

ORDER SHEET.

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No.D-1933 of 2008

Date

Order with signature of Judge

Petitioner Lt. Colonel (rtd.) Syed Jawaid Ahmed through Mr. Muhammad Arshad Khan Tanoli, advocate.

Pakistan Defence Officers Housing Authority and others through Mr. Khalid Javed, advocate.

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**MUHAMMED KARIM KHAN AGHA, J.** The petitioner, as alleged in the petition, was appointed in June, 2004 as Vice Principal of Pakistan Defence Officers Housing Authority, SKBZ College, Karachi. After retirement of the then Principal of the College the petitioner took over the charge of Acting Principal on 01.7.2004 and performed his duties as Principal till 05.5.2005. The petitioner applied to become Principal against the vacant post and was initially overlooked by Respondent No 1 when Brigadier (rtd.) Muhammad Ali Javed was selected and appointed to the said post.

2. When the post of Principal became vacant on 25.8.2008 the petitioner feared that he would again be overlooked for promotion to the post of Principal by Respondent No.1 so he filed Const. Petition No.D-1276/2008 in this Court seeking direction that the respondents may be ordered to appoint him as Principal with further direction to restrain the respondents from recruiting/inducting any other person as Principal of SKBZ College. Status-quo was granted by this Court in the said petition on 25.6.2008 in favour of the petitioner, however, this petition was dismissed in limine on 02.9.2008.

3. According to the petitioner, as per Induction/Promotion Policy of respondent No.1, 75% promotions in grade 18 and above are to be made from the staff held on roll of the college and 25% are to be inducted directly and as such he had a strong case to be appointed Principal.



4. The petitioner contends that Respondent No 1 retaliated on account of him filing the aforesaid petition by unlawfully terminating his services by its letter dated 09.9.2008 for no apparent reason (hereinafter referred to as the "Impugned Order").

5. In nutshell, the petitioner's case is that he has been condemned unheard and removed from service arbitrarily and that he has not been provided recourse of the provisions of Removal from Service (Special Powers) Sindh Ordinance, 2000 (hereinafter referred to as the "Ordinance, 2000").

6. Learned counsel for the petitioner, during his arguments, submitted that the Service Rules of 1992 for the employees of respondents had not been framed by the competent authority pursuant to President's Order 7 of 1980. Furthermore, the petitioner had not received one month's notice, as required under Section 5(a) of Service Rules, 1992.

7. With regard to maintainability of the petition, learned counsel for the petitioner, submitted that the respondent No.1 was a non statutory corporation and relied on the cases of MUHAMMAD DAWOOD v. FEDERATION OF PAKISTAN (SBLR 2007 Sindh 495) and TANVEER-UR-REHMAN v. PAKISTAN INTERNATIONAL AIRLINE CORPORATION (PLC 2009 CS 28).

8. In support of his various contentions learned counsel for the petitioner has placed reliance on the following cases:-

- (i) MUHAMMAD DAWOOD v. FEDERATION OF PAKISTAN AND OTHERS (2007 PLC (CS) 1046),
- (ii) SAKHAWAT ALI v. DEPUTY COMMISSIONER/CHAIRMAN (1998 PLC 19),
- (iii) IMAM SHAH v. GOVERNMENT OF N.W.F.P (PLD 2004 SC 285),
- (iv) AHMAD HASSAAN v. GOVERNMENT OF PUNJAB (PLD 2004 SC 694)
- (v) HABIB BANK LIMITED v. GHULAM MUSTAFA KHAIRATI (2008 SCMR 1516)

9. On the other hand the respondents, as a preliminary point, contended that since respondent No.1 does not have statutory Service Rules the



relationship between respondent No.1 and its employees (including the petitioner) was one of master and servant and as such this petition was not maintainable.

10. Learned counsel for the respondents, also initially contended that the petitioner's post had been abolished and as such his prayer of reinstatement was not maintainable. He further contended that the petitioner's academic, professional and service experience did not merit him to be appointed as Principal of SKBZ College. The petitioner did not even hold an M.A. in English Literature. He was, therefore, not appointed to the post of Principal because he lacked the qualifications required for the post.

11. The minutes dated 04.09.2008, signed by the Administrator of Respondent No 1, headed "Disciplinary Officers- Lt Col ® Syed Jawaid Ahmed, Vice Principal DA SKBZ College" ("**the Minutes**") indicate that the petitioner had a history of misbehavior and in particular as reproduced in part below had been involved in numerous cases of alleged sexual harassment:-

"The officer, allegedly, has also been involved in numerous cases of sexual harassment of female colleagues in his college. It was due to his activities that Ex. Dir Edn got his office door replaced with glass door. No case was ever pursued for the sake of DHA reputation and also that complainants were reluctant to appear as witnesses due to social complexities. However, following names can be quoted as reference:-

- (i) Dr. Shazia Iqbal d/o Dr. Muhammad Iqbal  
Ex MO DA Med Centre
- (ii) Ms Qurrat-ul-Ain d/o Mr. Abdul Hamid Qamar  
Ex Asst Prof SKBZ College

"6. In view of above, it is recommended that Staff No.4279 Lt. Col (R) Syed Jawaid Ahmed, Vice Principal of DA SKBZ College may be terminated from DHA sve under para 5a Chapter III of Service Rules for Employees of PDOHA-1992 (Flag-'F')

7. Submitted for approval of para 6 ante please.

Sd/-

Brig.  
(Kamran Aziz Qazi)  
Administrator DHA  
4 Sep 08

President Executive Board



8. Para 6 approved, to be enacted upon ASP. Don't you have a MISCONDUCT Clause? AD/DHA

9. Pl take action as approved by the PEB.

Dir Edn"

12. When confronted with these excerpts of the minutes Learned counsel for the respondents conceded that the petitioner's services were terminated on account of allegations of misconduct as opposed to the abolition of his post.

13. Accordingly pursuant to the recommendations contained in the Minutes learned counsel contended that respondent No.1, as it was entitled to do, lawfully dismissed the petitioner under Section 5(a), Chapter III of Service Rules, 1992, without giving the petitioner right of hearing through the Impugned Order.

14. Learned counsel for the respondents has contended that the Executive Board under President's Order 7 of 1980 had full powers to make Service Rules for the respondent No.1 and thereby repelled the petitioner's contention that the rules had been passed without lawful authority.

15. In support of his various contentions the learned counsel for the respondents has placed reliance on the following cases:-

- (i) MALIK AND HAQ v. MUHAMMAD SHAMSUL ISLAM (PLD 1961 SC 531)
- (ii) PAKISTAN RED CRESCENT SOCIETY v. NAZIR GILLANI (PLD 2005 SC 806)
- (iii) P.I.A. CORPORATION v. SHAHABUDDIN (1993 PLC (CS) 1)
- (iv) ZEBA MUMTAZ v. FIRST WOMEN BANK LTD. (PLD 1999 SC 1106)
- (v) RAZIUDDIN v. CHAIRMAN, P.I.A. CORPN. (PLD 1992 SC 531)
- (vi) MUHAMMAD YUSUF SHAH v. PAKISTAN INTERNATIONAL AIRLINES CORPORATION (PLD 1981 SC 224)
- (vii) PRINCIPAL, CADET COLLEGE, KOHAT v. MUHAMMAD SHOAB (PLD 1984 SC 170)
- (viii) ANWAR HUSSAIN v. DEVELT. BANK OF PAKISTAN (PLD 1984 SC 194)
- (ix) ANWAR HUSSAIN v. A.D.B.P. (1992 SCMR 1112)
- (x) HABIB BANK LIMITED v. ZIA-UL-HASSAN KAZMI (1998 SCMR 60, 68)
- (xi) MUHAMMAD MUMTAZ JAVED v. PAKISTAN (1988 CLC 1965)

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16. We have reviewed the documents on record and considered the arguments of the learned counsel for the respective parties, in detail.

17. With regard to the maintainability of this petition, under Article 199 of the Constitution, 1973, there is little doubt, as earlier rulings of this Court have shown, that such a petition does lie against the respondents. Reliance is placed on the case of MUSTAFA LAKHANI v. PAKISTAN DEFENCE OFFICERS HOUSING AUTHORITY (PLD 2005 Karachi 188) and MUSTAFA LAKHANI v. PAKISTAN DEFENCE OFFICERS HOUSING AUTHORITY (2008 SCMR 611). Furthermore, according to the Court's record two further writ petitions against the Respondent bearing Const. Petition No.D-2057/2006 and Const. Petition No.D-464/2008, under Article 199 of the Constitution, 1973 have already been admitted by this Court for regular hearing.

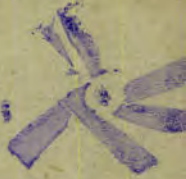
18. With regard to the Service Rules, 1992 of respondent No.1, these are non-statutory and according to MUHAMMAD DAWOOD's case (ibid) there implementation is subject to challenge before this Court under Article 199 of the Constitution, 1973, especially as regards the question of natural justice and right to be heard. Reliance is placed at paragraphs 29(i)(ii)(iii) and 30(iii) of MUHAMMAD DAWOOD's case (supra), which are reproduced herein below:-

"29. From the above somewhat detailed discussion, we have arrived at the following conclusions:

- (i) "Irrespective of an employee of a State controlled corporation not being a civil servant the corporation themselves continue to remain amenable to the jurisdiction of this Court under Article 199 of the Constitution.
- (ii) The rule of master and servant is inapplicable to cases where there is violation of statutory provisions or of any other law.
- (iii) The expression 'violation of law' would not be confined merely to violation of any specific provision of a statute but the expression 'law', as observed by Hamoodur Rehman, J., (as his lordship then was) in Government of West Pakistan vs. Begum Aga Abdul Karim Sorish (PLD 1969 SC 14 @ 31) and ought to be considered in its generic sense as connoting all



that is treated as law in this country including even the judicial principles laid down from time to time by the superior courts. It means according to the accepted norms of legal process and postulates a strict performance of all the functions and duties laid down by law. It may, instance, includes the principles of natural justice, the public duty to act fairly and honestly and absence of malafides in fact and law. In all such cases the Court would be competent to grant relief of reinstatement.”



30. As a consequence:-

i) .....

ii) .....

iii) Where there is violation of law as explained herein above is alleged and within the parameters of the exercise of constitutional jurisdiction of the Courts this Court would be competent to entertain petitions and grant appropriate relief within the parameters of its jurisdiction under Article 199 of the Constitution.

19. We do not consider it necessary to delve into the question as to whether or not Service Rules, 1992 of the respondent No.1 have been framed by the competent authority. This is because the essence of the case revolves around the termination of the petitioner without him being afforded an opportunity of defending allegations against him which can be adequately dealt with without entering into a detailed and time consuming discussion about the legality of various rules.

20. As the Respondent is a statutory body and falls within the purview of Article 199 of the Constitution of Islamic Republic of Pakistan 1973, we, therefore, consider that the employees of respondent No.1 (including the petitioner) are brought within the ambit of Ordinance, 2000.

21. This would be in consonance with the Respondents own past actions since in Const. Petition No.D-2057/2006 and Const. Petition No.D-464/2008, alluded to above, the Respondent had sought to terminate the service of the respective petitioners based on Ordinance 2000.

22. Before turning to Section 11 we would like to observe that in our view it would seem to be both unjust, immoral, unethical and against the spirit of fair

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play for any Institution to terminate an employee who had been in an Institutions service for around 7 years ostensibly on the grounds of misconduct without even affording that employee an opportunity to respond to those allegations. This is more so in a developing society which does not have a fully developed welfare state for the effected employee to fall back on and who may find himself at the mercy of unscrupulous employers during recessionary times.

23. Audi alteram partem, namely that no one should be condemned unheard, is a well settled principle of law. In the case of NAZIR AHMAD PANHWAR v. GOVERNMENT OF SINDH (2005 SCMR 1814) the following observation was made by the Supreme Court.

“There can be no denial that right to personal hearing to a person against whom an adverse order is to be made to be equated with fundamental right and an adverse order made without affording him an opportunity of personal hearing is to be treated as a void order.”

24. Although this right is not absolute, based on the facts and circumstances of this case, the petitioner should have been afforded this right before passing any adverse order against him. As such on this point alone the Impugned Order is liable to be set aside.

25. Section 11 of Ordinance, 2000, provides as follows:-

“11. The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in the Sindh Civil Servants Act, 1973 and the rules made there *under and any other law for time being in force.*” (italics added)

26. In an (as yet) unreported judgment dated 15.4.2009, passed in Const. Petition No.D-1690/2007, this Court, whilst fully analyzing in detail the impact of Section 11, bearing in mind the recent relevant authorities of the Supreme Court, held that Section 11 of Ordinance, 2000, overrides all other laws including those other laws and regulations in respect of other statutory bodies/corporations etc.



27. For convenience sake, paragraphs 12 and 13 of the said judgment are reproduced hereunder:-

“12. In our view, from the above discussed case law, it is clear that the Honourable Supreme Court of Pakistan has time and again regarded the provisions of Ordinance, 2000, being general in nature and on that account held that from the date of its promulgation it has overriding effect over other special Statutes on the subject and it has impliedly repealed the Rules in the other Statutes.

13. This being the position, we have no option but to hold that initiation of disciplinary proceedings against the petitioner on 19.06.2004 under the Statutes of 1990, after the promulgation of the Ordinance, 2000, with effect from 30<sup>th</sup> August, 2000, have vitiated the whole proceedings against him including the final order regarding the termination of his service. Resultantly, this petition is allowed.....”

28. Particular reliance is placed on the following excerpts of the following authorities.

29. In the case of I.G.HQ FRONTIER CORPS AND OTHERS v. GHULAM HUSSAIN AND OTHERS (2004 PLC (CS) 1187), the Hon'ble Supreme Court has held that:-

“It is noteworthy that prior to promulgation of Ordinance, 2000 there were Efficiency and Discipline Rules which were applicable to all Civil Servants. In some of cases the departments have framed Efficiency and Discipline Rules like WAPDA etc. but after the promulgation of Ordinance, 2000 which essentially is a general law in its nature and it has impliedly repealed earlier Efficiency and Discipline Rules by dint of its section 11.”

30. In the case of FEDERATION OF PAKISTAN THROUGH D.G. MILITARY LANDS AND CANTONMENT RAWALPINDI AND OTHERS v. SYED IBRAHIM SHAH AND OTHERS 92007 PLC (CS) 1288), dilating upon the scope of Section 11 of the Ordinance, 2000, the Honourable Supreme Court has again held that the provisions of Section 11 of Ordinance 2000 having overriding effect would make the proceedings under the Pakistan Cantonment Service Rules ineffective. The Court, therefore, without taking any exception to the judgment of the Tribunal, dismissed the petition on that account by placing



its reliance on the case of AZIZULLAH MEMON v. PROVINCE OF SINDH AND OTHER (2007 SCMR 229).

31. In the case of TANVEER HUSSAIN v. DIVISIONAL SUPERINTENDENT, PAKISTAN RAILWAY AND 2 OTHER (PLJ 2006 SC 1092), the Honourable Supreme Court has held as under:-

“It may also be pointed out that the Ordinance is a special law which has been promulgated in public interest and for good governance to provide for measures, inter alia, dismissal, removal etc. of certain persons from Government service and corporation service and to provide speedy disposal of cases and further that the provisions of the Ordinance have been given over-riding effect notwithstanding anything to the contrary contained in any other law for the time being in force dealing with subject-matter falling within the scope of the Ordinance. In this view of the matter also, the provisions of section 10 of the Ordinance will have over-riding effect over proviso (a) to subsection (1) of Section 4 of the Act, which stands impliedly repealed.”

32. This being the position, Section 11 overrides Service Rules, 1992 of respondents, as such, respondent No.1 is obliged to follow the provisions contained in the Ordinance 2000 before initiating any action against any of its employees.

33. Accordingly, we hold that the Impugned Order is of no legal effect and direct the respondents, if they so chose, to hold inquiry against the petitioner with regard to the allegations leveled in the minutes against him by adopting all codal formalities under the Ordinance, 2000.

In the above terms, Const. Petition No.D-1933 of 2008 is disposed of.

Karachi,  
Dated: 18.5.2009.

Announced by us.  
*[Signature]*  
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