

# THE HIGH COURT OF SINDH, KARACHI

**Before:**

**Justice Mohammad Karim Khan Agha**  
**Justice Adnan-ul-Karim Memon**

## **CP No.D-6240 of 2018**

[Muhammad Bakhtiar Ahmed 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 prays for a declaration from this Court that he is neither a civil nor a government servant, thereby rendering the show-cause notices, charge sheets, and the removal from service order dated 30.11.2017 unlawful and void. Additionally, he seeks a declaration that he did not commit any misconduct. Consequently, he requests the Court to set aside the removal order dated November 30, 2017, reinstate him with all consequential benefits and continuity of service, and quash any other punishment orders issued without proper inquiry.

2. The petitioner is a former NADRA employee, claiming to be regularized in 2012 after a 2004 contract start, and submitted that this court is the proper forum as a corporation employee. He submitted that NADRA classified itself as an "Industry" and its staff are not civil servants. He received a show-cause notice, was partially provided documents, and despite a prior warning for leaving duty, was terminated without a hearing for the same issue. He claimed his brief Friday absence during prayer break was not misconduct. He highlighted an unserved warning letter and a departmental appeal that led to reinstatement in Multan. Facing Karachi-based criminal proceedings initiated by the department, his requests for leave and transfer back were denied despite attendance proof. While in Multan, he received multiple charge sheets for past service and was ultimately removed in 2017 without inquiry, submitting a second removal order was void. His appeal against this is pending, as is an earlier petition against initial termination. He asserted that non-civil servant status makes Government Servant

under E&D Rules, 1973 inapplicable, rendering his removal from service illegal, and seeks reinstatement with benefits due to lack of other remedies.

3. The petitioner's counsel argued that NADRA's service regulations exclude efficiency-related E&D Rules, and NADRA admitted its employees are not civil servants before the Supreme Court. Given NADRA's classification as an "Industry," the Service Tribunal lacks jurisdiction. Thus, the counsel contended that applying E&D Rules, 1973, in the impugned order, to the petitioner was illegal, making his dismissal unlawful and justifying his demand for reinstatement with benefits due to the absence of alternative legal avenues as he was regular employee in terms of list of employees opting BPS-Employment. Regarding maintainability, counsel argued that the petitioner's charge sheet and removal under the Government Servants (E&D) Rules, 1973, constitute statutory intervention, making this constitutional petition maintainable under Article 199 of the Constitution, citing Supreme Court precedents in *Pakistan Defence Officers' Housing Authority* and unreported order dated 17.3.2025 passed in Civil Petition No.317-K of 2023.

4. NADRA's counsel argued that the employee of NADRA under an entity without statutory service rules, the petitioner's writ petition under Article 199 of the Constitution is not maintainable. Furthermore, the counsel asserted that the petitioner approached the Court with "unclean hands," thus disentitling him to equitable relief, which is extraordinary and discretionary and should not be granted to a NADRA employee who was terminated for misconduct as he had processed 52 x CNICs of confirmed Afghan / non-nationals from executive NRC SITE Industrial Area against the SOP. The counsel cited Supreme Court rulings from **2017 SCMR 1979** and **2019 SCMR 984**, along with cases *Maj. (Retd.) Syed Muhammad Tanveer Abbas v. Federation of Pakistan* (**2019 SCMR 984**) and prayed for dismissal of the petition being not maintainable under Article 199 of the Constitution.

5. We have heard arguments and reviewed the 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).

6. To proceed further on the maintainability of petition, 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.

7. 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 under Article 199 of the Constitution. 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 under Article 199 of the Constitution on the subject is not competent.

8. This Court, in Muhammad Mateen Khan v. 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 under Article 199 of the

Constitution not maintainable. On the same basis, this Court dismissed numerous constitutional petitions.

9. 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 initiated 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, therefore, assertion of the learned counsel for the petitioner is misconceived and discarded.

10. 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**