

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

CPNo.D-4009 of 2013

Mr. Hamid Saleem

Petitioner:

Through Malik Khushhal Khan, advocate

Respondents No.2 and 3:

Through Ms. Tania Alam, advocate a/w Mr. Iftikhar Hussain, advocate

Date of hearing

& Decision:

12.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through the captioned petition, the petitioner is seeking a declaration to the effect that he is entitled to the allotment of Staff plot in terms of the decision of Board of Directors dated 27.2.2009 of Pakistan Defense Officers Housing Authority (DHA) as well as under chapter VII of service rules 2008, inter-alia on the ground that as per Chapter VII of service, rules of the year 2008, ex-Army personnel of Scale 10 to 16 were declared to be eligible for staff plot on completion of 07 years of service with respondent authority.

2. Malik Khushhal Khan, learned counsel for the petitioner has submitted that in the meeting of Directors of respondent No.02 held on 27.02.2009, the period/duration of service for allotment of staff plot was reduced from 10 years to 07 years; again on 09.01.2010, it was confirmed that the tenure of service would be 07 years for the entitlement of the staff plot in terms of policy decision introduced by the respondent authority. Per learned counsel, the petitioner was informed by respondent No.03 to retire from service on 25.09.2010 on completion of 08 years of services from Scale 12 from respondent No.04 as his request for extension in the contract was declined by the competent authority. Learned counsel emphasized that the petitioner is entitled to the allotment for staff plot as per his length of service. In support of his contentions, he relied upon the cases of Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed, 2013 SCMR 1707, Pakistan Defence Officers'

Housing Authority v. Mrs. Itrat Sajjad Khan and others, **2017 SCMR 2010**, Ali Hassan v. Federation of Pakistan through Secretary Ministry of Defence and another, 2018 PLC (CS) Note 104, and unreported judgment dated 22.01.2020 passed by this Court in CP No.D-838 of 2014. He lastly prayed for allowing the instant petition.

3. Conversely, Ms. Tania Alam learned counsel for the respondents has objected to the maintainability of the instant petition, whereas, it has been argued that there is no violation of DHA Rules or the Policy for allotment of staff plot as alleged by the petitioner in the instant case. It has been further contended by the learned counsel that as per DHA Rules/Policy, which exercises the authority in terms of Rule 5, the Committee has declined the claim of the petitioner for allotment of plot under prevailing DHA Rules and the policy formulated in this regard. Learned counsel for the respondent further argued that the claim of the petitioner for allotment of the staff plot is otherwise, subject to fulfillment of other conditions, whereas, every employee of DHA cannot otherwise, be allotted the staff plot as a matter of right. Per learned counsel, without prejudice to the above, such claim of allotment of plot to the petitioner cannot be considered by this Court, while exercising its constitutional jurisdiction under Article 199 of the Constitution as it involves disputed facts and determination of such right through evidence. While concluding her arguments, learned counsel for the respondents submitted that besides having no case on merits, the petitioner is otherwise not entitled to invoke the constitutional jurisdiction of this Court as DHA has no statutory rules of service to be enforced, therefore, Constitutional Petition is not maintainable. In support of her contentions, she relied upon the cases of Ghulam Muhammad v. Government of Punjab through Additional Chief Secretary, Services General Administration and Information Department, Civil Secretariat, Lahore, and 03 others, **2022 CLC 1323**, PIA Corporation v. Syed Suleman Alam Rizvi and others, **2015 SCMR 1545**, Amir Jamil v. University of Karachi through Registrar and 2 others, **2018 PLC (CS) 542**, Qazi Munir Ahmed v. Rawalpindi Medical College and Allied Hospital through Principal and others, **2019 SCMR 648**, Pakistan Airline Pilots Association and others v. Pakistan International Airline and another, **2019 SCMR 278**, and Tahir Pervaiz, Director General Legal Affairs Pakistan Railways v. Federation of Pakistan and 6 others, **2019 PLC (CS) 339**. She lastly prayed that the DHA Employees who were

inducted after 2008 are entitled to allotment of staff plot on completion of 07 years, whereas such employees who were inducted pre or before 2008 are entitled to allotment of staff plot on completion of 10 years' service. Per learned counsel, petitioner misconstrued the things, and based on his misunderstanding he has claimed allotment of the subject plot for the reason that the condition of 07 years or the employees qualifying for the same conditions are applicable for those employees inducted into service after 2008 and service limit for ex-Army personnel is 08 years only, and the petitioner was employed on 26.09.2002, hence the decision as quoted by the petitioner that 27.02.2009 does not apply to him. She prayed for the dismissal of the petition.

4. We have heard the learned counsel for the parties, and perused the record with their assistance.

5. The questions involved in the matter are whether the petitioner's contract of service does disclose the entitlement of the plot; and, whether the Service Rules for the Employees of Pakistan Defense Officers Housing Authority 2008 could be enforced through Constitutional Petition.

6. Admittedly, respondent authority is a statutory body established under the Pakistan Defence Officer Housing Authority Ordinance, 1980, and the rules framed thereunder are non-statutory rules of service only dealing with instructions for internal control and management of DHA, which are treated as non-statutory rules of service.

7. Prima facie, the petitioner claims his entitlement to the subject plot on the plea that it is part of the terms and conditions of his contract. If this is the stance of the petitioner, the question for our consideration would be the maintainability of the Constitutional Petition filed by an employee of authority a statutory corporation having non-statutory rules of service seeking enforcement of the terms and conditions of service rules. It is a well-established principle of service jurisprudence 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 uses any violation thereof cannot normally be enforced through constitutional jurisdiction and there would be governed by the principle of master and servants. In the present case, the petitioner seeks

enforcement of Service Rules 2008, which is not possible for this Court to enforce the Service Rules of respondent DHA through this petition. On the aforesaid proposition, we are guided by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Pakistan Defense Officers Housing Authority vs. Mrs. Itrat Sajjad Khan and others, **2017 SCMR 2010**.

8. Taking further steps on the subject issue, it is the prerogative of the competent authority of respondent DHA either to allot the subject plot under the policy to the officers of DHA and/or who have retired from service having the requisite length of service under the policy decision and this court has no jurisdiction to take cognizance of the matter under Article 199 of the Constitution, however, if the petitioner still feels that his cause subsists under the Service Rules 2008, he is well within his right to approach the competent court of preliminary jurisdiction for redressal of his grievances as the questions which require recording of the evidence could not be agitated through a Writ Petition. The other case law cited by the petitioner is of no help to him in terms of the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Mrs. Itrat Sajjad as discussed supra.

9. This petition is found to be not maintainable under Article 199 of the Constitution, which is accordingly dismissed.

JUDGE

JUDGE

Nadir*