

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**C.P No.D-569 of 2017**

Present:-

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

Ghulam Rasool Bhagat.....Petitioner

Versus

Federation of Pakistan and others.....Respondents

-----

**Date of hearing 21.04.2017**

Syed Ashique Raza, Advocate for the Petitioner.

Mr. Ali Tufail Ebrahim, Advocate for Respondent No.2 & 3.

Mr. Muhammad Aslam Butt, D.A.G.

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON,J:-** The Petitioner has approached this Court on the assertion that the Termination Order dated 27.1.2017 passed by Respondent No.2 is without observance of legal procedure and in violation of fundamental principles of natural justice and equity.

2. Brief facts of the case are that the Petitioner joined National Insurance Corporation a statutory body (hereinafter referred to as NIC) as Departmental Officer (BS-17) in the year 1990. Petitioner has asserted that in the year 2000 other colleagues of the Petitioner were promoted to the next rank and he was left out, though he was at Serial No. 3 of the Seniority List issued by the Respondent-Company. Petitioner on denial of his right to promotion, submitted Departmental Appeal to the then Chairman,

National Insurance Company Limited (hereinafter referred to as NICL) but, his prayer was turned down by the Management of the Respondent-Company without any rational reasoning. Petitioner added that in the year 2002 yet again his juniors were promoted as Assistant Manager (A.M) and he was deprived from his due promotion on the premise that he did not meet the requirements of the promotion test. Petitioner again moved a Representation to the then Chairman, NICL but to no avail. On the contrary, Petitioner was served with a Show Cause Notice on the accusation that the Petitioner used critical remarks against the Chief Executive Officer (CEO), NICL. On the said allegation, a Departmental Inquiry was constituted by the Respondent-Company against the Petitioner. In the said Inquiry proceedings, the Petitioner was found guilty and recommendation was made for his removal from service. Subsequently, on 19.2.2002 Petitioner was terminated from service. But he impugned the Termination Order dated 19.02.2002 before the learned Federal Service Tribunal, Islamabad, which was abated, due to judgment passed by the Honorable Supreme Court in the case of Mubeen-ul-Islam vs. Federation of Pakistan and others (PLD 2006 SC602). Accordingly, order of abatement was passed by the learned Registrar, Federal Service Tribunal, Karachi. However, in the meantime, the Honorable Supreme Court passed another judgment in the case of Muhammad Idrees vs. Agricultural Development Bank of Pakistan & others (PLD 2007 SC. 681), consequently, the Service Appeal of the Petitioner in compliance of the ibid judgment was restored to its original position and was re-fixed on 13.6.2009 for hearing.

However, meanwhile the Petitioner filed an Appeal for his reinstatement in service before the then Chief Executive Officer (CEO), NICL, who was pleased to order for fresh inquiry in the case of the Petitioner. In the enquiry proceedings, the Petitioner was declared innocent in the month of November, 2008. Subsequently, the Petitioner was recommended for reinstatement in service along with back benefits. Accordingly, in July, 2009 the service of Petitioner was restored with retrospective effect i.e. 19.09.2002. Petitioner further added that despite clear findings of the Enquiry Committee in favour of the Petitioner, he was not granted seniority and promotion by Respondent-Company. Feeling aggrieved and dissatisfied, the Petitioner moved Representation before the Respondent No.2, who constituted a Fact Finding Committee in this regard. On 16.11.2013 the committee gave its findings/recommendations to the effect that the Petitioner may be promoted but the said recommendation was never acted upon by the Respondent No.3. On 06.09.2016, Petitioner was issued 'warning letter' by Respondent-Company whereby he was asked to refrain from further correspondence with the Respondent No. 3 on the issue of seniority and promotion. However, after service, Petitioner was again terminated from service on 27.1.2017. Hence, the Petitioner preferred the instant Constitutional Petition.

3. Respondents No. 2 and 3 filed comments and denied the allegations leveled against them.

4. Syed Ashique Raza, learned counsel for the Petitioner has contended that Petitioner being Senior Officer of NICL has been

denied the right of seniority and promotion, which is violation of National Insurance Corporation (Staff) Service Regulations, 1976. He next contended that in the month of January 2001, juniors of the Petitioner were promoted to the post of Assistant Manager (AM) vide office order dated 01.01.2001 whereas, the Petitioner was not considered for promotion without any reason, despite the fact that he was senior and eligible for the post of Assistant Manager. He further contended that in the year 2002, Respondent-Company again played the same role by not considering the case of Petitioner for promotion while officers junior to him were promoted to the post of Assistant Manager vide office Order dated 20.05.2002. He next contended that the Petitioner's request for due promotion was treated as disobedience/misconduct committed by him as such he was issued a Show Cause Notice without assigning any cogent reason and was dismissed from service on 19.09.2002 by the Respondent-Company. He further contended that Petitioner filed Departmental Appeal against the dismissal order but, NICL left the Petitioner in the lurch without providing him opportunity of hearing. He next contended that Petitioner after receiving no response from the Respondent-Company filed Service Appeal against the dismissal order before the learned Federal Service Tribunal, Karachi on 27.12.2002. In the meanwhile, the Respondent-Company reopened the enquiry on the directions of the then Chairman, NICL and the Petitioner was declared innocent, therefore, the Petitioner withdrew Service Appeal on 24.06.2009. He next contended that the commitment was made by the NICL to redress the grievance of the Petitioner but it was never fulfilled.

Therefore, the Petitioner approached the Minister of Respondent No.1 for redressal of his grievance in the year 2011. Ultimately, NICL Management constituted another Committee in the year 2013 headed by Mr. Muhammad Nusrat Hussain, who thoroughly examined the case of Petitioner with reference to documents and after due deliberations recommended that Petitioner be granted seniority and promotion. Accordingly, such recommendations were submitted by the Committee to the NICL Management for passing order on the subject regarding grant of seniority and promotion to the petitioner. But, the Respondent-Company never acted upon the said recommendation of the Committee. He further contended that Petitioner once again approached the Chief Executive Officer of Respondent-Company for implementation of Committee's recommendations and disposal of two Representations dated 06.06.2016 and 10.08.2016 respectively filed by him. But, the Respondent-Company was adamant not to pay any heed to the Petitioner's request. He added that instead of deciding the said Representations of the Petitioner, the Respondent No.2 and 3/NICL management issued 'warning letter' to him on 6.9.2016. He further contended that after receiving the said 'warning letter' the Petitioner approached the Chief Executive Officer, NICL for recalling the warning letter and requested for grant of due seniority and promotion in accordance with Committee's recommendations. He added that upon receiving said Representation, NICL management again issued harsh instructions to Petitioner to refrain from further correspondence with the Chief Executive Officer (CEO), NICL (Respondent No. 2) vide Letter dated

17.01.2017. Ultimately, Respondent No.3 issued the impugned Termination Order dated 27.01.2012 without adopting due process of law.

5. Mr. Ali Tufial Ebrahim, learned counsel for Respondent No.2 and 3 raised the preliminary issue of maintainability of the instant petition on the premise that NICL has no statutory rules of service and the Respondent-Company is being managed by the Human Resource Manual therefore, the instant Petition is not maintainable under the law. In support of his contentions, learned counsel relied upon an unreported case of Choudhary Aurangzeb (supra) and argued that in this case Hon'ble Supreme Court has held that Respondent-Company has no statutory rules of service. He also relied upon two orders passed in Writ Petitions by the learned Islamabad High Court and held that Writ Petition against NICL is not maintainable as Respondent-Company is being governed by Human Resource Manual, which has no statutory backing.

6. On merits, the learned counsel has contended that the Respondent-Company has reservations against the Petitioner so far as his activities are concerned because he has been charged with the allegation of misconduct for having documents of confidential nature, and such conduct of the Petitioner falls within the ambit of misconduct on his part. He next contended that Petitioner throughout his career has remained a trouble maker for the Management of NICL and he has breached the discipline and decorum of the Respondent-Company several times which is

misconduct. He next contended that the Petitioner has also been charged with the allegation of using derogatory language against the then Chairman, NICL which cannot be ignored. He further contended that promotion of the employees of NICL to management position is not solely based on Seniority but on numerous other factors including past performance, potential to assume more responsibilities, qualifications, adequate experience and performance in promotion examination especially the criterion laid down in Human Resource Manual are taken into consideration. He further contended that Petitioner was superseded in Departmental Promotion Committee due to promotion of other 6 (six) officers. He next contended that Representations moved by the Petitioner were examined by the Management of NICL and were not found tenable. He concluded by saying that the Petitioner was issued warning in view of his continuous involvement in unwarranted activities against the interest, decorum and discipline standards of NICL and was advised to abstain from such activities in future otherwise strict disciplinary action will be taken against him as per the Policy of NICL. But despite the said warning, Petitioner continued unwarranted activities to cause harm to the respondent company. Therefore, action was taken against the Petitioner within parameters of law and no violation of any law has been committed as alleged by the Petitioner.

7. Mr. Muhammad Aslam Butt, learned DAG argued that the National Insurance Corporation (Staff) Service Regulations, 1976 were adopted by the NICL which are statutory therefore, the

instant petition is maintainable and case of the Petitioner can be decided on merits. He further contended that case of the Petitioner is protected under Section 4 of National Insurance Corporation (Reorganization) Ordinance, 2000.

8. The learned counsel for the Petitioner in rebuttal on issue of maintainability has argued that this Court in the case of Roshan Ali Siddiqui Vs. National Insurance Corporation Ltd. vide order dated 11.11.2015 has held that the constitution petition is maintainable against the Respondent Company and the said judgment of this Court was upheld by the Hon'ble Supreme Court vide order dated 11.04.2017 in Civil Appeal No.1297 of 2016 (M/S National Insurance Company Ltd. vs. Roshan Ali Siddiqui and others). He also relied upon the case of Muhammad Rafi and others vs. Federation of Pakistan and others (2016 SCMR 2146) and argued that the Hon'ble Supreme Court has already declared that a constitution petition is maintainable, if there are no statutory rules of service. He also relied upon an unreported case of Choudhary Aurangzeb and others vs. National Insurance Company and others and argued that the Hon'ble Supreme Court vide order dated 26.05.2010 passed in Civil Petitions No. 436 and 897 of 2010 respectively has interpreted Section 4 (3) of the Ordinance, 2000 and held that rights of the employees upon transfer from a corporation to a company are protected and cannot be varied. He next argued that case of the Petitioner is not dealt with in accordance with the laws applicable thereto in violation of the above judgment of the Hon'ble Supreme Court. The learned

counsel further contended that the Petitioner has been condemned unheard throughout the proceedings which is a sheer violation of Article 10-A of the constitution. He concluded the arguments by submitting that service of the Petitioner is illegally terminated without any show cause notice, personal hearing and any enquiry in violation of the principles of natural justice and equity. He relied upon the case of Mrs. Anisa Rehman vs. PIAC and others (PLD 1994 SCMR 1232). The learned counsel for the Petitioner produced a copy of Human Resource Manual of NICL as amended up to 2010 along with other papers and argued that the Petitioner's case is protected under the previous laws which have been enacted prior to Ordinance, 2000 therefore, the instant petition is maintainable.

9. We have considered the contention of the learned counsel for both the parties and have minutely gone through the material available on record with their assistance and case laws cited at the bar.

10. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution. The background of the Respondent-Company is that NICL got status of a Public Sector Company under National Insurance Corporation (Re-Organization) Ordinance, 2000. Section 2(g) of Public Sector Companies, (Corporate Governance) Rules, 2013 defines the company as under:-

(g) *“Public Sector Company” means a company, whether public or private which is directly or indirectly controlled, beneficially owned or not less than fifty percent of the voting securities or voting power of which*

*are held by the Government or any instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors, and includes a public sector association not for profit, licensed under Section 42 of the Ordinance.”*

11. The profile of the Respondent-Company reveals that it is 100% owned by Government of Pakistan hence it is a Public Sector Company. In view of the above, the status of NICL, can ordinarily be regarded as a ‘Person’ performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution, therefore, High Court has jurisdiction to entertain the instant Constitutional Petition. The test laid down by the Honorable Supreme Court in the case of Pakistan Defense Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), is fully applicable to the instant Petition. Guidance is also taken from the decision of Hon’ble Supreme Court given in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383). In this context, the Honorable Supreme Court has held that two factors are most relevant i.e. the extent of financial interest of the State/Federation in an institution and the dominance in controlling the affairs thereof. On this issue we are also fortified with another judgment of the Hon’ble Supreme passed in the case of *Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.)* (2004 SCMR 1274) wherein it is held that a Constitutional Petition against a Public Limited Company is maintainable.

12. On conversion of a Corporation into a Company the terms and conditions of transferee employees are protected under Section 4 (3) of National Insurance Corporation (Reorganization) Ordinance, 2000. The claim of NICL management is that after conversion into Company by operation of Ordinance, 2000 *ibid*, the service issues of Respondent-Company are being dealt with by the Human Resource Manual only, which are non-statutory therefore, the instant petition is not maintainable. With respect, we disagree with the contention raised by the learned counsel for Respondent-Company for the reasons that the rules were framed under the Human Resource Manual but the Petitioner was not dealt with according to the National Insurance Corporation (Staff) Service Regulations, 1976, Rules which are applicable to his case. The said Regulations, 1976 along with other Rules [mentioned below] were adopted and approved by the Board of Directors of NICL (Respondent-Company) in its 7<sup>th</sup> and 8<sup>th</sup> meeting held on 19<sup>th</sup> and 20<sup>th</sup> November, 2001 respectively. Accordingly, Human Resource Manual was amended up to 1<sup>st</sup> January, 2010 and adoption of such legislations was mentioned therein, which is reproduced as follows for convenience:-

“Consequent upon the repeal of the NIC Act No. XXIII of 1976, the Board of Directors of the NICL adopted the following legislations with effect from 01 January, 2001:

- i. National Insurance Corporation (Staff) Service Regulations, 1976.
- ii. National Insurance Corporation Employees' (Medical Attendance) Regulations, 1976.
- iii. National Insurance Corporation Employees' Welfare Fund Regulations, 1976.
- iv. National Insurance Corporation (payment of Gratuity of Employees) order, 1976.

- v. National Insurance Corporation Employees' Provident Fund Regulations, 1977.
- vi. National Insurance Corporation Employees' (Pension) Regulations 1986.

13. In light of above, we are of the view that the instant Constitutional Petition is maintainable against the Respondent-Company.

14. Now coming to the question of repeal of National Insurance Corporation Act No. XXIII of 1976, suffice it to say that under Section 19 of the National Insurance Corporation Ordinance, 2000 the Board of Directors of the Respondent Company adopted the previous legislations with effect from 1<sup>st</sup> January, 2001 in order to extend the continuity of the terms of service of those regular employees who were appointed prior to 1<sup>st</sup> January 2001 and their services were transferred to newly incorporated National Insurance Company Limited under Section 4 of National Insurance Corporation (Reorganization) Ordinance XXXVII of 2000 and the question of non-statutory rules of service is diluted in this regard. Insofar as the issue of protection to the transferred employees is concerned, we are of the view that the position of the transferred employees is secured by a statute and a writ petition would be maintainable under Section 4 (3) of the Ordinance, 2000. There is no doubt that Petitioner was a transferred employee within the meaning of Section 4 (3) of Ordinance, 2000. Therefore, in our view the terms and conditions of the service of the Petitioner including those mentioned in Staff Service Regulations, 1976 would continue to be regulated by the position as it stood on the effective date

contemplated by the 2000 Ordinance. The Respondent Company was bound by Section 4 (3) of Ordinance, 2000 and had to give proper effect to the same. Therefore, the objection to maintainability of the instant Petition taken by the learned counsel for the Respondent No. 2 and 3 is rejected. Reliance is placed on the case of *Muhammad Zaman and others vs. Government of Pakistan and other (2017 SCMR 571)* in which the Hon'ble Supreme Court has determined the test of statutory or non-statutory nature of Rules/regulations. Reliance is also placed on an unreported decision dated 11.04.2017 passed in Civil Appeal No. 1297 of 2016 (M/s National Insurance Company Limited vs. Roshan Ali Siddiqui and others) wherein the Hon'ble Supreme Court upheld the decision given by Division Bench of this Court in C.P No. 1218/2014, whereby the issue of maintainability was raised by the NICL with respect to non-statutory Rules of service coupled with other legal objections.

15. The Respondent No.2 and 3 has also raised the similar objections which have already been discarded by this Court in the case of Roshan Ali Siddiqui supra while placing reliance upon many case laws of Hon'ble Apex Court:

16. This Court in the case of Roshan Ali Siddiqui supra has also dilated upon the issue of former statutory corporation which was converted into public limited company by Ordinance, 2000 as well as previous rules and regulations and their applicability on the transferred employee in the company and held in paragraph No.57 as follows:

“in our respectful view, insofar as the “former” statutory corporations are concerned, the position that emerges is as follows. If the position of transferred employees is secured by statute in a manner similar to the statutory provisions considered in the judgment cited above, then the relevant terms and conditions would be regarded as statutory in nature and a writ petition would be maintainable. This would be so regardless of the fact that any terms would be maintainable. This would be so regardless of the fact that any terms would be maintainable. This would be so regardless of the fact that any terms and conditions of service laid down subsequently by or in the “converted” entity itself (now a company registered under the company law) would be governed by the law of master and servant. Likewise, it would be irrelevant that the terms and conditions saved in favour of the transferred employees would, had the previous dispensation continued to prevail, been regarded as non-statutory in nature. The statutory terms of transfer would control and, if worded appropriately, would render the relevant terms and conditions statutory, with attendant consequences for maintainability.”

17. On merits, the moot point involved in this Petition is whether the Petitioner can be reinstated in service of Respondent-Company. The allegation against the Petitioner as set forth in the letter dated 17.01.2017 (available at page 269 of the file) is that the Petitioner submitted an Application to Chairman, NICL with supporting documents which purportedly were of confidential nature and access to such documents by the Petitioner was objected to being against the norms of Service. It is further alleged against the Petitioner that he is a habitual litigant and during the entire period of service with NICL he always remained a troublemaker for the Management. And Petitioner’s behavior and attitude towards the office discipline & decorum is alleged to be misconduct. Petitioner is also charged with the allegation that he used derogatory language against the then Chairman, NICL. Due to the said

reasons, Petitioner was terminated from service in the year 2002. It is further alleged against the Petitioner that he filed a case before the learned Federal Service Tribunal at Karachi in the year 2002 and also used political pressure on the management of NICL. Therefore, the then Chairman, NICL namely Mr. Ayyaz Khan Niazi reinstated the Petitioner into service with back benefits.

18. We have to look into the Termination Order dated 27.01.2017 issued by the Management of NICL (Respondent-Company) against the Petitioner to find as to whether any law has been violated and whether this Court has jurisdiction to examine the propriety of the impugned action taken against the Petitioner. For convenience, the contents of the impugned Termination Letter dated 27.01.2017 (available at page 275 of the file) are reproduced verbatim as follows:-

“You are hereby informed that in the best interest of National Insurance Company Limited (NICL), the Competent Authority has decided to terminate your service from the post of Deputy Manager at NICL with immediate effect.

You are therefore, advised to leave the premises of NICL without any further delay (i.e. immediately upon receipt of this letter).

Please note the final settlement of your dues, if any, shall be made in due course in accordance with the laid down procedure.

S/D  
Major Abdul Waheed (Retd).  
Head-HR & Admin”

19. We are of the view that in a service matter this Court has jurisdiction under Article 199 of the Constitution to examine the propriety of impugned action taken against the Petitioner when the

action of statutory company is in disregard of the procedural requirements, in violation of the principle of natural justice and on the ground that the Petitioner has been condemned unheard in violation of Article 4 and Article 10-A of the Constitution.

20. Perusal of the Termination Letter dated 27.01.2017 reveals that the Petitioner has been terminated without disclosing reasonable justification or ground whatsoever. Record further reveals that in the earlier Inquiry Proceedings initiated against the Petitioner, not only the Petitioner was cleared from the charges/allegations leveled against him but his name was also recommended for promotion in next rank along with seniority. Thus, it is prima facie clear that nothing was proved against the Petitioner, yet NICL management has proceeded to get rid of him.

21. We are of the view that firstly, the NICL (Respondent-Company) has failed to place the case of Petitioner before Competent Authority in order to conduct impartial and fair probe into the allegations leveled against him. Secondly, action taken by the NICL Management against the Petitioner is harsh and in sheer violation of maxim of equity "*Audi alteram partem*" (no one should be condemned unheard), principle of natural justice and the law.

22. We are of the view that unjustified penalty has been imposed on the Petitioner by removing him from service without holding a proper inquiry and providing him an opportunity of hearing. Just handing over a Letter to the Petitioner that your services are no more required with directions to leave the premises of Respondent-

Company without any reason or ground whatsoever is illegal hence the same is declared to be unwarranted under the law.

23. It is well settled law that an Authority cannot dispense with or remove any employee from service of without determination his civil rights and obligations, if any, criminal charge is pending against him. The employee shall be entitled to a fair trial and due process, as has been set forth under Article 10-A of the Constitution, with particular reference to the measures provided for dismissal and removal of the persons either working in the Company or a Corporation. Admittedly, the Respondent-Company while dispensing with the service of the Petitioner has not followed the relevant procedure and the Rules and Regulations which have been adopted by the Respondent-Company for dealing the service issues of its employees.

24. To our minds, it would be appropriate and fair that a regular enquiry is to be conducted into the allegations against the Petitioner.

25. The case laws cited by the learned counsel for the Respondent-Company are quite distinguishable from the facts and circumstances of the present case. The Hon'ble Supreme Court in the case of Muhammad Rafi and others vs. Federation of Pakistan & others (2016 SCMR 2146) has held that:-

“We, therefore, are of the considered view that issue in hand is fully covered by para-50 of the judgment referred to hereinabove, which provides that an aggrieved person can invoke the constitutional jurisdiction of the High Court against a public authority if he satisfies that the act of the authority is

violative of the service Regulations even if they are non-statutory.” (Emphasis added).

26. In the light of the facts, circumstances and the case law cited by the learned counsel for the Petitioner at bar, the instant Constitutional Petition is allowed, the impugned order dated 27.01.2017 is set aside and the Petitioner is directed to be reinstated in service forthwith to his original position with all back benefits. At the same time, Respondent No.2 is directed to conduct impartial inquiry against the Petitioner with regard to the allegations of misconduct and delinquency, if any, after giving the petitioner full opportunity of hearing in accordance with law.

27. The instant Constitutional Petition stands disposed of in the above terms.

JUDGE

JUDGE

Principal Cadet College Kohat Vs. Muhammad Shoib Qureshi (PLD 1984 S.C.170), State Bank of Pakistan and others Vs. Mehrajuddin (PLD 1959 SC 147), Lahore Central Cooperative Bank Limited Vs. Pir Siafullah Shah (PLD 1959 SC 210), Faiz Ahmed Vs. Registrar Cooperative Society West Pakistan and others (PLD 1962 SC 315), Zainul Abidin Vs. Multan Central Cooperative Bank Limited (1966 SC 445), Chairman East Pakistan Industrial Development Corporation and another Vs. Rustam Ali and another (PLD 1966 SC 848), Shahid Khalil Vs. Pakistan International Airlines Corporation (1971 SCMR 568), Aslam Salam Mehta Vs. Chairman Water and Power Development Authority and others (1970 SCMR 40), Lt. Col. Shujauddin Ahmed Vs. Oil and Gas Development Corporation (1971 SCMR 566), R.T.H Janjua Vs. National Shipping Corporation (PLD 1974 SC 146), Evacuee Trust Property Board and another Vs. Muhammad Nawaz (1983 SCMR 1275), Muhammad Yousuf Shah Vs. Pakistan International Airline Corporation (PLD 1981 SC 224), Anwar Hussain Vs. Agricultural Development Bank of Pakistan and others (PLD1984 SC 194), Anwar Hussain Vs. Agricultural Development Bank of Pakistan and others(1992 SCMR 1112), Nisar Ahmed Vs. Director Chilton Ghee Mills and another (1987 SCMR 1836), Karachi Development Authority and others Vs. Wali Ahmed Khan and others (1991 SCMR 34), Anisa Rehman Vs. PIAC and others (1994 SCMR 2232), Chairman WAPDA and others Vs. Syed Jamil Ahmed (1993 SCMR 346), Muhammad Umer Malik Vs. Muslim Commercial Bank Limited (1995 SCMR 453), M.N.Arshad and others Vs. Miss Naeema Khan (PLD 990 SC 612), Raziuddin Vs. Chairman

Pakistan International Airline Corporation and others (PLD992 SC 531), Wilayat Ali Mir Vs. Pakistan International Airline Corporation and others (1995 SCMR 650), Zeba Mumtaz Vs. First Women Bank Limited and others (PLD 1999 SC 1106), Ziaullah Khan Niazi Vs. President Pakistan Red Crescent Society (2004 SCMR 189), Pakistan Red Crescent Society Vs. Syed Nazir Gilani (PLD 2005 SC 806), Pakistan Defence Officers Housing Society and others Vs. Lt. Col. Syed Javed Ahmed (2013 SCMR 1707), Syed Nazir Gilani Vs. Pakistan Red Crescent Society (2014 SCMR 982), ZariTaraqiati Bank Limited Vs. Said Rehman and others (2013 SCMR 642).

This Court in the case Roshan Ali Siddiqui (supra) in paragraph No. 54 has given the conclusion by analyzing the above case laws as under:

“a) The core principle is that a writ petition will be maintainable only if the terms and conditions of service are governed by statutory rules or regulations or are regarded as statutory in nature.

b) If the terms and conditions are not governed by statutory rules or regulations but only by rules or instructions meant for the “internal use” of the corporation, then any violation of the same would not normally be amenable to the Article 199 jurisdiction of the High Courts.

c) In order to determine what are statutory rules or regulations the test established by a combined reading of Cadet College Kohat and the Anwar Hussain cases will be applied. Even if there is an express statutory power to make regulations, which have been framed expressly with reference thereto, the terms and conditions will be regarded as non-statutory unless the power to frame the regulations is controlled, fettered or conditional in some manner. If the power to frame regulations is not fettered, etc., then the regulations will be no-statutory in nature. This would be so even if the only manner in which the terms and conditions can be laid down is by the framing of regulations. The typical control or fetter in this regard is that the regulations be made with the approval of Government or somebody or

authority outside the corporation. We would here respectfully suggest that in appropriate circumstances (such as e.g., the ‘senate’ of a university or equivalent authority within an educational institution) the relevant control or fetter could even be provided by an “organ” within the corporation.

d) Not only must there be statutory regulations in the sense just described but the action actually taken and impugned must be with reference or relatable to such regulations. If this is not the case, then the impugned action will be regarded as having been taken on the basis of non-statutory regulations / instructions and a writ petition will be maintainable.

e) If there is no express link between the (expressly) conferred power to lay down the terms and conditions of service and the (expressly) conferred power to make regulations, it will be open to the corporation to lay down such terms and conditions by either making regulations or in some other way, i.e. by instructions, etc. meant for “internal use”. If the latter option is chosen, then the terms and conditions will be non-statutory in nature even if the power to make regulations is subject to fetters or control, e.g., by way of Government approval. In other words, the mere existence of a “fettered” power to make regulations is not decisive. Such power must be exercised, and the impugned action actually taken must be in terms of or with reference to regulations so framed.

f) It may be that regulations that are initially non-statutory subsequently become statutory in nature in the sense described above. This happened e.g., to the 1961 regulations in *Anwar Hussain II* and (in our respectful view) to the rules of the Board in *Evacuee Trust Property Board* after the coming into force of the 1975 Act.

g) Notwithstanding the foregoing,. Even if the regulations are non-statutory in nature, a writ petition may be maintainable if the impugned action is in violation of a rule of law, such as a denial of the principles of natural justice (*Anisa Rehman*) or the impugned decision being tainted by mala fides (*Anwar Hussain II* ). The rule of law must be one that applied generally and in various contexts (i.e. not only the context of an employee seeking specific, declaratory or injunctive relief against an employer), and it must be such that a violation thereof strikes at the very root of the impugned action.”