

# IN THE HIGH COURT OF SINDH AT KARACHI

## Constitutional Petition No.D-3796 of 2012

Before:

**Mr. Justice Nadeem Akhtar &  
Mr. Justice Muhammad Iqbal Kalhoro**

Date of Hearing : 18.11.2014.

Date of Decision : .12.2014.

Petitioner, Mrs. Itrat Sajjad Khan, through Mr. Syed Shafqat Ali Shah Masomi, Advocate.

Respondent No.1, Federation of Pakistan, through Mr. Ainuddin Khan, Deputy Attorney General (DAG).

Respondent No.2, Pakistan Defence Officers Housing Authority, through Mr. Asim Iqbal, Advocate.

None for respondents No.3 & 4.

### **JUDGMENT**

**MUHAMMAD IQBAL KALHORO, J:-**The petitioner has called into question through the instant Petition a letter No.DHA/DE-PF/267, dated 11<sup>th</sup> September 2012 (for short, the impugned letter) dispensing with her services as Asst. Professor issued by the respondent No.4/Addl. Director (HR&A) the Pakistan Defense Officers Housing Authority.

2. The case of the petitioner is that she was appointed as a Lecturer on probation at DHA Degree College for Women in BS-17 on 1<sup>st</sup> March 1999. Her appointment was confirmed vide letter dated 5<sup>th</sup> December 2000 and then in the year 2009 she was promoted to BS-18. Due to her outstanding performance, various letters of appreciation and monetary rewards were showered upon her. After appointment of Colonel (Retd.) Tahir Aziz as Additional Director of Colleges, the atmosphere in the

college for female teachers became undesirable due to his degrading, intimidating and hostile treatment meted out to them. In the wake of above, the petitioner filed a complaint under the Protection against Harassment of Women at the Workplace Act, 2010, through her counsel, pursuant to which to enquire into the allegations of the petitioner a committee was constituted, but she got awed to know that the said committee was headed by Brigadier (Retd.) Shahid Saleem Lone against whom a complaint had already been filed. The petitioner through her counsel took exception to his appointment as Chairman of the Enquiry Committee but to no avail. Instead she was served with the impugned letter on 12<sup>th</sup> September 2012 and was instructed verbally by the then Acting Principal not to attend the College thenceforth. With these facts, the petitioner has prayed as under:

- a. *Declare that the impugned letter No.DHA/DE-PF/267 dated 11<sup>th</sup> September 2012 illegal, malafide, contrary to law, unjustified, and without any lawful authority or jurisdiction whatsoever.*
- b. *Declare that the impugned letter No.DHA/DE-PF/267 dated 11<sup>th</sup> September 2012 is null, void ab initio having no sanctity either in law or in equity.*
- c. *Direct the Respondents to restore the original position of the Petitioner as on 10<sup>th</sup> September 2012 with full back-benefits, concessions, perks and privileges.*
- d. *Direct the Respondent No.2 to re-constitute a fresh inquiry committee under section 3 of the Protection against Harassment of Women at Workplace Act, 2010 comprising reputable, unbiased and upright persons having sound character.*
- e. *Restrain the Defendants from appointing any other person to the vacant employment position of the Petitioner, namely Assistant Professor /Lecturer BS-18 in Pakistan Studies and Social Studies till the pendency of this Constitution Petition.*
- f. *Grant any other relief(s) which this Hon'ble Court may deem just and proper in the circumstances of the case.*
- g. *Grant costs of the petition.*

3. Respondent No.2 filed the reply raising preliminary legal objections to the effect that the petitioner had no vested right to file the petition as there were no statutory rules of service governing the relationship between the petitioner and respondent No.2. The principle of master and servant was applicable in the present case; therefore, this Court had no jurisdiction to entertain the petition under Article 199 of the Constitution of Islamic Republic of Pakistan. The employee /the petitioner had no legal right to force the employer to withdraw the dismissal order and the only remedy available to her in such a situation was to file a suit for damages against the respondent No.2. The controversy between the parties revolved around the disputed questions of fact, which could not be adjudged upon in the present petition. On facts, the respondent No.2 denied the case of the petitioner excepting the issuance of the impugned letter to her. Further, it was stated that Colonel (Retd.) Tahir Aziz received several complaints of the petitioner, regarding her failure to attend training workshop, late arrival, early departure etc. from Additional Principal of College; resultantly she was repeatedly issued warnings to strictly follow the discipline of the College. The respondent No.2 in the objections also defended the appointment of Mr. Shahid Saleem in the Enquiry Committee by claiming that it was in accordance with the provisions of the relevant law. The petitioner was asked to appear before the Committee through letters dated 24.07.2010, 25.07.2010 and 27.07.2010, but she deliberately avoided to show up. In addition, she was given a fair chance to express her grievances but she did not avail it nor she could mend her working habits, hence, finally after completing all formalities contemplated under the Service Rules, she was issued the impugned letter, whereby her services were dispensed with.

4. Mr. Syed Shafqat Ali Shah Masomi, learned counsel for the petitioner, during his arguments, contended that the respondent No.2 removed the petitioner from service without holding a formal enquiry against her, so much so she was not even given a notice or afforded an opportunity of hearing to defend herself. He further argued that since respondent No.2 before dispensing with the services of the petitioner did not comply with Rule 6, Chapter-V of Rules of Conduct & Discipline, the removal of the petitioner was illegal, mala fide and arbitrary and against natural norms of justice. According to him the petitioner was made victim for raising voice against Colonel (Retd.) Tahir Aziz, who had created uncondusive atmosphere particularly for female teaching staff of the College to work in, and instead of redressing her grievance, she was unceremoniously removed from the service despite earning distinction in her career. Lastly he in support of his arguments relied upon an unreported decision of this Court in the case of Lt. Col. Syed Jawaid Ahmed (Retired) Vs. Pakistan Defence Officers' Housing Society, Karachi (C.P. No.D-1933 of 2008), in addition to the case of Khalid Siddique Vs. Secretary, Excise and Taxation Department, Punjab and other (2002 SCMR 690) and Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707).

5. Learned counsel for respondent No.2, Mr. Asim Iqbal submitted that service of the petitioner was neither regulated by any law nor the same was governed by any statutory rules hence the petition under Article 199 of the Constitution was not maintainable. Per learned counsel, this was the case where the principle of master and servant was involved and the only remedy available to the petitioner, therefore, would be to file a suit for damages against the respondent, if she felt

aggrieved by the impugned letter. He further argued that since the petitioner was terminated simpliciter without affixing any stigma upon her, the petition for reinstatement in the service filed by her before this Court was not maintainable. He in support of his arguments relied upon an unreported decision of this Court in the case of Ejaz Alam Vs. Director Personnel & Administration & others (C.P. No.D-3688 of 2011) and on the verdict of the Hon'ble Supreme Court of Pakistan in the case of Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383).

6. We have heard the learned counsel for the parties and with their assistance have perused the material available on the record including the case law relied upon by them.

7. As regards the maintainability of the petition in the context of the proposition that a petition under Article 199 of the Constitution would not lie against an organization or corporation which does not have statutory rules of service regulating its employees, we, while taking guidance from the case of Pakistan Defence Housing Authority quoted supra (2013 SCMR 1707), are of the view that if an organization or corporation is established through the statutes and it performs some of the functions which the State does, for instance creating jobs for the people through the exercise of the public power, the same would be construed as "persons" within the scope of Article 199 (i)(a)(ii) and (5) of the Constitution. While dealing with the public, if such body (corporation/organization) passes orders or acts in a way that is in violation of the Rules and Regulation constructed under the statute creating that body, the same could be intervened by the High Court under Article 199 of the Constitution. A reading of the case titled Lt. Col. Syed Jawaid Ahmed, quoted supra, further strengthens this view. The said case was moved almost on analogous facts and circumstances,

which are cited in the present petition. Accordingly the petitioner while working as Vice Principal in Defence Authority SKBZ College was terminated from his service by Pakistan Defence Officer Housing Authority (the respondent No.2), without holding an enquiry against him and without having a recourse to the provision of REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000 (hereinafter referred as “the Ordinance 2000”). In the course of examining the question qua maintainability of the petition raised in the similar context and all but on the same ground pressed by the respondent No.2 here, this Court observed as under:

*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 (sic) 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.*

And while disposing of the above petition, the order of dismissal was declared to be of no legal effect in the following words. *“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.”*

8. The judgment of this Court referred above was challenged in Civil Appeal No.39 of 2010, which came to be considered by the Honorable Supreme Court along with several other appeals filed on the questions involving the same law points. The Hon’ble Apex Court in its monumental judgment in the supra case reported in 2013 SCMR 1707 has eruditely dealt with the principle of Master and Servant and has deeply examined the right of an employee in a corporation whose service is regulated by non-statutory rules. In Para No. 18 the Hon’ble Supreme Court has framed a question of law that *“Whether the appellants are persons discharging functions in connection with affairs of Federation or a Province within meaning of clause (5) of Article 199 of the constitution and amenable to writ jurisdiction of the High Court?”* and proceeded to give a brief overview of the law, structure and functions of the statutory bodies/corporations/authorities in Para No.19, which are Pakistan Steel Mills, Port Qasim Authority, S.M.E. Bank, Defence Housing Authority, Karachi. Regarding Defence Housing Authority, Karachi (the respondent No.2), it reads as under:

*(iv) The Defence Housing Authority Karachi was established under the Pakistan Defence Officers Housing Authority Order, 1980 (promulgated on 9<sup>th</sup> of August 1980). The management and authority vests in the Governing Body which comprises of the Secretary-General, Ministry of Defence, Government of Pakistan, who would be its Chairman and the other members/officers include (a) Vice Chiefs of Staff of the three Services or one Principal Staff Officer from each of the three Services to be nominated by the respective Chiefs of Staff; (b)*



*the President; (c) the Director, Military Lands and Cantonments; and (d) the Administrator [(Section 5 (1)]. For day to day working, an Executive Board of the Authority comprises of Corps Commander who would be its President and other members include: (a) a serving Naval Officer not below the rank of a Commodore posted at Karachi, to be nominated by the Chief of the Naval Staff; (b) a serving Air Force officer not below the rank of an Air Commodore posted at Karachi, to be nominated by the Chief of the Air Staff; (c) a serving Army Officer not below the rank of a Brigadier posted at Karachi, to be nominated by the Chief of the Army Staff; (d) the Administrator; and (e) co-opted members, to be appointed by the Executive Board for a period not exceeding two years at a time, provided that such co-opted members shall not have any right of vote [(Section 5(2)]. The Executive Board of the Authority has the power to acquire land under the law, undertake any work in pursuance of any scheme or project; no master plan, planning or development scheme can be prepared by any local body or agency for the specified area without prior consultation with, and approval of, the Executive Board (Section 9). The Authority through the Executive Board has the power to raise funds for the purpose of its working capital in a manner the Board may think proper, through loans or levy of any charges which may be prescribed by it under the Rules (Section 10). The Administrator functions in accordance with the policy laid down by the Governing Body (Section 11). All schemes/projects/works carried out by the Authority are deemed under the law to be schemes for public purposes (Section 12). The employees of the Authority are deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Section 16). The Governing Body has the power to make Rules by notification in the official Gazette for carrying out the purposes of the Order/Statute (Section 22). The Executive Board has the power to make Regulations not inconsistent with the provisions of the Order and the rules as it may consider necessary or expedient for the administration and management of the affairs of the Authority (Section 23).*

9. In Para No.20, the functions of the Federation or a Province in the context of a modern welfare State have been explained that in the contemporary age the role of the State and its various institutions has increased tremendously. The State's power to perform various functions of creating jobs, issuing licenses, fixing quotas, granting mining rights or lease of estate, signing contracts and providing variety of utility services to the people are sometimes implemented through the companies established by the statutes. Such functions so performed have the elements of public authority and while defining "the public authority", it has been stated that it is a body that has to perform public and statutory

duties to carry out its transactions for the benefit of the public and not for private gain or profit. However, it is not stopped from making a profit for the public benefit. The said Para deserves to be reproduced, as it is relevant with the point being dealt with by us:

**20. While dilating on this question whether the appellants' organization are "persons" within the meanings of Article 199(1)(a)(ii) read with Article 199(5) of the Constitution, the expanded functions of the Federation or a Province in contemporary age have to be kept in view. An important dimension of the modern welfare State is that the role of the State and its various institutions has increased manifold. The government is regulator and dispenser of special services. It has the power to create jobs, issue licenses, fix quotas, grant mining right or lease of estate, sign contracts and provide variety of utility services to the people. Such entrepreneurial activities at times are carried out through companies created under the Statute or under the Companies Ordinance. The functions these companies institutions perform have elements of public authority. A public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private gain or profit. Such an authority, however, is not precluded from making a profit for the public benefit. The Courts have generally applied what has been classified as a "function test" to consider whether a statutory body is a 'person' within the meaning of Article 199 of the Constitution. In Salahuddin v. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), the Court laid down similar test to assess whether a body or authority is a person within the meaning of Article 199 of the Constitution and observed:--**

***"The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Government; and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not."***

10. The Hon'ble Apex Court in the light of the statutes that created the above respective authorities /bodies and keeping in view the functions they perform has held and declared in Para No.27 that these are the statutory bodies which perform some of the functions of the Federation /State and through the exercise of public power these

authorities create public employments. Therefore, these bodies are construed to be “persons” within the meaning of Article 199 (1)(a)(ii) read with Article 199 (5) of the Constitution. It has been further held that in case their actions or/and orders passed are in violation of the statutes establishing those bodies or of rules /regulations framed under the statutes the same could be intervened by the High Court under Article 199 of the Constitution.

11. The Hon’ble Supreme Court while embarking upon a comparative study of the constitutional law on the issues involved has also referred to the several case law in the succeeding Paras, where despite the non-statutory regulations governing the employees in a corporation, they were given relief, for the action of authority was held to be tainted with malice.

**41. In Karachi Development Authority v. Wali Ahmed Khan (1991 SCMR 2434), this Court did not interfere in the judgment of the High Court under Article 199 of the Constitution whereby the petitions were allowed because the action of the authority was tainted with malice notwithstanding the non-statutory nature of Regulations under which the employee was being governed.**

**42. In Mrs. Anisa Rehman v. PIAC and another (1994 SCMR 2232), the scope of judicial review was further enlarged despite Regulations being non-statutory and violation of principles of natural justice was held to be a valid ground to invoke writ jurisdiction under Article 199 of the Constitution. In the said case, the employee was aggrieved of an order of demotion passed without hearing her and the said right of hearing was not being claimed by her through statutory provision. This Court nevertheless held that the principles of natural justice were part of law and the order of the authority was struck down.**

**43. In Walayat Ali Mir v. Pakistan International Airlines Corporation through its Chairman (1995 SCMR 650), the Court held that the Corporation was bound by its Regulations though those may be non-statutory and struck down the order of the authority which was violative of those regulations. It also laid down parameters of exercise of this discretionary jurisdiction.**

**44. In House Building Finance Corporation through Managing Director, Karachi and another v. Inayatullah Shaikh(1999 SCMR 311), this Court while reiterating the earlier view that the Corporation may terminate the service of an employee under**

*Regulation 11 simpliciter qualified it with a proviso; provided it acts in good faith and in the interest of Corporation. Though the principle of ‘Master and Servant’, was reaffirmed, yet the Court did not interfere with the judgment of the High Court whereby the writ petition had been allowed and the employee of the House Building Finance Corporation was reinstated since the order of the competent authority terminating the service of the employee had not been placed before the High Court.*

45. *In Pakistan International Airlines Corporation (PIAC) v. Nasir Jamal Malik (2001 SCMR 934), the PIA had challenged the judgment of the Service Tribunal wherein it had allowed respondents-employees’ appeal and directed their reinstatement as their services had been terminated without assigning any reason but it was left to the organization to proceed against them in accordance with law. This Court upheld the judgment of the Service Tribunal and reiterated the law laid down in Mrs. Anisa Rehman v. PIAC (1994 SCMR 2232) to the effect that the employee of PIAC were governed by the principle of “Master and Servant” but put a rider that “the employer who itself has framed Rules as well as the Regulations for its domestic purposes is bound to strictly follow/adhere them because deviation therefrom is bound to violate settled principles of justice including the one enshrined in the maxim Audi alteram partem i.e. no one is to be condemned unheard.”*

46. *The violation of principles of natural justice in disciplinary proceedings has been found to be valid ground for judicial review in U.K. as well. In a very instructive Article titled Judicial Review of Dismissal from Employment: Coherence or Confusion? By Bernadette A. Walsh, with reference to plethora of case law, the author stated that:--*

*“In the context of dismissal from employment, the major significance of the grounds of judicial review is that they enable a dismissed employee to challenge his dismissal on the grounds that the decision to dismiss him was taken in disregard of procedural requirements, including the rules of natural justice, or that it was so unreasonable that no reasonable body could have taken it. By contrast, in an ordinary action for wrongful dismissal, the traditional view was that the employee was confined to arguing that there had been a breach of the terms of his contract pertaining to notice. Ridge v. Baldwin established that an office-holder was entitled to challenge his dismissal on the additional ground that there had been a breach of the rules of natural justice. Ridge itself concerned an action begun by writ, but there was no argument in the case as to the appropriate procedure for seeking relief.”*

12. In the concluding Paras, while summing up the whole discussion, the Hon’ble Supreme Court has observed as under:

55. *In an attempt to resolve a conflict of judicial opinion, this Court must keep in mind: first the purpose of law the Court is called*

*upon to interpret; second that law is living organism which adapts to societal change and sometimes change in law precedes the former; third the ambit of court's jurisdiction and its limitations as defined in the Constitution; fourth the Court must be consistent i.e. in similar situations/cases, the judicial opinion will be similar; fifth though the Supreme Court is not bound by the principle of stare decisis, but the departure from the precedent should be well reasoned, proper and in accordance with the established principles of law. A Judge's role is to interpret the law and to correct its mistakes. The twin role of a developer in law and an earnest interpreter of legislation, though challenging, is in accord with the role the Supreme Court has in the constitutional scheme as also consistent with society's perception of the role of judiciary in a liberal democracy. In the context of the case in hand, the mandate of two constitutional provisions should be kept in mind i.e. Article 4 and Article 10A which read as follows:-*

*“4.(1) to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen wherever he may be, and of every other person for the time being within Pakistan.*

*(2) In particular-----*

*(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.*

*(b) No person shall be prevented from or be hindered in doing that which is not prohibited by law; and*

*(c) No person shall be compelled to do that which the law does not require him to do.*

*10A. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.”*

*56. The legislative intent in the promulgation of Ordinance 2000; inter alia, was that “persons in corporation service” in their service matters should be dealt with in accordance with provisions of the said law and to ensure a fair deal /trial it was inter alia provided in the Ordinance that unless specifically so exempted by a reasoned order, the competent authority shall hold a regular enquiry against an employee accused of misconduct and that he shall have a right of appeal (Section 10 of the Ordinance).*

*57. The right of appeal is a substantive right. The respondents were deprived of the said right not by any legislative amendment but by a judicial opinion and that too on the analogy of the law laid down in Mubeen us Islam's case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC 681). In both these cases, the effect of the Ordinance 2000 and that it was a statutory intervention was not a moot point. It is well established that an appeal is continuation of trial would it be a fair trial if an accused is shorn off his right of appeal? Would the deprivation of right of appeal not amount to judicial sanctification of all the orders passed by the departmental*

*authorities awarding various penalties to the employees and would it not be violative of the fundamental right to a “fair trial and due process” as ordained in Article 10A of the Constitution? Could the respondent employees not invoke Article 199 of the Constitution to seek due compliance of the Ordinance 2000 for ensuring fair trial and due process? If the constitutional scheme and the purpose of law are kept in view, the answer to all these queries has to be in the affirmative and the constitutional petitions filed by the respondents seeking enforcement of their said right would be maintainable.*

*58. The High Court in the exercise of its jurisdiction under Article 199 of the Constitution can pass an appropriate order “declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect.” [(Article 199 (1) (a) (ii)]. The grievance of the respondent-employees in most of the cases was that the order of the departmental authority was violative of the Ordinance, 2000 and of no legal effect (as they were proceeded against under the said law) while in other cases it was that they had not been dealt with under the said law despite its overriding effect, the High Court had jurisdiction to interfere and allow the petitions.*

*60. It was not disputed before this court by appellants learned counsel that the respondent-employees were “persons in corporation service” within the meaning of section 2(c) of the Ordinance 2000 and except in the case of N.E.D. University, they were proceeded against under the said law. This was a statutory intervention and the employees had to be dealt with under the said law. Their disciplinary matters were being regulated by something higher than statutory rules i.e. the law i.e. Ordinance, 2000. Their right of appeal (under section 10) had been held to be ultra vires of the Constitution by this Court as they did not fall within the ambit of the Civil Servants Act, 1973, [(Mubeen us Salam’s case (PLD 2006 SC 602) and Muhammad Idrees’s case (PLD 2007 SC 681)]. They could in these circumstances invoke constitutional jurisdiction under Article 199 of the Constitution to seek enforcement of their right guaranteed under Article 4 of the Constitution which inter alia mandates that every citizen shall be dealt with in accordance with law. The judgment of this Court in Civil Aviation Authority (2009 SCMR 956) supra is more in consonance with the law laid down by this Court and the principles deduced therefrom as given in Para 50 above.*

13. After going through the above all-encompassing decision of the Hon’ble Supreme Court, with particular reference to Para No.58, we are of the view that where the petitioner(s) is able to show that an action taken against him /her is tainted with malice and militates against the natural norms of justice; this Court can assume the jurisdiction under

Article 199 of the Constitution, notwithstanding his /her status as an employee governed by the non-statutory rules of service in the corporation created by some statutes.

14. Reverting to the merits of the case in hand, admittedly the petitioner's service was confirmed vide letter dated 5<sup>th</sup> December 2000 and during her service she was awarded various certificates of appreciation and rewards accruing monetary benefits to her, the copies of which are available at pages No.69 to 127 of the file, which go a long way to establish that her professional skill was impeccable beyond any dispute. It, however, became a different story for her after she raised voice against (that is said without intending any disrespect to) Col. (R) Tahir Aziz, Additional Director of Colleges for his alleged intimidating and disparaging behavior to the female teaching staff. In this regard, a complaint under Section 3(1) of the Protection against Harassment of Women at the Workplace Act 2010, was moved by the learned counsel of the petitioner requesting the respondent NO.2 to constitute an enquiry committee under the said Act to inquire into her grievances against him. Such facts speak of an exacting and unfavourable milieu obtaining in the college against her. The subsequent correspondence, which the petitioner's counsel made with respondent No.2, would show that such committee was formulated but she had taken exception to the name of Brigadier (R) Shahid Saleem Lone being at the chair of the said committee on the ground that against him the complaint under the said law had already been filed. The notices to the petitioner to appear before the committee were sent with baffling immediacy i.e. 24<sup>th</sup>, 25<sup>th</sup> and 27 July 2010, disregarding her objection over its format. That series of events preceding ridding the petitioner of her service leads to an impression that it was not all-well for the petitioner at the college, and

her dismissal was not simpliciter as argued by the leaned counsel for the respondent. More so, the said contention stands belied by the stance taken and various documents submitted by the respondent No.2, available along with its reply at annexures R-2/1, R-2/2, R-2/3, R-2/4 and R-2/5 of the Court file, according to which the petitioner, on some occasions, was warned for not maintaining the proper timings of the duty. In order to justify her such delinquency /conduct, her counsel filed a copy of the letter dated 22.09.2004 during the course of his arguments to show that she was allowed some concession in maintaining the punctuality regarding duty hours on account of her newly born baby at home, by the then principal. We, however, do not feel persuaded to examine the merits of such factual controversy, which pertains purely to the discipline matter of the college, whilst sitting on the constitutional jurisdiction. The purpose of mentioning the above facts, nevertheless, is to show that there was a certain situation, not exactly in favour of the petitioner, prevalent at the college, which in fact led the respondent No.2 to do away with the services of the petitioner, which, however was made to appear a simple case of removal from service without any stigma through the impugned letter.

15. The next leg of above discussion shall take us to examine as to whether adherence to the principle of natural justice was taken into consideration or not by the respondent No.2 while removing the petitioner from service. This Court in the case of PEERO KHAN and another Vs. The STATE, reported in 2014 YLR 1331, has aptly defined the natural justice in following words:

*“It need (sic) not to reiterate that the natural justice is another name of commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in commonsense liberal way. Justice is based substantially on*



*natural ideas and human values. The administration of justice is to be free from narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice, which has to determine its form. The expressions “natural justice” and “legal justice” do not present a water-tight classification. It is the substance of justice which is to be secured whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logic prevarication, it supplies the omissions of a formulated law.”*

16. Admittedly, the petitioner was removed from the service, which with the passage of time was duly confirmed, without being provided an opportunity of hearing and without holding a formal inquiry against her in terms of rule 6, Chapter V of Rules of Conduct and Discipline adopted by the respondent No.2 for governing its working with its employees. Just handing her over a letter that you services were no more required without any apparent rhyme and reason and leaving the petitioner out without any forum to challenge the same would not be considered in accord with the norms of natural justice. As has been held by the Hon’ble Supreme Court in DHA’s case quoted supra that the respondent No.2 is a body established under statues whose management and authority lies with the Government Body comprising the Secretary-General, Ministry of Defence Government of Pakistan as its chairman and other members. We, therefore, are not hesitant to state that the respondent No.2 comes within the definition of “persons” in terms of Article 199 of the Constitution. Since “the employees of the Authority (DHA) are deemed public servant within the meaning of section 21 of the Pakistan Penal Code”, the authority can dispense with or remove them from service only by having a regard to the terms of the Ordinance, 2000. Many decisions of the Hon’ble Supreme Court can be cited to emphasize that the Ordinance 2000 has an overriding effect to the other laws and was promulgated in the public interest and for good governance

with particular reference to the measures provided for dismissal and removal of the persons either working in the government service or in the service of a corporation. Admittedly, the respondent No.2 while dispensing with the service of the petitioner has not followed the provisions of the Ordinance, 2000. We, therefore, allow the instant petition accordingly. The impugned letter is declared to be of no legal effect, hence we direct the respondent No.2 to restore the petitioner with immediate effect to her original position as on 10.09.2012. However, it is hereby made clear that this order is not meant to deter the respondent No.2 to hold an enquiry against the petitioner with regard to any delinquency/misconduct (referred above) alleged against her and to take action, if any, in accordance with the Ordinance, 2000.

Pending application, if any, stands disposed of along with the main petition.

JUDGE

JUDGE