

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 145/2023

Shahnaz Sadiq D/O Muhammad Saddiq R/O Mohallah Nijar Abad Road
side Ismaila Tehsil Razzar District Swabi

..... Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Education and
others


..... Respondents


INDEX

S.No	Description of Documents	Annexure	Page
1	Rejoinder along with affidavit		1-5
2	Copy of the judgment reported in 2022 SCMR 1583	R-1	6-12
3	Copy of the judgment reported in 1997 SCMR 1552	R-2	13-17
4	Copy of the judgment reported in 2008 PLC (C.S) 715	R-3	18-22

Dated. 09/06/2023

Through


Appellant


Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

Amjad Ali
ADVOCATE
SUPREME COURT

(1)

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REPLICATION ON BEHALF OF APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Respectfully Sheweth:-

Diary No. 7445

PRELIMINARY OBJECTIONS:

Dated 12/09/23

1. That Para No 1 of the preliminary objections of reply/comments is incorrect, misconceived. Denied. The appointment order has been validly passed and appellant performed duty in pursuance of the said appointment order and therefore a vested right has accrued to the appellant.
2. That Para No 2 of the preliminary objections/comments of reply is incorrect, misconceived. Denied. Appellant is initially appointed vide appointment order dated 27/07/2020 which after lapse of one year automatically stood regularized. Even otherwise, other similarly placed employees have been regularized as per Khyber Pakhtunkhwa Teachers (Appointment and Regularization of Services) Act 2022. The appointment order has been issued after due recommendation of Departmental Selection Committee.
3. That Para No 3 of the preliminary objections of reply/comments is incorrect, misconceived. Denied. Moreover, replied above in Para 2. Furthermore, there is no provision of dis-owning appointment orders in E&D Rules.
4. That Para No 4 of the preliminary objections of comments/reply is incorrect, misconceived. Denied. The appellant has been condemned unheard.
5. That Para No 5 of the preliminary objections of comments/reply is incorrect, misconceived. Denied.
6. That Para No 6 of the preliminary objections of comments/reply is incorrect, misconceived. Denied.
- 7-13. That Para No 7 to 13 of the preliminary objections of the comments/reply are incorrect, misconceived. Denied.

ON FACTS:

- Para 1** That Para No.1 of the service appeal is not denied hence admitted as correct. The appellant has been appointed after due recommendation of the Selection Committee as visible from the appointment order.

- Para 2** That Para No 2 of the service appeal is correct and that of the comments/reply is incorrect. Denied. The appellant is duly appointed after observing all codal formalities and after recommendation of the Selection Committee. Moreover, the appointment order, nowhere mentions contract appointment and therefore the judgments cited are not applicable to the instant case.
- Para 3** That Para No 3 of the service appeal is correct and that of comments/reply is incorrect, misconceived. Denied. Appellant is declared as medically fit by the Medical Superintendent DHQ Teaching Hospital Swabi in pursuance of the appointment order of the appellant.
- Para 4** That Para No 4 of the service appeal is correct and that of reply/comments is incorrect. Denied specifically. The appellant is appointed after due recommendation of the Selection Committee. The appellant has no approach to the record of the respondents and the appointment order has been issued after due process and recommendation of the Departmental Selection Committee. As per principle of locus poenitentiae, the respondents cannot recede back its action once it has been acted upon and a vested right has accrued to the appellant.
- Para 5** That Para No 5 of the service appeal is correct and that of the comments/reply is incorrect, misconceived. Denied specifically. Pay has been released by the DEO(F) Swabi and even service book has been issued to the appellant and therefore a vested right has accrued to the appellant which cannot be taken away on mere conjectures and pre-suppositions. The pay release order has been issued by the competent authority and has been acted upon. A vested right has accrued to the appellant and appellant cannot be divested of the same in a perfunctory manner which is clearly hit by the doctrine of locus poenitentiae.
- Para 6** That Para No 6 of the service appeal is correct and that of comments/reply is incorrect, misconceived. Denied. The appellant is posted by the District Education Officer (F) Swabi and duly performed her duties to the entire satisfaction of superiors. The appellant has been targeted and made a scapegoat whereas the officials concerned especially the members of the Departmental Selection Committee or the appointing authority have been let free and no action has been taken against them thereby discriminating the appellant only. No action whatsoever has been taken against the appointing authority i.e (DEO(F) Swabi) or the members of the Departmental Selection Committee. As per consistent judgments of the Superior Courts, the appointing authority/officials concerned be penalized and ~~not~~ the low-paid employees cannot be targeted. Reliance is placed on 2022 SCMR 1583 (Copy of the judgment reported in 2022 SCMR 1583 is attached as Annexure R-1)
- Para 7** That Para No 7 of the service appeal is correct and that of comments/reply is incorrect. Denied. The assertion of the respondents is based on conjectures and pre-suppositions and no evidence has been annexed in support of their assertion.
- Para 8-9** That Para No 8 to 9 of the service appeal are correct and that of comments/reply are incorrect, misconceived. Denied. A vested

right has accrued to the appellant and appellant cannot be divested of the same.

Para 10 That Para No 10 of the service appeal is correct and that of comments/reply is incorrect, misconceived. Denied. There is no provision in E&D rules for dis-owning appointment orders. Neither the appellant is associated with any enquiry, nor any charge sheet has been issued nor statement of allegation has been issued nor the appellant is given show cause notice nor the appellant is afforded an opportunity of personal hearing and the enquiry (if any) is one-side, partial, bias and not tenable in the eye of law. Moreover, as per 1997 SCMR 1552 it is mandatory to hold regular enquiry whether temporary employee or a contract employee or a probationer which has been blatantly violated in the instant case **(Copy of the judgment reported in 1997 SCMR 1552 is attached as Annexure R-2)**

Para 11-13 That Para No 11 to 13 of the service appeal are correct and that of comments/reply are incorrect, misconceived. Denied. Already explained above. A vested right has accrued to the appellant and appellant cannot be divested of the same. The appointment order and subsequent posting and transfer orders have been acted upon and has thus created a vested right in favour of the appellant. The appellant has been condemned unheard and no regular inquiry has been conducted thereby infringing the principles of natural justice which are deemed to be enshrined in every statute.

ON GROUNDS:

A-C That grounds A to C of the service appeal are correct and that of comments/reply are incorrect. Denied. No regular enquiry whatsoever has been conducted thereby infringing the Principle of Audi Alteram Partem. Moreover, no enquiry has been conducted. Neither any charge sheet has been issued nor statement of allegation has been issued nor any witness is examined nor opportunity of cross examination has been provided nor show cause notice has been nor opportunity of personal hearing has been afforded to the appellant, thereby the judgment reported in 1997 SCMR 1552 has been violated by not holding regular inquiry.

D-F That grounds D to F of the service appeal are correct and that of comments/reply are incorrect. Denied. The appellant being a low paid employee is merely made a scapegoat whereas the members of the Selection Committee or the appointing authority has neither been arrayed as accused nor questioned nor made part of any so-called inquiry and therefore appellant is discriminated. Reliance is placed on 2022 SCMR 1583.

G-I That ground G to I of the service appeal are correct and that of comments/reply are incorrect. Denied. A vested right has accrued to the appellant wherein the appellant has performed duty for 02 years and appellant cannot be divested of the same. Similarly, as per 2008 PLC (C.S) 715, the appellant's appointment order is issued, performed duty, drew salaries and therefore the appointment order cannot be cancelled as per well-established principle of locus poenitentiae. Appellant has been condemned unheard and no right of defence has been provided to the

appellant (Copy of the judgment reported in 2008 PLC (C.S) 715 is attached as Annexure R-3). In other identical cases, this Honorable Tribunal has reinstated the employees

J That ground J of the service appeal is correct and that of comments/reply is incorrect. Denied. The respondents are estopped to back-track from their orders duly issued after recommendations of the Selection Committee. The appointment of the appellant is made after observance of codal formalities. Appellant has attained the status of a regular employee and therefore has rightly approached this Honorable Tribunal. Khyber Pakhtunkhwa Teachers (Appointment and Regularization of Services) Act 2022 has been promulgated wherein appellant has attained the status of a regular civil servant.

K That ground K of the service appeal is correct and that of comments/reply is incorrect. Denied. If the assertion of the respondents is admitted as correct, then the impugned notification which is also passed under E&D Rules 2011 has no legal effect as it would not be applicable on the appellant.

L That ground L of the service appeal is correct and that of comments/reply is incorrect. Denied. The impugned notification is illegal and against law and facts.

M That ground M of the service appeal is correct and that of comments/reply is incorrect. Denied. The impugned notification is not a speaking order and in contravention of the rules on subject.

N That ground N of the service appeal is correct and that of comments/reply is incorrect. Denied. Neither any forensic has been conducted nor any proof is available in support of the assertion of the respondents.

O That ground O of the service appeal is correct and that of comments/reply is incorrect. Denied. The contention of the respondent is baseless. Appellant has no approach to the official record of the respondents and it is respondents only who issued all the orders after observance of all codal formalities.

P That ground P of the service appeal is correct and that of comments/reply is incorrect. Denied. Appellant is entitled for all back benefits. Appellant has been condemned unheard and no regular inquiry has been conducted and therefore the principles of natural justice which are deemed to be enshrined in every statute have been infringed.

Q That appellant may also be permitted to raise further grounds at the time of arguments.

(5)

It is therefore humbly prayed that the service appeal may please be accepted as prayed for.

Dated. 09/06/2023

Through

CS

Appellant

Amjad Ali
ADVOCATE

SUPREME COURT

Amjad Ali (Mardan)

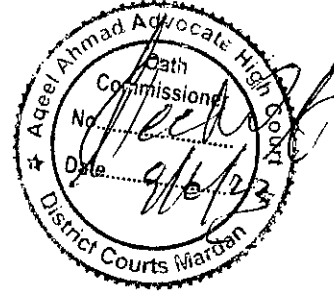
Advocate

Supreme Court of Pakistan

AFFIDAVIT

I, **Shahnaz Sadiq D/O Muhammad Saddiq R/O Mohallah Nijar Abad Road side Ismaila Tehsil Razzar District Swabi (appellant)** do hereby solemnly affirm and declare that the contents of the **accompanying rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

CS
Deponent



2022 S C M R 1583

[Supreme Court of Pakistan]

Present: Sardar Tariq Masood and Muhammad Ali Mazhar, JJ

INSPECTOR GENERAL OF POLICE, QUETTA and another---Appellants

Versus

FIDA MUHAMMAD and others---Respondents

Civil Appeal No. 17-Q of 2021, decided on 18th April, 2022.

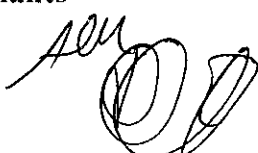
(Against the judgment dated 07.04.2021 Balochistan Service Tribunal, Quetta, in S.A. No. 542 of 2019)

(a) Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009---

---R. 9(6)---Reinstatement in service---Violation of principles of natural justice---Vested right to appointment---Locus poenitentiae, doctrine of---Appointment letters were cancelled through an omnibus order without disclosing any reason, providing any opportunity of hearing or issuing any show cause notice---Legality---In the present case all the appointment letters were issued by the Deputy Inspector General of Police with the approval of the Inspector General of Police after fulfillment of and contentment of required codal formalities including the recommendation of Departmental Selection Committee, constituted by the competent authority---All the respondents/employees were appointed on different posts in BPS-1 as admissible under the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 ('the 2009 Rules') against the existing vacancies---Appointment letters did not reflect that all the appointments were made for one District only, but names of other various districts were also mentioned---No convincing or persuasive *raison d'être* was brought forward to assume the ground of debarring the respondents from selection in view of the rigors of Rule 9(6) of the Rules, which did not seem to have been violated in any way while appointing the respondents on the recommendation of the Departmental Selection Committee---Nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or their appointments were made on political consideration or motivation or they were not eligible or not local residents of the district advertised for inviting applications for the job---Despite that, an omnibus order was issued by the DIG Police for cancellation of appointments without disclosing any reason for cancellation or withdrawal and without issuing any show cause notice or providing any opportunity of audience to the respondents---Appointing authority had, therefore, violated the principle of natural justice and due process---Respondents were appointed after fulfilling codal formalities which created vested rights in their favour that could not have been withdrawn or cancelled in a perfunctory manner on mere presupposition and or conjecture which was clearly hit by the doctrine of *locus poenitentiae*---Appeal was dismissed with the observation that some strenuous action should have been taken against persons involved in the selection and appointment process who allegedly violated the rules rather than accusing or blaming the low paid poor employees of downtrodden areas who were appointed after due process in BPS-1 for their livelihood and to support their families.

Asim Khan and others v. Zahir Shah and others 2007 SCMR 1451; Muhammad Akhtar Shirani and others v. Punjab Text Book Board and others 2004 SCMR 1077; Managing Director, SSGC Ltd. v. Ghulam Abbas PLD 2003 SC 724; Muhammad Shoaib and 2 others v. Government of N.W.F.P. through the Collector, D.I. Khan and others 2005 SCMR 85; Mst. Basharat Jehan v. Director-General, Federal Government Education, FGEI (C/Q) Rawalpindi and others 2015 SCMR 1418 and Director, Social Welfare, N.W.F.P., Peshawar v. Sadullah Khan 1996 SCMR 1350 ref.

(b) Natural justice, principles of---

(6) *Aux R 11*


---Purpose and scope of the principles of "natural justice" stated.

The doctrine of natural justice is destined to safeguard individuals and whenever civil rights, human rights, Constitutional rights and other guaranteed rights under any law are found to be at stake, it is the religious duty of the Court to act promptly to shield and protect such fundamental rights of every citizen of the country. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording a right of audience before any detrimental action is taken in tandem with its ensuing constituent; that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-defined, just, right and understandable. Therefore, it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice.

Principles of natural justice must be read in each and every statute unless and until the same were excluded from the wording of the statute itself.

Asim Khan and others v. Zahir Shah and others 2007 SCMR 1451 ref.

(c) Vested right, doctrine of---

---Scope---Doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection---Vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances---In fact, it is a right independent of any contingency or eventuality which may arise from a contract, statute or by operation of law.

(d) Civil service---

---Illegal order---If an order is illegal then perpetual rights cannot be gained (by employees) on the basis of such an illegal order.

Ayaz Khan Swati, Additional A.G. Balochistan for Appellants.

M. Rauf Ata, Advocate Supreme Court for Respondents Nos. 2, 3, 5 7-10, 12 and 13.

Respondents Nos. 1, 4, 10 in person.

Date of hearing: 18th April, 2022.

JUDGMENT

MUHAMMAD ALI MAZHAR, J.---This Civil Appeal with leave of this Court is brought to challenge the judgment dated 07.04.2021 passed by the learned Balochistan Service Tribunal, Quetta in S.A. No. 542 of 2019, whereby the Service Appeal filed by the respondents (employees) was allowed and they were reinstated in service.

2. The transitory facts of the case are as under:-

On 28.12.2018, advertisement was published in the Newspapers to invite applications for different vacant posts in the Balochistan Police Sibi Range. The respondents applied for the different posts respectively and after completion of all requisite formalities including the scrutiny of documents they were selected and appointment letters were issued to them on 22.05.2019. However, vide consolidated order of cancellation of appointment dated 21.06.2019, the appointment letters were withdrawn. The respondents filed departmental appeal which remain undecided therefore they preferred the Service Appeal before the learned Service Tribunal, Balochistan. The

8

learned Service Tribunal allowed the appeal, set aside the cancellation order of the appointments and reinstated the respondents.

3. The learned Additional Advocate General, Balochistan argued that the learned Service Tribunal has committed serious error while allowing the Service Appeal of the respondents and failed to consider that the advertisement was made for the entire Sibi range which consists of five districts i.e. District Sibi, District Ziarat, District Harnai, District Kohlu and District Dera Bugti, whereas the appointments were made from District Sibi and Harnai which was in violation of Rule 9(6) of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 ("the 2009 Rules"), therefore, the appointment orders were rightly withdrawn. It was further argued that the respondents had no vested right to appointment in violation of Rules.

4. The learned counsel for the respondents argued that, after appointment, the respondents were performing their duties to the satisfaction of the competent authority and there was no complaint against them, but all of a sudden their appointment letters were cancelled through an omnibus order without disclosing any reason, providing any opportunity of hearing or issuing any show cause notice. The Departmental Appeal remained undecided within the statutory period, hence the respondents approached the learned Service Tribunal for redressal of their grievances. It was further averred that the action of the petitioners was in violation of the principle of natural justice whereby the services of low paid, poor employees belonging to downtrodden areas were terminated.

5. Leave to appeal was granted vide order dated 18.11.2021 in the following terms:-

"Learned Additional Advocate General, Balochistan contends that the respondents who were all local residents of District Sibi could not have been appointed to the local post of District Ziarat and their appointment on such account in terms of Rule 9(6) of Balochistan Civil Servants (Appointment, Promotion and Transfer), Rules, 2009, being illegal, were validly cancelled and withdrawn, and the Tribunal by the impugned judgment was not justified in granting reinstatement to the respondents to the same post in District Ziarat, as the appointment in District Ziarat could only be made to that of local based in District Ziarat and not that of District Sibi or any other District.

2. Contention raised by the learned Additional Advocate General needs consideration. Leave to appeal is granted to consider, inter alia, the same..."

6. Heard the arguments. It is reflected from the available record that the respondents applied for the posts in response to the advertisement published in the newspapers for recruitment on vacant posts. The applications were submitted by the respondents individually for appointment in BPS-1 against the vacant posts of Painter, Barber, Gardener, Welder, Washer man, Cook and Sweeper. Some appointment orders were issued collectively, including some other candidates who are not party to the present lis but, in a nutshell, the appointment letters are conspicuously transpiring that the present respondents are the indigenous dwellers of District Sibi and the appointments in BPS-1 were not made only for Sibi, but some persons that were inhabitants of other local areas, such as District Harnai, Dera Bugti and Ziarat, were also appointed. Corresponding to these undeniable and indisputable facts, the contention of the learned Additional Advocate General that all appointments were made for Sibi only is misconceived and ill-thought-out. It is also quite perceptible that all the appointment letters were issued by the Deputy Inspector General of Police, Sibi Range with the approval of the Inspector General of Police, Balochistan, Quetta but on consideration of merits of each successful candidate duly recommended by the Departmental Selection Committee, constituted by the Competent Authority vide Notification No. 57451-99/13(103)/Admn. dated 28.12.2018. As a result thereof, all the respondents were appointed on different posts in BPS-1 as admissible under the 2009 Rules against the existing vacancies.

However, an omnibus order dated 21.6.2019 was issued by the DIG Police, Sibi Range for cancellation of appointments without disclosing any reason for cancellation or withdrawal and without issuing any show cause notice or providing any opportunity of audience to the respondents.

7. The learned counsel for the petitioners predominantly relied on Sub-Rule (6) of Rule 9 of the 2009 Rules. In fact, this whole Rule is concomitant to initial appointment and its guiding principle. For the ease of convenience, the aforesaid Rule is reproduced as under:-

9. (1) Initial appointment to the post in basic pay scales 16 and above or equivalent shall be made if the post;

(a) fall within the purview of the Commission, on the basis of examination or test to be conducted by the Commission; and

(b) do not fall within the purview of the Commission, in the manner as may be determined by Government.

(2) Initial appointments to the posts in basic pay scales 1 to 15 and equivalent shall be made on the recommendations of the Departmental Selection Committee, after these vacancies have been advertised in leading newspapers.

(3) A candidate for initial appointment to a post must possess the educational qualification(s) and experience and be within the age limit as laid down for the post.

(4) A candidate for appointment shall be the citizen of Pakistan and a domicile/local of the Province of Balochistan.

(5) Posts in basic pay scales 3 to 15 in offices which serve only a particular Region or District shall be filled by appointment of persons domiciled in the Region or District concerned.

(6) Posts in basic pay scales 1 and 2 shall ordinarily be filled on local basis. [Emphasis applied]

8. The nucleus and essence of this Rule as long as associated with this case elucidates in clear terms that initial appointment to the posts in Basic Pay Scales 1 to 15 and their equivalent shall be made on the recommendations of the Departmental Selection Committee after these vacancies have been advertised in leading newspapers; candidates for appointment shall be citizens of Pakistan having a domicile of the province of Balochistan with the rider that the posts in Basic Pay Scales 1 and 2 shall ordinarily be filled on local basis. To be frank, we have no hesitation to hold that neither the above Rule is supporting the petitioners' plea nor it is opposed or antagonistic to the case of respondents. Admittedly, the respondents are local inhabitants of Sibi for which also applications were invited in the newspapers. The respondents were appointed on 22.05.2019 after fulfillment and contentment of required codal formalities including the recommendation of Departmental Selection Committee. The leave to appeal was obtained under the guise and pretext of Sub-Rule (6) of Rule 9 of the 2009 Rules with ill-conceived and misconstrued insights. Undoubtedly and irrefutably, the aforesaid Sub-Rule only enshrines that the posts in Basic Pay Scales 1 and 2 shall ordinarily be filled on local basis and under the same understanding of this condition, not only the applications of the respondents were entertained but after proper scrutiny and verification of their antecedents, the Departmental Selection Committee (constituted for this purpose) recommended their appointments. At first sight, it is quite obvious without ado that the respondents were local inhabitants of district Sibi and not foreigners or aliens to the province of Balochistan. The appointment letters do not reflect that all the appointments were made for Sibi only, but names of various districts are mentioned where also the equal opportunity was afforded. No convincing or persuasive *raison d'être* was brought forward to evenhandedly assume the ground of debarring the respondents from selection in view of the rigors of the aforesaid Rule which does

not seem to have been violated in any way while appointing the respondents on the recommendation of the Departmental Selection Committee.

9. Quite the reverse, the petitioners have gravely violated the principle of natural justice and due process insofar as, without providing any opportunity of hearing or issuing show cause notice, they terminated the services of the respondents by dint of an omnibus order in an abrupt and unprofessional manner. The doctrine of natural justice is destined to safeguard individuals and whenever the civil rights, human rights, Constitutional rights and other guaranteed rights under any law are found to be at stake, it is the religious duty of the Court to act promptly to shield and protect such fundamental rights of every citizen of this country. The principle of natural justice and fair-mindedness is grounded in the philosophy of affording a right of audience before any detrimental action is taken in tandem with its ensuing constituent, that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-defined, just, right and understandable, therefore it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice. In our Constitution, the right to a fair trial is a fundamental right. On inclusion of this fundamental right, we ought to explore and review the laws and allied Rules and Regulations to figure out that this indispensable right should not be deprived of. In the case of Tariq Aziz-Din, Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P and 14306-G to 14309-G of 2009 (2011 PLC (C.S.) 1130), while referring to the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101 and Mansukhlal Vithaldas Chauhan v. State of Gujarat 1997(7) SCC 622, this Court held that the object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind. Such objective can be achieved by following rules of justness, fairness and openness in consonance with command of Constitution enshrined in different Articles including Articles 4 and 25 of the Constitution. Good governance is largely dependent upon upright, honest and strong bureaucracy particularly in written Constitution wherein important role of implementation has been assigned to bureaucracy.

10. In the case of Asim Khan and others v. Zahir Shah and others (2007 SCMR 1451), the respondents secured their appointments as PTC teachers after recommendations of Departmental Selection Committee but later on the appointment letters were withdrawn by the authorities on the ground that respondents did not have valid domicile certificates of category. High Court restored the appointment letters of respondents. This Court held that respondents had secured vested right which right could not be taken or withdrawn without fulfilling the requirement of principles of natural justice. Principles of natural justice must be read in each and every statute unless and until the same were excluded from the wording of the statute itself. In the case of Muhammad Akhtar Shirani and others v. Punjab Text Book Board and others (2004 SCMR 1077), the Court held that beneficiary cannot be blamed alone because primarily the authority who had actually mis-exercised his powers for the reasons known to it is bound to be held responsible for the same, instead of penalizing the petty employees like Chowkidar, Naib-Qasid, junior clerks etc. who have to earn livelihood to support their families and if after having served for a long period they are removed. In this regard at a number of occasions, it has been held by this Court that instead of removing the employees from service, action should have been taken against the authority who had mis-exercised its powers. The Court also referred to the judgment rendered in the case of Managing Director, SSGC Ltd. v. Ghulam Abbas PLD 2003 SC 724 wherein it was held that assuming that appointments of some of the respondents were contrary to Rules/Regulations then the authority who was in the helm of the affairs may have declined to honour the directions of political personalities. However, for any flaw or defect in the appointment as far as respondents are concerned, they cannot be

blamed. Whereas in the case of Muhammad Shoaib and 2 others v. Government of N.W.F.P. through the Collector, D.I. Khan and others (2005 SCMR 85), it was held that the department was bound to issue notice to the appellants to show cause as to why their services be not terminated accordingly. Had such notice been issued, the appellants might have come out with the defence that the appointments were not illegal and that the illegality, if at all, had been committed by the department itself for which action they could not be penalized. It was further held that the principle of natural justice and audi alteram partem, has grossly been violated. While in the case of Mst. Basharat Jehan v. Director-General, Federal Government Education, FGEI (C/Q) Rawalpindi and others (2015 SCMR 1418), it was held that once a person is appointed after fulfilling all the codal formalities, appointment letter is issued, it was held that a vested right is created and appointment letter could not be withdrawn. It was further held that once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of locus poenitentiae well recognized and entrenched in our jurisprudence. While in the case of Director, Social Welfare, N.W.F.P., Peshawar v. Sadullah Khan (1996 SCMR 1350), it was held that the petitioners themselves appointed him (respondent) on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate the services of the respondent merely because they have themselves committed irregularity in violating the procedure governing the appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality or irregularity in re-instating the respondent.

11. The doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or eventuality which may arise from a contract, statute or by operation of law. The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or their appointments were made on political consideration or motivation or they were not eligible or not local residents of the district advertised for inviting applications for job. On the contrary, their cases were properly considered and after burdensome exercise, their names were recommended by the Departmental Selection Committee, hence the appointment orders could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of the respondents.

12. The learned Additional Advocate General failed to convince us that if the appointments were made on the recommendations of Departmental Selection Committee then how the respondents can be held responsible or accountable. Neither any action was shown to have been taken against any member of the Departmental Selection Committee, nor against the person who signed and issued the appointment letters on approval of the competent authority. As a matter of fact, some strenuous action should have been taken against such persons first who allegedly violated the rules rather than accusing or blaming the low paid poor employees of downtrodden areas who were appointed after due process in BPS-1 for their livelihood and to support their families. It is really a sorry state of affairs and plight that no action was taken against the top brass who was engaged in the recruitment process but the poor respondents were made the scapegoats. We have already held that the respondents were appointed after fulfilling codal formalities which created vested rights in their favour that could not have been withdrawn or

(12)

cancelled in a perfunctory manner on mere presupposition and or conjecture which is clearly hit by the doctrine of locus poenitentiae that is well acknowledged and embedded in our judicial system.

13. In view of the above discussion, we do not find any illegality or perversity in the impugned judgment of the learned Service Tribunal. The appeal is accordingly dismissed.

MWA/I-5/SC
dismissed.

Appeal

1997 S C M R 1552

[Supreme Court of Pakistan]

Present: Ajmal Mian, Actg, CJ., Irshad Hasan Khan and , Nasir Aslam Zahid, JJ

THE SECRETARY, GOVERNMENT OF THE PUNJAB, through Secretary,
Health Department, Lahore and others--Petitioners

versus

RIAZ-UL-HAQ---Respondent

Civil Appeal No. 1428 of 1995, decided on 5th June, 1997.

(On appeal from the judgment dated 30-11-1994 of the Punjab Service Tribunal, Lahore, passed in Appeal No.657 of 1992).

(a) Punjab Civil Servants Act (VIII of 1974)---

---S. 10(3)---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. R. 7---Constitution of Pakistan (1973), Art. 212(3)--Misconduct---Temporary employee engaged on contract---Termination of service of employee on ground of misconduct and that his performance was not found satisfactory and that he failed to prove his innocence---Leave to appeal was granted to consider, as to whether employee's services could be terminated under S.10(3), Punjab Civil Servants Act. 1974 by serving him 30 days' notice as he was temporary employee.

(b) Civil service---

--- Termination of service---Misconduct---Civil servant's services were on temporary basis liable to be terminated on 30 days' notice or pay in lieu thereof on either side---Services of civil servant were to be governed by statute and Rules/Instructions/Regulations framed thereunder---If a person is employed on contract basis and terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof---Where, however, a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or probationer, he is entitled to a fair opportunity to clear his position which means that there should be a regular enquiry in terms of Efficiency and Discipline Rules before condemning him for the alleged misconduct.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 and Pakistan (Punjab Province) v. Riaz Ali Khan 1982 SCMR 770 ref.


(c) Civil service---

---Termination of service---Misconduct---Regular enquiry---If an accused civil servant/employee is charged, with misconduct of the nature which cannot be proved without holding of regular enquiry, the removal or dismissal from service of a civil servant on the basis of summary enquiry is not sustainable in law---Charges of defiance of orders of superiors; being rude to his colleagues and having concealed the factum of having a job in another department, which the civil servant had denied involved factual controversy which could not be resolved without holding regular enquiry and services in such a situation could not be terminated without such enquiry.

Deputy Inspector-General of Police, Lahore and others v. Anis-urRehman Khan PLD 1985 SC 134; Alamgir v. Divisional Forest Officer, Multan and others 1993 SCMR 603; Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another 1993 SCMR 1440; Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC

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222 and Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1996 PLC (C.S.) 868 ref.

Ehsan Sabri, Assistant Advocate-General, Punjab for Petitioners.

Malik Amjad Pervez, Advocate Supreme Court for Respondent.

Date of hearing: 5th June, 1997.

ORDER

AJMAL MIAN, ACTG. C.J.---This is an appeal with the leave to this Court against the judgment dated 30-11-1994 of the Punjab Service Tribunal, Lahore, hereinafter referred to as the Tribunal, passed in Appeal No.657 of 1992, filed by the respondent against the termination of his service by an order dated 29-5-1991 while working as a Stenographer in the Office of the Project Director, Paediatric Hospital/Institute, Lahore, hereinafter referred to as the Institute, allowing the same as follows:--

"18. Section 10(3) *ibid* prescribes 30 days' notice and not 10 days. Obviously it did not meet the requirement. In any event section 10 had no application inasmuch as it was not an ad hoc appointment. Parties were agreed that it was regular employment though they differed as to the precise date of joining it on the part of the appellant. Thus, 10 days' notice did not improve the situation.

19. As a result the appeal is allowed. The impugned order is set aside and the appellant is re-instated with back benefits. "

2. The brief facts are that the respondent was employed on 26-4-1986 on contract basis by the Health Department at the behest of the Project Director of the Institute. It seems that at the time of the respondent's induction into service, there were no rules to govern terms and conditions of the staff of the Institute. The rules were subsequently framed, which came into force with effect from 28-10-1988. It appears that after the framing the aforesaid rules, the respondent's services were regularised by an order dated 8-1-1989 retrospectively i.e. from the date when he joined the Institute on 26-4-1986. It was also stated in the aforementioned order of regularisation that like others, the respondent would also be treated as a civil servant and governed by the rules applicable to them. It further seems that the respondent's services were terminated by an order dated 18-5-1991. However, the above termination order was not acted upon and the respondent was served with a show-cause notice, calling upon him to explain as to why he observed local holidays without permission and why he used to leave the office without permission while his officers were still working in the office and thereby committed an act of misconduct and indiscipline. He was required to submit his reply within 10 days. It appears that before the expiry of above period of 10 days, the department served another notice dated 22-5-1991 upon the respondent, further charging him with defiance of orders of the superiors, being rude to his colleagues, having concealed the factum of having a job of a Stenographer with the Board of Excellence of Education by making a formal application there etc. It seems that the respondent refuted all these allegations. He also expressed his apprehension that he would not get justice from appellant No.4 Project Director of the Institute and requested that an Enquiry Officer might be appointed to look into the charges. It was further asserted by him that he was no more on probation and he had become a regular incumbent, whose services could not have been terminated especially by aforesaid order dated 18-5-1991. On receiving the above reply from the respondent, the Project Director of the Institute (i.e. appellant No.4) by his aforesaid order dated 29-5-1991 terminated the respondent's services. After that the respondent filed a departmental appeal and then approached the Tribunal through the aforementioned appeal, which was upheld in the above terms. Thereupon, the appellants i.e. the Government of the Punjab and other officials, filed a petition for leave to appeal, which was granted to consider, as to whether the respondent's services could be terminated under section 10(3) of the Punjab

Civil Servants Act, 1974, hereinafter referred to as the Act, by serving 30 days notice as he was a temporary employee.

3. In support of the above appeal Mr. Ehsan Sabri, learned Assistant Advocate-General, Punjab, has vehemently contended that since the respondent was employed on contract basis and as he was a temporary employee, his services could have been terminated by serving 30 days' notice and, therefore, the respondent, at the most, was entitled to one month's salary in lieu of the notice period. '

On the other hand, Malik Amjad Pervaiz, learned Advocate Supreme Court for the respondent, has strongly urged that factually the respondent was a permanent employee of the Institute as he was inducted against a permanent post and his services were regularised after the enforcement of the rules with effect from 28-10-1988. His further submission is that even if it is to be held that the respondent was a temporary employee of the Institute, his services could not have been terminated under section 10 of the Act read with Rule 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, hereinafter referred to as the Rules, particularly by condemning the respondent without holding an enquiry.

4. In order to appreciate the respective contentions of the learned counsel for the parties, it may be pertinent to reproduce the above termination order dated 29-5-1991, which reads as under:--

"Whereas Mr. Riaz ul Haq Stenographer of this office was served with Memo. No.PF/4182/PH & I, dated May 18, 1991 to put up his defence in writing or otherwise as to why his services may not be terminated during probation under section 10 of the Punjab Civil Servants Act, 1974 read with Rules 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 on account of his work and conduct during the probation period being not satisfactory.

And whereas, he submitted a representation dated 26-5-1991 in this behalf which was given due consideration and he was also heard in person on the same day.

And whereas, the representation of the official having not been found satisfactory and he having not been able to prove his innocence in this behalf, therefore, in exercise of the powers conferred under section 10 of the Punjab Civil Servants, 1974, I hereby terminate his services with immediate effect in the public interest. "

A perusal of the above order indicates that the respondent's services were terminated on the ground that his performance was not found satisfactory and that he failed to prove his innocence. Reference has also been made to the show-cause notice and the reply submitted by the respondent, and it has been stated that the respondent's reply was given due consideration and was also afforded personal hearing.

5. It will not be out of context to refer to the aforesaid order dated 8-1-1989, whereby the respondent's services were regularised. The above, order is at pages 35 and 36 of the paper book, which indicates that the respondent's services were regularised on the following terms and conditions:-

"(1) that your service will be governed by the provisions of the Punjab Civil Servants Act, 1974 and all Rules/Regulations/Instructions framed thereunder;

(2) that you will be required to undergo a medical examination if not already done on your first entry into Government service, and your appointment will be subject to the conditions that you are declared medically fit by the competent medical authority.

(3) that your appointment will be subject to verification of your character and antecedents to the satisfaction of the Government.

(16)

(4) that your appointment in the Paediatric Hospital/Institute will be on temporary basis liable to terminate on 30 days notice or pay in lieu thereof on either side.

(5) that you will be governed by such rules and orders relating to leave, T.A., Medical Attendance, Pay etc. as may be issued by the Government from time to time for the category of Government servants to which you will belong."

6. It is evident from the abovequoted terms and conditions that the respondent's services were to be governed by the provisions of the Act and of the Rules/Regulations/Instructions framed thereunder. It is also manifest that the respondent's services were on temporary basis, which were liable to be terminated on 30 days' notice or pay in lieu thereof on either side.

7. Without going into the controversy, as to whether the respondent's claim that he was a permanent employee, we may observe that there is a marked distinction between simpliciter termination of services in accordance with the terms of appointment and the termination of services on the ground of misconduct. There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular enquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct. In this regard, reliance has been placed by the learned counsel for the respondent on the case of Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393), in which Waheeduddin Ahmad, J. has succinctly brought out a distinction between termination of services of a probationer on the ground of unsatisfactory performance and the ground of misconduct as follows:--

"In the light of the above discussion, it appears to me that a probationer is a person who is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service. I agree with the view expressed in Muhammad Afzal Khan v. The Superintendent of Police, Montgomery and Riaz Ali Khan v. Pakistan, that a person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice. In my opinion, if the service of a probationer is terminated on the ground of unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in terms of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a stigma in his favour. In the last-mentioned case, the probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and will be entitled to a show-cause notice and a proper enquiry against him must be made. "

8. The above view was reiterated by this Court in the case of Pakistan (Punjab Province) v. Riaz Ali Khan (1982 SCMR 770) as under:--

"From the pleadings of the parties it is clear that there was no latent stigma of misconduct but the sole ground of termination of service was his unsatisfactory work which was also apparent from the explanation submitted by the respondent. Therefore, the result of this appeal is concluded by a judgment of this Court reported as Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393). It was observed in this case at page 401 that a probationer is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service; and if the service of a probationer is terminated on the ground of unsatisfactory work, it will not amount to dismissal or removal from service. Such termination will be in accordance with the terms of the contract or the Rules made by the Government in that behalf. However, a distinction was drawn that if such termination was on the ground of

misconduct then it will be subject to the Constitutional protection which is not the case here."

9. We respectfully agree with the proposition of law as enunciated in the above reports. The same is in line with the view which we are inclined to take and which has been highlighted hereinabove.

It may be observed that in the present case, inter alia, the respondent was charged with defiance of the orders of his superiors, being rude to his colleagues, having concealed the factum of having a job of a Stenographer with the Board of Excellence of Education etc., which the respondent had denied and, therefore, there was a factual controversy which could not have been resolved without holding regular departmental disciplinary proceedings. In this regard, reference may be made to the following cases: --

- (i) Deputy Inspector-General of Police, Lahore and others v. Anis-ur Rehman Khan (PLD 1985 SC 134);
- (ii) Alamgir v. Divisional Forest Officer, Multan and others (1993 SCMR 603);
- (iii) Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440);
- (iv) Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222); and
- (v) Ghulam Muhammad Khan v. Prime Minister of Pakistan and others (1996 PLC (C.S.) 868);

In all the above reports, it has been held that if an accused civil servant/employee is charged with misconduct of the nature which cannot be proved without holding of a regular enquiry, the removal or dismissal from service of a civil servant on the basis of a summary enquiry is not sustainable in law. It will suffice to reproduce para. 5 from the last report, which reads as under:--

"5. It has been consistently held by this Court that there is a marked distinction between Rule 5 and Rule 6 of the Rules, inasmuch as under the former Rule, a regular inquiry can be dispensed with, whereas the latter Rule envisages conducting of regular inquiry which will necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with. Reference may be made in this behalf to the case of Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222)."

10. The above cases support the view of the Tribunal that the respondent's services could not have been terminated in the manner which was resorted to in the present case.

11. The upshot of the above discussion is that the instant appeal has no merits and the same is, accordingly, dismissed. However, there will be no order as to costs.

2008 P L C (C.S.) 715

[Lahore High Court]

Before Hafiz Tariq Nasim, J

Rana ASIF NADEEM

Versus

**EXECUTIVE DISTRICT OFFICER, EDUCATION, DISTRICT NANKANA and
2 others**

Writ Petitions Nos.352, 1080, 7960 to 7971, 2225, 6723, 6724, 6828, 8189, 7028, 6292, 7993 of 2007 and 11015 of 2006, decided on 12th March, 2008.

(a) Constitution of Pakistan (1973)---

---Art 199---Constitutional petition---Civil service---Contract employees---Jurisdiction of High Court---Scope---When matter is between Government and its employees on contract basis and there is no question of any statutory or non-statutory organizations and rules involved in the case High Court can exercise its jurisdiction under Art.199 of the Constitution.

Karachi Development Authority and another v. Wall Ahmed Khan and others 1991 SCMR 2434; Lal Din v. Vice-Chancellor and others 1994 PLC (C.S.) 880; Mrs. Anisa Rehman v. P.I.A.C. and another 1994 SCMR 2232; Muhammad Ashraf v. Director-General, Multan Development Authority, Multan and another 2000 PLC (C.S.) 796; Administrator, District Council Larkana and others v. Ghulab Khan and 5 others 2001 SCMR 1320; Arshad Jamal v. N.-W.F.P. Forest Development Corporation and others 2004 SCMR 468; Muhammad Mushtaq v. Chancellor, Government College University, Faisalabad 2005 PLC (C.S.) 1300 and Mrs. Munawar Sani v. Director Army Education 1991 SCMR 135 rel.

(b) Constitution of Pakistan (1973)---

---Art. 175---Judicature---High Court, establishment of---Object---High Court is established to provide justice to aggrieved party albeit on merits and according to law.

(c) Constitution of Pakistan (1973)---

---Art. 199---Constitutional petition---Civil service---Contract employees---Termination of service---Principles of natural justice---Applicability---Illegal appointments---Petitioners were employed as teachers on contract basis for three years--After a few months when the petitioners had joined their duties, their appointment letters were withdrawn and their services were terminated on the ground that the appointments were illegal---Plea raised by petitioners was that no notice was given to them before termination of their contracts and they were condemned unheard---Validity---Before passing the termination order, neither any inquiry was conducted nor petitioners were served with show-cause notice, nor they were heard by authorities concerned, thus, they were condemned unheard---If at all it was found that the then authorities had made illegal or irregular appointments, even then the petitioners could not be held responsible for the same---High Court set aside the termination letters and reinstated the petitioners in service with effect from the date of their termination with back-benefits---Constitutional petition was allowed accordingly.

Director Social Welfare, N.-W.F.P. Peshawar v. Sadullah Khan 1996 SCMR 1350; Chairman, Minimum Wage Board Peshawar and another v. Fayyaz Khan Khattak 1999 SCMR 1004; Collector of Customs and Central Excise, Peshawar and 2 others v. Abdul Wahced and 7 others 2004 SCMR 303; Muhammad Akhtar Shirani and others v. Punjab

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Text Book Board and others 2004 SCMR 1077 and Abdul Salim v. Government of N.-W.F.P. through Secretary, Department of Education, Secondary N.-W.F.P. Peshawar and others 2007 PLC (C.S.) 179 rel.

(19)

(d) General Clauses Act (X of 1897)---

---S. 21---Locus poenitentiae, principle of---Applicability---Civil service---After issuance of appointment orders, petitioners joined service performed their duties, drew their salaries, whereafter their appointment letters were cancelled without any notice to them---Effect---Valuable right having accrued in favour of petitioners that could not be recalled in view of well-established principle of locus poenitentiae.

Liaquat Ali Memon and others v. Federation of Pakistan and others PLD 1994 SC 556; Secretary to Government of N.-W.F.P. and another v. Muhammad Nawaz and another PLD 1996 SC 837; Rukhsar Ali and 11 others v. Government of N.-W.F.P. through Secretary Education, Peshawar and 3 others 2003 PLC (C.S.) 1453; Pakistan International Airlines Corporation through Chairman and others v. Shahzad Farooq Malik and another 2004 SCMR 158 and Chairman/Managing Director, Pakistan International Airlines Corporation and another v. Nisar Ahmad Bhutto 2005 SCMR 57 rel.

Mrs. Rizwana Anjum Mufti for Petitioner.

Naeem Masood, Asstt. A.-G. Punjab for Respondents.

ORDER

HAFIZ TARIQ NASIM, J.--- In view of the similarity of facts and questions of law, I propose to decide all the Writ Petitions Nos.352 of 2007, 1080 of 2007, 7960 to 7971 of 2007, 2225 of 2007, 6723 of 2007, 6724 of 2007, 6828 of 2007, 8189 of 2007, 7028 of 2007, 6292 of 2007, 7993 of 2007 and 11015 of 2006 through this single order.

2. In response to the advertisement in press all the petitioners applied, for the advertised posts, they were called for interview by the duly constituted Committee, who after examining the eligibility of the petitioners, determined their suitability, recommended for their appointments and ultimately the petitioners were appointed but of course on contract basis for a period of three years in the year 2006. Accordingly the petitioners joined, performed their duties but unfortunately without any complaint whatsoever all of them were ousted from service through the impugned orders whereby the petitioners' appointments were cancelled from the date of its issuance, treating these appointments as illegal and without merit---

3. Aggrieved by this, the petitioners filed departmental representations/appeals but with no result and as such approached this Court through these present writ petitions.

4. The learned counsel for the petitioners submit that while cancelling the appointment orders, neither the petitioners were served with a show-cause notice, nor they were provided an opportunity of hearing and even the provisions of contract were not adhered to resulting into serious miscarriage of justice.

5. On the other hand, the learned Assistant Advocate-General Punjab, Lahore opposed the writ petitions with vehemence and submits that the writ petitions are not maintainable because the petitioners are regulated by the principle of Master and Servant, it is the domain of the competent authority either to retain the petitioners or to cancel their contract because a contract employee has no right for continuation in service.

6. Arguments heard; record perused.

7. So far the objection of law of Master and Servants applicability and non-maintainability of the writ petitions is concerned, it is repelled on the short ground that there are series of judgments whereby this Court can interfere in such-like controversy which is under dispute. (20)

8. In support of my view, reliance can be made on those very judgments wherein even the employees of the statutory corporations having non-statutory rules when felt aggrieved of the orders of the management, approached the High Court, the High Court in exercise of its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 came for their rescue, whereas in the present controversy the matter is between the Government and the employees and there is no question of any statutory or non-statutory organizations and rules meaning thereby that the cases of the present petitioners are on better footing than the cases of statutory corporations.

9. As mentioned above, that in cases of statutory corporations, this Court interfered on different occasions and for that the following judgments can be quoted.

Karachi Development Authority and another v. Wall Ahmed Khan and others 1991 SCMR 2434, wherein it is held,

"If the statutory body is amenable to the writ jurisdiction the remedy under Article 199 would be available to challenge the mala fide exercise of statutory authority."

Lal Din v. Vice-Chancellor and others 1994 PLC (C.S.) 880 wherein it was held,

"Employee's service being governed by the rules and regulations framed under the statute, relationship of Master and Servant was not applicable---Premature retirement of an employee being not warranted by law, order of his retirement was without lawful authority and of no legal effect and thus, quashed."

Mrs. Anisa Rehman v. PIAC and another 1994 SCMR 2232 it is held that,

"Maxim "audi alteram partem" would be applicable to judicial as well as to non-judicial proceedings and it would be read into every statute as its part if right of hearing has not been expressly provided therein---Violation of the maxim could be equated with the violation of a provision of law warranting pressing into service constitutional jurisdiction."

Muhammad Ashraf v. Director-General, Multan Development Authority, Multan and another 2000 PLC (C.S.) 796 a Division Bench of this Court held,

"Law of Master and Servant is a notion of English common law and does not emanate from any constitutional provision or even a statute or some Injunctions of Holy Qur'an or Sunnah of the Holy Prophet (p.b.u.h.)---Resort to rule of English Common Law could not be taken in view of Art.2-A of the Constitution of Pakistan.

Rule of master and servant---Where jurisdictional bars have been enacted, against superior judiciary, in legislative measures, such bars and fetters, if within the legislative and constitutional bounds, may take effect with exception of an action which was mala fide; an action which was without jurisdiction and an action which was coram non iudice---Where relationship between the parties was governed by the rule of master and servant, action adverse to the servant falling with such three exceptions would not be exempted from scrutiny of High Court---Constitutional petition, therefore, was maintainable."

Administrator, District Council Larkana and others v. Ghulab Khan and 5 others 2001 SCMR 1320 it was held that,

"High Court would become competent in issuing a direction to the respondents who are admittedly persons performing functions in connection with the affairs of the Federation/Provinces, to do a thing which they are required by law to do within the jurisdiction of the High Court."

Arshad Jamal v. N.-W.F.P. Forest Development Corporation and others 2004 SCMR 468. it is categorically held,

"The question arises whether the appellant can maintain Constitutional petition even if no statutory rules had been framed by the Provincial Government if the above said rules are deemed to have not been framed properly as they had not been notified through official Gazette. It has been held in Pakistan International Airlines Corporation v. Nasir Jamal Malik and others 2001 SCMR 934 and Abdul Hafeez Abbasi and others v. Managing Director Pakistan International Airlines Corporation and others 2002 SCMR W34 that where a removal order of such an employee of corporation even in the absence of statutory rules is made on particular grounds which are in the nature of charges, the employee has a vested right of hearing before any order adverse to his interest was passed by virtue of principle of audi alteram partem which was the least requirement."

Muhammad Mushtaq v. Chancellor, Government College University, Faisalabad 2005 PLC (C.S.) 1300, it is held,

"Absolute power and authority cannot be arrogated to or exercised by any State functionary---Concept of Master and Servant relationship has undergone a change and the relationship of master and servant does not confer unbridled or unfettered powers to act whimsically or capriciously in violation of the principles of natural justice and well-settled norms of justice."

10. In addition to this I can rely on a judgment of the Honourable Supreme Court of Pakistan reported as Mrs. Munawar Sani v. Director, Army Education 1991 SCMR 135. This case was related to a civil servant and the aggrieved civil servant approached the High Court for the redressal of her grievance, the point of jurisdiction was raised even up to the level of Honourable Supreme Court of Pakistan and the same was resolved in the following terms:

"The question whether she should approach the Civil Court or the Service Tribunal for this purpose was not very pertinent in the face of bound-down obligation of the authorities to satisfy this claim themselves without the necessity of driving a needy litigant from pillar to post."

11. To my mind this objection of the learned Assistant Advocate-General Punjab, Lahore is repelled; that in my understanding the High Court is established to provide justice to an aggrieved party albeit on merits and on law.

12. Now coming to the merits of the case, suffice it to say that the impugned termination/cancellation of appointment letters' plain reading reveals that allegedly some illegality or irregularities were found by the authorities in the original orders of the petitioners' appointments. In such-like controversy it is well-settled law laid down by the Honourable Supreme Court of Pakistan that "whenever there is some element of allegation in the termination order without resorting to the procedure of regular inquiry, no one can be non-suited despite the fact that the employee is even on contract". Reliance in this respect can be made on a judgment of Honourable Supreme Court of Pakistan reported as Muhammad Amjad v. WAPDA.1998 PSC 337.

13. Admittedly in the present cases the record produced by the departmental representative reveals that before passing the impugned order neither any inquiry was conducted nor the petitioners were served with show-cause notice, even they were not heard by the authorities concerned, meaning thereby that the petitioners were condemned unheard which otherwise is a violation of law laid down in Pakistan

International Airlines (P.I.A.C.) through its Chairman and others v. Nasir Jamal Malik and others 2001 PSC 1.

(22)

14. It is also an admitted fact that after the issuance of appointment orders the petitioners joined, performed their duties, drew their salaries and as such a valuable right had been accrued in favour of the petitioners which could not be recalled in view of well-established principle of locus peonitiae. On this principle reliance can be placed on Liaquat Ali Memon and others v. Federation of Pakistan and others PLD 1994 SC 556, Secretary to Government of N.-W.F.P. and another v. Muhammad Nawaz and another PLD 1996 SC 837, Rukhsar Ali and 11 others v. Government of N.-W.F.P. through Secretary Education, Peshawar and 3 others 2003 PLC (C.S.) 1453, Pakistan International Airlines Corporation through Chairman and others v. Shahzad Farooq Malik and another 2004 SCMR 158 and Chairman/Managing Director, Pakistan International Airlines Corporation and another v. Nisar Ahmad Bhutto 2005 SCMR 57 and as such the impugned orders being violative of law (supra) cannot hold the field.

15. There is another aspect of the matter and that is, that if at all it is found that at the time of appointments, the then authorities made illegal or irregular appointments, even then in that eventuality the petitioners cannot be held responsible for the same and cannot be made sufferers whereas it is a well-settled law laid down by the Honourable Supreme Court of Pakistan in a number of judgments like Director Social Welfare, N.-W.F.P. Peshawar v. Sadullah Khan 1996 SCMR 1350, Chairman; Minimum Wage Board Peshawar and another v. Fayyaz Khan Khattak 1999 SCMR 1004, Collector of Customs and Central Excise, Peshawar and 2 others v. Abdul Waheed and 7 others 2004 SCMR 303, Muhammad Akhtar Shirani and others v. Punjab Text Book Board and others 2004 SCMR 1077 and Abdul Salim v. Government of N.-W.F.P. through Secretary, Department of Education Secondary N.-W.P.P. Peshawar and others 2007 PLC (C.S.) 179, wherein it is held that instead of penalizing the employees, the responsible be taken to task.

16. It is not the case of the respondent/department that any of the petitioners was not eligible at the time of appointment as per requirement of the advertisement and the post.

17. It was specifically asked to the departmental representative that if some of the petitioners is found ineligible for the said posts it be mentioned even before this Court but the departmental representative after consulting the record could not controvert the eligibility of any petitioner so in the presence of such record, I have left no other option except to set aside the impugned orders whereby the petitioners were terminated/their appointment orders were cancelled.

18. Resultantly, all the petitioners are reinstated into service with effect from the date of their termination.

It is clarified that in compliance to the orders of this Court, the petitioners shall be entitled for the pay of the intervening period from the date of their termination to the date of reinstatement because they could not perform their duties with no fault of them rather, they remained out of service due to the inaction of the departmental authorities which is declared illegal. With these observations all the writ petitions are accepted with no order as to costs.

M.H./A-2/L

Petitions allowed.