

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

C.P. No.D-1933 of 2008

Lt. Col. Syed Jawaid Ahmed (Retd.)

Versus

Pakistan Defence Officers Housing Authority & others

Date	Order with signature of Judge
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Before: **Mr. Justice Munib Akhtar**

**Mr. Justice Muhammad Shafi Siddiqui**

**Date of hearing: 15.07.2014**

Petitioner is present in person.

Mr. Dilawar Hussain, standing counsel.

Malik Naeem Iqbal for the respondents.

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**Muhammad Shafi Siddiqui, J.**- By short order dated 15.07.2014 the Review Application bearing CMA No.20986 of 2013 filed by the respondents against the order dated 12.04.2011 was dismissed of which following are the reasons.

Very briefly the facts of the case are that the petitioner filed this petition challenging his termination from service vide letter impugned therein dated 09.09.2008. The petition was heard and the impugned letter of termination was set aside in terms of order dated 18.05.2009. After such disposal the petitioner filed CMA No.9839/10 seeking implementation of the aforesaid order dated 18.5.2009, which application was allowed vide order dated 12.04.2011. Such order dated 12.4.2011 was challenged before the Hon'ble Supreme Court and by an order dated 02.05.2013 the case was remanded and the petition filed before the Hon'ble Supreme Court was ordered to be treated as a Review Petition, i.e. the instant application.

The only ground urged by learned counsel for the applicants/ respondents in support of this review application is that the petitioner was not entitled for back benefit in view of impugned order. Learned counsel in support of the review application has relied upon two case laws i.e. (i) case of Muhammad Bashir v. Chairman Punjab Labour reported 1991 SCMR 2087 and (ii) case of Qadeer Ahmad v. Punjab Labour Appellate Tribunal reported in PLD 1990 SC 787.

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

The scope of this Court in the present application is only limited to the extent as to whether there is any error apparent on the face of order dated 12.04.2011. The indulgence by way of review is done to prevent injustice being done by a Court but in no case it could be considered as rehearing on merit. The grounds raised by the learned counsel for the respondents are not within the frame of Order 47 and domain of this Court while exercising review jurisdiction. The respondents have not been able to point out any error apparently floating on the surface of order.

It is a fact that the termination, which was based on a notice issued by the respondents on account of alleged misconduct, was held to be of no legal effect on account of the principle of audi alteram partem i.e. no one should be condemned unheard. It was held that in view of Section 11 of the Ordinance 2000 it would be unjust, immoral, unethical and against the spirit of fair play for an institution to terminate an employee who had been in the institution service for around seven years without affording him/her an opportunity to respond those allegations.

The two case laws which were relied upon by the learned Counsel for the respondent are also distinguishable on the ground that neither

any charges against the petitioner were established nor any inquiry is claimed to be pending against the petitioner.

In view of the above, we are of the view that the respondents have not been able to make out a case for review. Accordingly the application was dismissed vide short order as referred above.

Dated:

**Judge**

**Judge**

The reliance that was placed by the learned counsel for the respondents is also of no help since all that has been ordered on 12.04.2011 was the implementation of the order, which include the back benefit on account of his reinstatement pursuant to order dated 18.05.2009. The case of Muhammad Bashir (Supra) is distinguishable from the present case on the ground that the reinstatement of an employee can be deemed to be the reinstatement of a workman whose conduct was partly responsible for removal of his service. In the referred case the employee obtained the back benefit on exoneration of a more serious charge of illegal gratification of which he was really guilty and ultimately also received the benefit of having been wrongly found guilty of other charge was not really established. In the instant case there is not an iota of evidence even to remotely consider that the removal on account of any misconduct was established beyond reasonable shadow of doubt. In fact the petitioner in the instant case was not even allowed an opportunity to defend such alleged charges.

The other judgment that was relied upon by the learned counsel for the respondents that is the case of Qadeer Ahmad (Supra) also favours the petitioner and goes against the respondents themselves wherein it was held by the Hon'ble Supreme Court as under:-

*“As regards the question of entitlement to back benefits, the established proposition is that where the order of dismissal or removal has been set aside unconditionally, fond to be without jurisdiction and uncalled for, necessarily the back benefits have to be paid.”*