

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-6242 of 2018

[Raheel Mehtab v. Federation of Pakistan and others]

Petitioner : through Mr. Muhammad Nishat Warsi,
Advocate.

Respondents No.1 : through Ms. Wajiha M. Mehdi, Assistant
Attorney General

Respondents No.2 to 6 : through Chaudhry Muhammad Farooq,
advocate

Dates of hearing : 30-04-2025

Date of order : 30-04-2025

ORDER

Adnan-ul-Karim Memon, J. The petitioner requests that this Court declare that he is not a civil or government servant, thereby rendering the show-cause notices, charge sheets, and subsequent removal orders unlawful, lacking jurisdiction, void, and without legal standing. Consequently, he prays for a declaration that he committed no misconduct, the annulment of the removal orders dated November 30, 2017, and his reinstatement with all accompanying benefits and continuous service.

2. The petitioner was appointed as a Junior Executive on contract in 2011 following due procedure, faced multiple show-cause notices and charge sheets (Annexures 'B' to 'B/12'), to which he responded. He stated that despite no misconduct being proven through a proper inquiry, he was dismissed via two letters dated November 30, 2017 (Annexures 'C' & 'C/1'). His departmental appeal, filed on December 19, 2017 (Annexures 'D' to 'D/2'), remained unanswered. He had previously been involved in CP No. 1078/2016 concerning service regularization, which had an interim order until August 9, 2016 (Annexure 'E').

3. A key submission of the petitioner is that respondent No.2 (NADRA) is a statutory body governed by its service regulations, the "National Database & Registration Authority Employees (Service) Regulations 2002." While these regulations make the Government Servants Conduct Rules 1964 and Efficiency & Discipline (E&D) Rules 1973 applicable "insofar as practicable," they specifically

exclude E&D Rules related to efficiency (Regulation 23). The petitioner emphasized that NADRA employees are not civil or government servants, a fact acknowledged by NADRA itself before the Supreme Court (Annexures "F" & "F/1"). He further submitted that NADRA's functions, as defined by its Ordinance, classify it as an "Industry" under the Sindh Industrial Relations Act, 2013. The petitioner submitted that as an employee of a statutory corporation with its own service rules, the Service Tribunal lacks jurisdiction, citing relevant legal precedents. He asserted that since NADRA has disclaimed civil servant status for its employees, the E&D Rules, 1973 should not apply to him, rendering his dismissal from service order dated 30.11.2017 illegal. Consequently, being unemployed since his removal from service, he seeks reinstatement with all associated benefits, maintaining that no other effective legal recourse is available.

4. The learned counsel for the petitioner argued regarding the petition's maintainability, he submitted that because the petitioner was charge-sheeted and subsequently removed under the Government Servants (Efficiency and Discipline) Rules, 1973 (the Rules of 1973), this statutory intervention renders the current constitutional petition under Article 199 of the Constitution maintainable. In support of the case of the petitioner, learned counsel cited the Supreme Court judgments in Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707) and an unreported order of the Supreme Court of Pakistan dated March 17, 2025, in Civil Petition No.317-K of 2023.

5. Learned counsel for NADRA argued that the petitioner was a contract employee and NADRA has no statutory rules of service, hence the Constitutional Petition under Article 199 of the Constitution is not maintainable. He further averred that the petitioner invoked the jurisdiction of this Court with unclean hands, therefore, equity does not lie in his favor. The writ is an extraordinary and discretionary relief that could not be extended to the petitioner, who was a contractual employee whose service was terminated for misconduct on the premise that he processed 52 x CNICs of confirmed Afghan / non-nationals. The learned counsel relied on the dictums laid down by the Supreme Court, **2017 SCMR 1979** and **2019 SCMR 984**, and also placed reliance upon the cases of Maj. (Retd.) Syed Muhammad Tanveer Abbas and another v. Federation of Pakistan through Secretary, Ministry of Interior and another (2019 SCMR 984). He prayed for dismissal of the petition being not maintainable under Article 199 of the Constitution.

6. We have heard arguments and reviewed the available record. The initial matter to be decided is the maintainability of this constitutional petition under Article 199 of the Constitution. NADRA was established by the National Database and Regulatory Authority Ordinance, 2000. While Section 44 of the

Ordinance allows the Federal Government to make rules, Section 45 grants NADRA the power to create its regulations, including those governing employee terms and conditions (Section 45(2)). NADRA subsequently framed "The National Database and Registration Authority (Application for National Identity Card) Regulations, 2002." Regulation 23 of these regulations adopted civil service laws, including the Efficiency and Discipline Rules, 1973, for NADRA employees, stating their applicability "insofar as practicable," but excluding their application to matters of employee efficiency (as detailed).

7. The Supreme Court in Maj. (Retd.) Syed Muhammad Tanveer Abbas vs. Federation of Pakistan (2019 SCMR 984) has already ruled that NADRA's Regulations under Section 45 of the Ordinance are non-statutory. In that case, this Court dismissed constitutional petitions filed by NADRA employees against their terminations, holding the Regulations to be non-statutory. The Supreme Court upheld this decision, dismissing the appeals and explicitly stating that NADRA's Regulations are non-statutory. The Supreme Court's relevant observations include the comparison with the DHA case, noting similarities in termination from service and concluding that NADRA is a "person" under Article 199(1)(a)(ii) of the Constitution. Crucially, the Supreme Court held that the 2002 Regulations, like the DHA service rules, are non-statutory, and the termination clauses in the appeals are materially the same as the non-statutory Rule 8(b)(1) of the DHA service rules. The central question was whether these termination clauses could be treated similarly to Rule 8(b)(1) and similar relief granted.

8. Considering the preceding discussion, it is clear that NADRA's Regulations under Section 45 of the Ordinance are non-statutory. The primary legal question now is whether orders issued under the Rules of 1973 constitute statutory intervention, or if the adoption of these Rules by NADRA under Regulation 23 renders them non-statutory for this petition's maintainability. The Supreme Court in M.H. Mirza vs. Federation of Pakistan (1994 SCMR 1024) held that the mere adoption or application by reference of statutory government rules does not automatically grant those rules statutory status. The Supreme Court observed that the Capital Development Authority (CDA) was empowered to determine its employees' terms and conditions without government input, and none of its regulations, whether directly framed or adopted, had a statutory basis. This view was supported by earlier judgments. The Supreme Court explicitly stated that adopting government rules by reference does not give them statutory cover, and in the absence of statutory rules, a constitutional petition on the subject is not competent.

9. This Court, in Muhammad Mateen Khan vs. Federation of Pakistan (2020 PLC (C.S.) 1), specifically addressed the present issue, holding that NADRA's

adoption of the Rules of 1973 under Regulation 23 does not give them statutory status. Instead, they remained internal instructions for the Authority's control and management, rendering a constitutional petition not maintainable. On the same basis, this Court dismissed numerous constitutional petitions upheld by the Supreme Court in Major Tanveer case (supra).

10. The core issue is whether proceedings under the statutory Rules of 1973 constitute statutory intervention, allowing a writ petition based on the *Pakistan Defence Officers' Housing Authority case* (2013 SCMR 1707). That case held that statutory proceedings override non-statutory rules. Here, the Supreme Court found statutory intervention because proceedings against corporation employees were under the Removal from Service Ordinance, 2000. However, the present petitioner was proceeded against under the Rules of 1973, which inherently apply only to civil servants, not NADRA employees. These rules were applied to the petitioner solely through adoption in NADRA's non-statutory Regulation 23. Statutory intervention would only exist if the Rules of 1973 directly applied to NADRA employees, independent of NADRA's adoption. Since their application is solely via non-statutory regulations, they do not gain a superior statutory status.

11. The preceding analysis constrains the conclusion that NADRA's Regulations are non-statutory. Although the petitioner proceeded against the statutory Rules of 1973, their adoption under Regulation 23 of the non-statutory Regulations gives them a non-statutory status in this context. Consequently, this constitutional petition is not maintainable under Article 199 of the Constitution more particularly in terms of the judgment rendered by the Supreme Court in Maj. (Retd.) Syed Muhammad Tanveer Abbas's case supra and is therefore, dismissed with the pending application(s).

JUDGE

HEAD OF CONST. BENCHES