

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

Suit No.2841 of 2021 along with Suits No.632 of 2020, 2251, 2252, 2255, 2256, 2257, 2258, 2260, 2261, 2295, 2840, 2863 to 2866 of 2021 and Suits No. NIL (-2903, -2904, -3052) of 2021 and (-1225 and -1386) of 2022

Ali Adnan Arif Tabba, Malik Sajid, Ashfaq Ahmed, Farman Ali, Mansoor Ahmed, Afroz Ali, Zafar Mohammad Khan, Tariq Junejo, Faiz Ahmed, Muhammad Adeel Durrani, Anas Qamar, Waheed Ahmed Memon, Fahad Ibrahim Memon, Hammad Hussain, Zahoor Ahmed Rajper, Abdul Aziz Abbasi, Syed Asif Shah, Muhammad Qaisar, Muhammad Yasir Mubeen, Mir Hassan and Sikandar Ali Shaikh, respectively

Versus
NADRA & others

Date	Order with signature of Judge
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1. For order as to maintainability of suit vide Hon'ble Court's order dated 11.5.22.
2. For hearing of CMA 15911/21

Dated: 19.09.2022

Mr. Ali Asadulh Bullo for plaintiffs.

Mr. Ch. Muhammad Farooq along with Mrs. Samina Maqsood for defendants/NADRA.

Mr. Aamir Saleem holds brief for Mr. Arshad Lodhi for defendant No.3 in Suit No.632 of 2020.

Qazi Ayazuddin, Assistant Attorney General.

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Muhammad Shafi Siddiqui, J.- These 21 suits are being heard and decided through this common order as in all these suits issuance of show-cause notices followed by consequential procedure has been challenged and for the sake of brevity facts are taken out from Suit No.2841, being the leading suit whereas only question of law is involved.

These suits challenge the suspension orders dated 01.06.2021 (or of other dates), charge sheets and office orders dated 20.09.2021, which are sought to be declared as illegal and in violation of NADRA Employees (Service) Regulations, 2002 (Regulations 2002) and in contravention of fundamental rights, as guaranteed.

At the very outset plaintiffs were put on notice regarding maintainability of these suits as the triggered point was show-cause notices which was then followed by aforesaid charge sheets and office orders. These plaintiffs were employees of NADRA i.e. National Database & Registration Authority. The primary allegation against the plaintiffs was that certain process of issuance of NIC was initiated in respect of suspected aliens and their approval with improper documents vide order dated 01.06.2021 available at page 43 of the file as Annexure 'D' was managed. They (plaintiffs) were suspended under Rule 5 of Civil Servants (Efficiency & Disciplinary) Rules, 2020 placed at respective HR Pool till further orders. Charge sheets were then issued with the allegations that they have initiated process of suspected aliens in violation of NADRA policy.

The primary objection of the learned counsel for plaintiffs was "not of suspension" but that their services are shown to have been governed by non-statutory rules and these plaintiffs are being dealt with as being civil servants and proceedings were initiated under Civil Servants (Efficiency & Disciplinary) Rules, 2020.

The objection of plaintiffs to this extent is irrelevant in terms of Regulation 23 of Regulations 2002, which provides that subject to Regulation 24, Rules made and instructions issued by the Government of Pakistan or a prescribed authority as for civil servants under Sections 15 and 16 of the Civil Servants Act, 1973 as amended from time to time will be applicable insofar as practicable to the employees of the authority. The case of plaintiffs does not fall within the proviso to such Regulation 2002.

The Courts have already assessed the status of Regulations 2002 and the regulations as non-statutory and hence the employees are

governed by non-statutory rules of service leaving the relationship as that of Master and Servant. Reliance is placed on:

- i) Major (R) Tanveer Abbas v. Federation of Pakistan (2019 SCMR 984)
- ii) Pakistan Telecommunication Co. Ltd. v. Iqbal Nasir (PLD 2011 SC 132)
- iii) Mateen Khan v. Federation of Pakistan (2020 PLC (Sindh) 1
- iv) Pakistan Airline Pilot Association v. PIAC (2019 SCMR 278)

There is no violation of any fundamental right in issuance of such show-cause notices followed by consequential and logical procedure. These proceedings in substance are against show-cause notices pending departmental disciplinary actions. It appears that actions have not attained finality and still the right of appeal, as a result of conclusion, is available with the plaintiffs under Regulations 2002, though that stage is yet to come. Despite queries plaintiffs' counsel is unable to satisfy if any of their fundamental right was violated. The following reliefs are being sought by the plaintiffs, which are reproduced as under:-

- i. Declare the impugned suspension order dated 01.06.2021, charge sheets and office order dated 20.9.2021, as illegal, violation of the NADRA Employees Service Regulations and in contravention of the fundamental rights as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 and set aside the same.
- ii. Grant damages of Rs.20 Million on account of social financial and psychiatric injury due to the above referred impugned acts of the defendants.
- iii. Restrain the defendants from taking any coercive action against the plaintiff and should conduct themselves strictly in accordance with law.

- iv. Any other relief ..
- v. All other prayer

In the absence of any substantial relief being matured, no consequential relief could be claimed, be that damages. Neither any jurisdictional error was highlighted nor the plaintiffs' case is within the frame of such jurisdictional error hence plaintiffs' case could not be isolated on such count alone. Recently Hon'ble Supreme Court in case of Commissioner Inland Revenue v. Jahangir Khan Tareen in Civil Petition No.349-L of 2017 has also covered this aspect as well and held that even if there is jurisdictional error it is to be objected to/redressed and/or agitated before the concerned authority and none else.

In view of above, I do not see any reason to maintain these suits for show-cause notices issued within their jurisdiction and authority which are yet to be concluded and taken to its logical end whereafter the plaintiffs may, if circumstances so demands, file an appeal under the rules. The suits are accordingly dismissed along with pending applications.

J U D G E