

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-332 of 2018

(Amjad Ali v Federation of Pakistan & another)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul-Karim Memon

Date of hearing and Order: 28.04.2025

Mr. Muhammad Nishat Warsi advocate for the petitioner
Ms. Wajiha Mehdi Additional Attorney General

ORDER

ADNAN-UL-KARIM MEMON, J: The Petitioner requests this Court to declare that he is not a civil or government servant, thereby invalidating the E&D Rules, the show cause notice, and the dismissal order. He further prays for a declaration that he committed no misconduct. Additionally, he seeks the annulment of the dismissal order dated December 6, 2016, his reinstatement with all consequential benefits and continuous service, and the nullification of any other punishment orders issued without inquiry.

2. The Petitioner, a former NADRA Deputy Assistant Director appointed in 2007 and dismissed in 2016, submitted that his dismissal was unlawful. His counsel contended that he responded to a show cause notice, attended a hearing he deemed a formality, and was dismissed without the authorized officer's recommendations. His departmental appeal went unanswered. He asserts that NADRA, an autonomous body under Ordinance VIII of 2000 with its service regulations (2002), does not classify its employees as civil servants. While NADRA regulations make Government Servants Conduct Rules and E&D Rules "practicably" applicable, however, the E&D Rules are explicitly inapplicable to efficiency matters, the basis of his dismissal for alleged illegal processing of non-nationals without proper inquiry or misconduct under Rule 3. Citing precedent and NADRA's admission to the Supreme Court, he argues that the petitioner cannot approach the Service Tribunal. He claims NADRA's functions and funding further establish its autonomous "Industry" status. Therefore, as the petitioner is not a civil servant, his remedy lies under Article 199 of the Constitution, and the application of Government Servants (E&D) Rules to his dismissal was illegal. He seeks reinstatement with full benefits due to his unlawful dismissal and current unemployment.

3. At this stage, we confronted the counsel for the petitioner that the petitioner was a contract employee of NADRA (which lacks statutory service rules); as such, this petition under Article 199 is not maintainable. Besides writ relief, being extraordinary and discretionary, has not been granted to a contractual employee who voluntarily accepted his appointment, in terms of the ratio of the judgments rendered by the Supreme Court in the cases of Chairman NADRA

versus Muhammad Ali Shah & others, **2017 SCMR 1979**, and Maj. (Retd.) Syed Muhammad Tanveer Abbas versus Federation of Pakistan & another **2019 SCMR 984**.

4. The Petitioner's lawyer contended that the Supreme Court, in a recent similar case (CP No. 317 of 2023), issued notices, indicating a potential error in dismissing the present case for lacking statutory rules. The argument in that case, which the lawyer claims was overlooked here, challenged the legality (vires) of the NADRA Employees (Service) Regulations, 2002 (which incorporate E&D Rules). Therefore, the lawyer argued that this petition is indeed maintainable under Article 199 of the Constitution because the respondent authority used the statutory Government Servants (Efficiency and Discipline) Rules 1973, and a petition against such a decision is permissible under Article 199 of the constitution, citing the Supreme Court's ruling in Muhammad Naeem v Federation of Pakistan & others (**2023 SCMR 301**).

5. The learned Assistant Attorney General opposed the petition, submitting that because NADRA does not possess statutory rules governing its employees' service, the disciplinary actions taken against the petitioner are not amenable to challenge under the constitutional jurisdiction provided by Article 199 of the constitution.

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

7. It is well settled now that contractual employees of NADRA (which lacks statutory service rules), the petitioner could not invoke writ jurisdiction in terms of law laid down by the Supreme Court in the case of Chairman NADRA v. Muhammad Ali Shah (**2017 SCMR 1979**), holding that contractual employees of statutory bodies cannot use the High Court's constitutional jurisdiction to renegotiate regularization terms. In another case Supreme Court in the case of Maj. (Retd.) Syed Muhammad Tanveer Abbas v. Federation of Pakistan (**2019 SCMR 984**), stating contractual employees cannot challenge termination via writ. These precedents supported our view against the maintainability of the Constitution Petition.

8. Based on the Supreme Court's decision in Maj. (Retd.) Syed Muhammad Tanveer Abbas v. Federation of Pakistan (**2019 SCMR 984**), which remains in the field as it has not been overturned by a larger bench of the Supreme Court, in such circumstances, this petition is not maintainable under the current legal precedent. Consequently, it is dismissed along with any pending applications, and its merits are not considered.

JUDGE

Head of Constitutional Benches