

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-4105 of 2024
(*Tariq Ali versus Federation of Pakistan & others*)
Constitutional Petition No. D-4106 of 2024
(*Raja Mushtaque Ahmed Bhatti versus Federation of Pakistan & others*)
Constitutional Petition No. D-4107 of 2024
(*Imtiaz Ali versus Federation of Pakistan & others*)

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

Date of hearing and order:- 03.11.2025

Mr. Muddasir Ghumro advocate for the petitioner
Ms. Wajiha M Mehdi, Assistant Attorney General along with
Aurangzeb, Assistant Director (Admn) National Institute of Public
Respondent Nos. 2 & 3.

ORDER

Muhammad Karim Khan Agha, J: The petitioners have prayed
as under:-

- To declare that the impugned order No. 3/21/84-NIM (Admin) dated 26.04.2024, passed by Respondent No.3, and order No. 3/21/84-NIM (Admin) dated 03.01.2024, passed by Respondent No.5, are unlawful, illegal, null, and void ab initio.*
 - To declare that the respondent No.3 is not an authorized officer to pass the impugned order. The acts of respondents No. 3 & 5 are illegal, discriminatory, and against the due process of law.*
 - To direct the respondents to reinstate the petitioner from the date of the suspension order dated 03.01.2024 and release all unpaid salaries with other benefits.*
 - To suspend the operation of its order passed on dated 26.04.2024, till the disposal of this petition.*
 - To direct the respondents to release all the unpaid salaries and restore the petitioner's services till the decision of this petition.*
2. The petitioners are ex-employees of the National Institute of Management (NIM), who were awarded the major penalty of compulsory retirement for alleged misconduct following departmental inquiry proceedings. The petitioners were initially appointed on a contract basis in 2009 and subsequently regularized by the department in 2022. They had been serving as P.A. (BS-16), Superintendent Works (BS-17), Driver, and LDC for several years, during which no allegations of corruption or misappropriation were ever raised against them. Feeling aggrieved and dissatisfied with the impugned order of compulsory retirement passed by the Director General, NIM Karachi, the petitioners have approached this Court. It is further stated that although their departmental appeal was heard on 24.07.2024, no order has been passed thereon to date.
3. Learned counsel for the petitioners contended that the impugned orders dated 03.01.2024 and 26.04.2024, whereby major penalties of

compulsory retirement were imposed upon the petitioners, are unlawful, void ab initio, and passed without jurisdiction. He submitted that Respondent No.3 was not authorized to pass the impugned order, and the proceedings were conducted in violation of due process and the Civil Servants (Efficiency and Discipline) Rules, 2020. It was argued that the inquiry committee acted beyond the scope of the charge sheet, failed to record conclusive findings or evidence, and ignored the petitioners' objections against the inquiry members. The Director General also disregarded the petitioners' right to a fair hearing. The learned counsel submitted that the alleged acts did not constitute misconduct and that the penalty was predetermined and disproportionate. He emphasized that the petitioners, being regular employees and sole breadwinners of their families, have been subjected to severe hardship due to the stoppage of salaries. Reliance was placed on Province of Sindh & others v. Ghulam Fareed & others (2014 SCMR 1189), Salim Raza v. Government of Sindh & others (2001 PLC (CS) 1123), John Haider v. Director Food Sindh & others (2005 PLC (CS) 203), and Shaikh Abdul Majid v. Government of Sindh & others (PLD 1994 Karachi 367).

4. Conversely, the learned Assistant Attorney General argued that the petitioners were appointed on a contractual basis, later made regular employees, and were inefficient and problematic workers with a history of warnings. Disciplinary proceedings were initiated against them under the Civil Servants (Efficiency and Discipline) Rules, 2020, on charges of misconduct. After a proper inquiry and findings of misconduct, major penalties were proposed and imposed following the issuance of show cause notices in accordance with Rule 16(6) of the said Rules. She maintained that the impugned orders were issued lawfully and after following due process, and therefore, the petition deserves to be dismissed.

5. We have heard learned counsel for the parties and have perused the material available on record with their assistance.

6. Under Rule 2(k) of the *Government Servants (Efficiency and Discipline) Rules, 2020*, the term “misconduct” has been defined to include any act or omission which is unbecoming of a government servant, contrary to the prescribed code of conduct, or prejudicial to good order, discipline, or the legitimate interests of the Government or its institutions. The definition is broad enough to encompass behaviour that undermines administrative discipline, affects official decorum, or tarnishes the reputation of a department or public office.

7. Under the Civil/Government Servants (Efficiency & Discipline) Rules, 2020 the competent authority can impose “compulsory retirement” as a major penalty for inefficiency/misconduct/corruption, but it must follow the procedure laid down in the Rules (notice, opportunity, inquiry where required). In the present case, disciplinary proceedings were initiated against the petitioners under the said Rules for certain acts alleged to be in violation of service discipline. The accusations included using the platform of the NIM Employees Welfare Association to exert undue influence in service and promotion matters; provoking employees to create unrest and disharmony against the management of the Institute; communicating false and unverified allegations against senior officers to external authorities in violation of the communication channels prescribed under Chapter XVIII of the *ESTACODE*; demanding official records beyond the entitlement available under Rule 13.1 of the *ESTACODE*; misusing their position as office bearers of the Association by engaging in activities detrimental to institutional discipline, contrary to the conditions set forth in the NSPP’s letter dated 24.09.2009; and levelling baseless allegations of incompetence, bias, and corruption against the Directing Staff (Admin), including demands for his removal. Nevertheless, while such conduct *prima facie* may fall within the ambit of misconduct, it is equally settled that the imposition of penalty must be proportionate to the gravity of the offence and supported by a fair, transparent, and legally compliant inquiry. It has been repeatedly emphasized by the courts that procedural irregularities, absence of evidence, or pre-determined findings can render disciplinary action void, even where the acts complained of technically amount to misconduct. Therefore, the legality of the impugned penalty ultimately depends not only on whether the alleged conduct qualifies as misconduct but also on whether the inquiry proceedings were conducted in accordance with the due process of law.

8. The Supreme Court held that allegations of dishonesty/corruption/negligence that involve disputed questions of fact cannot be resolved without regular inquiry. It said that if departmental action is being taken on such charges, regular inquiry is normally required unless there are *justifiable reasons in writing* to dispense with it. For this purpose, the nature of allegations against the delinquent official has to be considered. In a case when it is clear to the authority that the allegations could be decided with reference to admitted record or it forms an opinion that un-rebuttable evidence on the touchstone of QANUN-E-SHAHADAT, to prove the charge against the accused/employee is available on the record, the procedure for regular inquiry, may be dispensed with, otherwise, the ends of justice demand an inquiry. There can be a situation where real fate of allegations can only be

adjudged by a regular inquiry and not by mere textual proof. The Supreme Court of Pakistan in the case of Abdul Qayyum vs. D.G. Project Management Organization JS HQ, Rawalpindi and 2 others (2003 SCMR 1110) held that the requirement of regular inquiry could be dispensed with in exceptional circumstances. Where recording of evidence was necessary to establish the charges, then departure from the requirement of regular inquiry under the Rules would amount to condemning a person unheard.

9. Adverting to the case, there is nothing available on record which could show that upon denying the allegations by the petitioners, any regular inquiry was conducted, and or any opportunity to cross-examine the witnesses was provided. As discussed above, in this case, specific allegations had been levelled against the petitioners, which included inefficiency and misconduct. When the petitioner, in response to the Show Cause Notice, had specifically denied the charges against them and considering the nature of charges, all those allegations required evidence, then it had become incumbent upon the authority to have ordered for a regular inquiry and in the above given situation, departure from normal course does not reflect bona fides on the part of the authority. In this regard, reliance can be placed on the case of Basharat Ali v. Director, Excise and Taxation, Lahore and another (1997 PLC [CS] 817) [Supreme Court of Pakistan]. It is by now well settled that the right to a fair trial means the right to a proper hearing by an unbiased, competent forum. Right to a fair trial has been associated with the fundamental right of access to justice, which should be read in every statute, even if not expressly provided for, unless specifically excluded. While incorporating Article 10A in the Constitution and making the right to a fair trial a fundamental right, the legislature did not define or describe the requisites of a fair trial, which showed that perhaps the intention was to give it the same meaning as is broadly universally recognized and embedded in jurisprudence in Pakistan. Reliance can be placed on the SUO MOTU CASE NO.4 OF 2010 (PLD 2012 SC 553).

10. Prima facie, the record shows that the committee pre-decided the matter based on purported involvement of the petitioners in union activities, which factum needs to be thrashed out by conducting regular inquiry by allowing the petitioners to cross examine the witnesses and not by way of questioners; as such the impugned orders are liable to be declared illegal notwithstanding that whether the alleged acts *prima facie* fall within the scope of “misconduct.”

11. The upshot of the above discussion is that the impugned orders and imposition of Major Penalty of compulsory retirement, passed against the

petitioners is not sustainable in law. Consequently, these petitions are allowed, the impugned orders in all petitions are set-aside with the directions to pay the back benefits to the petitioners curtailed due to imposition of major penalty. However, the respondents if so advised, shall be at liberty to initiate de novo regular inquiry in the matter in accordance with law. The inquiry, if any, should be completed within a period of two months from the date of communication of this order.

HEAD OF CONST. BENCHES

JUDGE

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