilt of the petitioner which actually arises out of Section 3(c) ibid. On the basis of reply to the charge sheet and statement of allegations even inquiry was not required.

24. Thus, in view of the aforesaid discussion and reasons we dismissed this petition earlier on 16.12.2019 by a short order.

Dated:

**Judge**

**Judge**