

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

## C.P No.D-4377of 2012

Dr. Itret Malik.....Petitioner

Versus

State Life Insurance  
Corporation of Pakistan and others.....Respondents

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### **Dates of hearing: 08.05.2018 & 23.05.2018**

M/s. Shoaib Moinuddin Ashraf & Ameer-Uddin,  
Advocates for the Petitioner.  
Mr. Ali Asadullah Bullo, Advocate for the Respondents.

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

**ADNAN-UL-KARIM MEMON, J:** - Through the instant captioned Petition, the Petitioner has impugned the Order dated 11.10.2012 passed by State Life Insurance Corporation of Pakistan, whereby she was dismissed from service, and has prayed for re-instatement of her service with all consequential relief(s) and back benefits.

2. Brief facts of the case are that the Petitioner was appointed as Deputy Manager (Claims) on 25.2.1996 in the State Life Insurance Corporation of Pakistan (hereinafter referred to as SLIC). Thereafter, Petitioner was promoted as Manager on 29.3.2002. Petitioner was then transferred to Eastern Zone Karachi and was posted as Manager w.e.f. 15.6.2011. Petitioner has submitted that her service was suspended by the Respondent-Corporation vide letter dated 06.04.2012, without assigning any reason. Petitioner being aggrieved by and dissatisfied with the

aforesaid suspension from service letter responded the same vide letter dated 13.4.2012, addressed to the Chairman SLIC, for malafide action of the Executive Director (Personal and General Services) for misusing his powers and authority. Petitioner has submitted that in retaliation, the Respondent-Corporation vide letter dated 21.06.2012 issued statement of allegations to her, in response thereof she submitted reply of the charges vide letter dated 24.6.2012 and refuted the allegations leveled against her. Petitioner has submitted that an Inquiry Officer was appointed to conduct the inquiry into the allegations. Petitioner further stated that she received a letter dated 09.8.2012 from Assistant General Manager (Internal Audit/Convener Inquiry Committee) to appear before the Committee on 13.08.2012. Petitioner stated that inquiry proceedings were initiated in the form of questionnaire only and not in the way as the law requires and on the day of inquiry nobody from the management side was examined to substantiate the allegations since the Petitioner was only asked to reply to all the questions in written form, although many of them did not pertain to the charges/statement of the allegations against her. The Petitioner has asserted that she was again called via telephonic message by Dr. Shehzad Haider to appear before the Inquiry Committee and the Convener of the Inquiry Committee specifically advised the Committee Members and Management representative not to ask any question beyond the charges leveled upon her. Per petitioner, she replied to all the questions. Petitioner has submitted that prior to that even personal questions were asked from her about her husband. Thereafter, on the basis of so-called biased inquiry report, a Final Show Cause Notice dated

19.9.2012 was served upon her, containing the charges / statement of allegations; that in response to that Final Show Cause notice, she submitted a detailed para-wise reply and denied all the allegations leveled upon her. According to the petitioner, she was called for personal hearing by the Executive Director (Personal and General Services), who had a personal grudge against her, she protested upon it but of no avail as the management of Respondent-Corporation was bent upon to get rid of her as a result, she was neither heard in person nor was allowed to explain her defense and it was merely an eye wash hearing. Resultantly, the Petitioner received dismissal from service order dated 11.10.2012 against which a departmental appeal was preferred on October 22, 2012. Petitioner being aggrieved by and dissatisfied with the impugned dismissal order dated 11.10.2012 then filed this petition.

3. Mr. Shoaib Moinuddin Ashraf, learned counsel for the Petitioner contended that the enquiry proceedings were conducted by way of questionnaire without examining the witnesses on oath in support of charges leveled against the Petitioner by the Respondent-Company; that the Respondent-Company has imposed a major penalty of dismissal from service upon the Petitioner without adopting the procedure as laid down under State Life Employees (Services) Regulations, 1973; that non holding of the regular enquiry, as envisaged under the law, by the Competent Authority and summary procedure followed by the Respondent-Company against her and dispensing with the service of Petitioner is against the principle of natural justice; that vague charges were

leveled against her, which could not be proved in the so called enquiry proceedings; that the Petitioner is condemned unheard while awarding major penalty of dismissal from service on the charges leveled against her. He next contended that the Respondents have violated the Rules and Regulations of SLIC while imposing major penalty of dismissal from service. He next contended that impugned Order dated 11.10.2012 is passed without lawful authority as there is no provision for conducting the inquiry proceedings in the manner as has been chosen in the case of the Petitioner. He added that the Petitioner herself informed the management of the Respondent Corporation about the conduct of the Executive Director (Personal and General Services) who was biased against her. He next added that the impugned order is approved by the Executive Director of the Corporation, thus it is illegal and unlawful. He next contended that the Petitioner was not allowed to rebut the charges through cogent evidence as no personal hearing was provided to her. He next contended that the petitioner was victimized by the Executive Director of the Corporation, while dismissing her from service; that the charges/statement of allegations were vague and do not contain any date as to on what occasion and on what particular dates the Petitioner remained absent from her duty and on what dates she had left the office without prior permission from the Competent Authority; that the above allegations were falsified from the statement of Dr. Bhagumal Talreja, who was the immediate boss of the Petitioner and had categorically stated as when he was called by the inquiry committee he stated that the "Petitioner whenever had to leave the office, she obtained prior permission and neither

remained absent and nor left the office without his permission”; that the allegations as framed in the charges do not constitute “misconduct” as provided under State Life Employees (Service) Regulation, 1973; that to prove the allegations neither any witness from the management side was examined by the inquiry committee in presence of the Petitioner nor the Petitioner was provided the opportunity to cross examine the said witness, which nullifies the entire proceeding; that the statement of the Petitioner was recorded in the shape of questionnaire, which is not a proper way of conducting the inquiry which clearly proves that the Petitioner was not provided the opportunity to record her statement before the inquiry committee in the manner as the law provides, which amounts to denial of opportunity of recording her statement; that the statements of various other witnesses recorded in her absence cannot be used against her which vitiates the entire proceedings culminating in to the dismissal of the service of the Petitioner; that the entire proceedings were without any lawful authority as the Competent Authority in the case of the Petitioner, as per explanation of Rule 20 of the State Life Employees (Service) Regulations, 1973 was the Board of Directors and in the case of Petitioner neither order of inquiry nor charges/ statement of the allegations were framed by the Board as no inquiry committee was appointed by the Competent Authority and as such the Impugned Order of the dismissal of the service of the Petitioner is not sustainable under the law; that all the actions against the Petitioner were deceptive since no misconduct/ inefficiency, as alleged was proved against her, since no detailed statement of the allegations was prepared against her and she had been made the

victim of personal enmity by some officials of SLIC including the members of the inquiry committee; that the perusal of the inquiry report would reveal that it was self-made and was the outcome of the prejudicial mind of the inquiry committee; that before passing the order of dismissal no personal hearing was granted by the Competent Authority and no order has been passed by the Competent Authority which in the case of the Petitioner being an officer in Grade-11 was the Board of Directors. He added that though impugned Order appears to have been issued under the authority of the Executive Director (P&GS) but no such appears to have been given to him. He further stated that the evidence recorded in the shape of question/answers have always been discarded by the Superior Courts as such the Impugned Order based upon a questionnaire is not sustainable under the law. The learned counsel for the petitioner in support of his contention has relied upon the cases of Muhammad Shoaib Roomi Vs. Secretary/Additional Secretary Education, Government of Punjab and others (2005 SCMR 605), Abdul Sattar Vs. Pakistan Water and Power Development and 2 others ( 2006 SCMR 846), Tariq Mehmood Vs. District Police Officer Toba Tek Singh and another (2008 PLC (C.S) 921), Muhammad Haleem and another Vs. General Manager (Operation) Pakistan Railways Headquarter, Lahore and others (2009 SCMR 339), (Irshad Ahmed Vs. Port Qasim Authority through its Chairman and 2 others ( 2012 CLR 464). He lastly prayed for allowing the instant petition.

4. Mr. Ali Asadullah Bullo learned counsel for the Respondent-Corporation has argued that the instant petition is not maintainable since it involves factual controversies, which requires

evidence. He next contended that the Petitioner was found guilty of the misconduct thus was rightly removed from service under the State Life Employees (Service) Regulations, 1973. He next contended that the Petitioner was found negligent throughout her career in performing her duties, as she remained absent from office without intimation, misbehaved with her seniors and is a troublesome officer. He next contended that inquiry was conducted and the Petitioner was found involved into the charges leveled against her, thereafter she was issued Charge Sheet, Final Show Cause Notice and finally dismissal Order dated 11.10.2012. He also contended that on the basis of report of the Petitioner's Zonal Head, the departmental enquiry was initiated as per the charges and statement of allegation against the Petitioner dated 12.04.2012 and 19.06.2012 whereby the Enquiry Committee while giving its finding stated that on account of availing excessive leaves, the efficiency of the Dr. Itrat Malik (Petitioner) had to be checked of her entire career as she had remained a habitual absentee from her duty in her career as no leave was available at her credit and her absence were always treated as Extra Ordinary Leave without pay by the Management and at many a times though leave/absence was not necessary but she preferred to be on leave. He stated that it was also mentioned in the Statement of Allegations dated 12.04.2012 that Petitioner is a habitual late comer and leaving the office without informing her seniors. It is mentioned that in the year 2010 she remained absent for 59 days and when she was told by her senior to mend her ways, she started leveling baseless allegations of discrimination or harassment to her. He added that beside the above she also had

attitude problem and is an arrogant person. He submitted that in this behalf, she was issued several explanation letters. He further explained that when she was issued suspension order, she tried to skip the Enquiry Proceedings by writing objectionable letters to the Executive Director (PHS) and the Chairman to avoid the enquiry proceedings which could be judged from her replies. He stated that the Petitioner was in the habit of defying the orders of the seniors. He contended that statement of Dr. Bhagumal Teleraja summarized by the Enquiry Committee in the findings/discussion also negates the statement of the Petitioner. The learned counsel also referred to the terms of the State Life Regulation No.30 (2) (i), (v) & (vi) about the procedure for enquiry and stated that all the above procedures were duly followed and adopted and the Final Show Cause Notice was issued after establishing the allegations as noted by the Enquiry Committee. He stated that the Enquiry Report, along with enclosures, were duly provided to the Petitioner as per the legal requirement of the disciplinary proceedings. He submitted that the statement of allegations were based on career record of the Petitioner and to avoid victimization on the ground of gender a lady was appointed as the convener of the Committee. He stated that no self-made or prejudicial mind of the committee has been pointed out. The learned counsel finally concluded that the disciplinary proceedings against her were initiated on the basis of the report of Zonal Head and the leave record of the Petitioner and a proper departmental enquiry was conducted and the Petitioner was provided full opportunity of rebuttal of the charges. He submitted that Enquiry report was provided to her for her defence, personal hearing was also provided by the Competent



Authority hence no illegal or arbitrary action was taken by the Management against her. He next contended that the Petitioner had filed a departmental Appeal against the dismissal Order and the same is still pending. He lastly suggested that Respondent-Corporation may be directed to decide the departmental appeal of the Petitioner in accordance with law, which will meet the ends of justice and this petition if not dismissed may be disposed of accordingly.

5. 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 the case law cited at the bar.

6. In the first place, we would like to examine the issue of maintainability of the instant Petition, under Article 199 of the Constitution.

7. To answer the proposition, the profile of the Respondent/SLIC was examined which reveals that it is a Statutory Body established under section 11 of the Life Insurance (Nationalization) Order, 1972 (President's Order No.10 of 1972), now repealed under State Life Insurance Corporation (Re-Organization and Conversion) Ordinance, 2016. The background of the Respondent-Company is that it is a State Enterprise and got status of a Public Sector Company under State Life Insurance Corporation (Re-Organization and Conversion) Ordinance, 2016. Section 2(g) of the 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 10 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."***

8. The profile of the Respondent-Company further reveals that it is 100% owned and controlled by the Government of Pakistan, hence it is a Public Sector Company. In view of the above, the status of SLIC, 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, this 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), in our view is fully applicable to the instant Petition. Guidance is also taken from the decision of the Hon'ble Supreme Court given in the case of Abdul Wahab and others Vs. 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 by another Judgment of the Honorable Supreme passed in the case of Ramna Pipe and General Mills (Pvt.) Ltd Vs. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274) wherein it was held that a Constitutional Petition against a Public Limited Company is maintainable.

9. The issue before us is whether Departmental Inquiry into the allegations with the approval of the Competent Authority was conducted by the Respondent-Company and whether legal and procedural formalities, which include charge sheet, were complied with by the Respondent-Company before imposing major penalty of “Dismissal from Service” upon the Petitioner or not?

10. The documents of the enquiry proceedings have been placed on Court’s record by the parties, which relate to the issue of show cause notices, charge sheet etc issued to her.

11. On merits, the moot point involved in this Petition is whether the Petitioner can be reinstated in service of the Respondent-Company. The allegation against the Petitioner as set forth in the letter dated 19.06.2012 (available at page 37-39 of the file) is as under:-

**CHARGES/ STATEMENT OF ALLEGATIONS AGISNT DR. ITRET MALIK, MANAGER (135057), PHS DEPARTMENT, KEZ**

**I) It is alleged that you Dr. Itret Malik availed leave frequently without prior approval and proper permission, excessively and beyond your entitlement, these acts are taken as committing breach of discipline and violations of standing instructions of the Corporation, which are liable to be punished under State Life Employees ( Service) Regulation, 1973.**

**II) It is alleged that you Dr. Itret Malik are habitual of late coming and leaving office before office timing without intimating to seniors, these acts are violation of Service Regulations and liable to be punished under State Life Employees (Service) Regulations, 1973.**

**III) It is alleged that you Dr. Itret Malik misbehaved with your superiors and avoid the office orders, which construed as willful in-subordination and disobedience, which are punishable under State Life Employees ( Service) Regulations, 1973.**

**IV) it is therefore alleged that you have committed willful acts which tantamount to misconduct under Regulation No. 30(2) and liable to be punished in terms of Regulation No. 30(1)(g) of State Life Employees (Service) Regulations 1973.**

12. It is further alleged that the Petitioner was a troublemaker for the Management and her behavior and attitude

towards the office discipline & decorum comes under the definition of “misconduct”, as defined under Regulation No. 30(2) of State Life Employees (Service) Regulation 1973. Petitioner was also charged with the allegation that she used derogatory language against her seniors and due to these reasons, she was dismissed from her service in the year 2012.

13. In our view, before proceeding further we have to look into the dismissal Order dated 11.10.2012 issued by the Management of SLIC-Respondent Company against the Petitioner in detail to find out as to whether any law has been violated and whether this Court has the jurisdiction to examine the propriety of the impugned action taken against her. For convenience, the contents of the impugned dismissal from service Letter dated 11.10.2012 is reproduced verbatim as follows:-

**Sub: Dismissal from Service**

**This has reference to the Final Show Cause Notice Ref-PL-9(425) dated 19.09.2012 closing therewith copy of the Enquiry Report dated 17.09.2012, your reply dated 25.09.2012 and subsequent personal hearing before the Competent Authority i.e. Executive Sector (P& GS) at Principal Office, Karachi on 08.10.2012.**

**The Competent Authority i.e Executive Director (P&GS) after examining available record, enquiry report, your reply to the Final Show Cause Notice and inter alia your contention during the personal hearing has been found you guilty of misconduct and impose Major penalty of Dismissal without payment of any compensation in lieu of notice under Regulation Nos. 30(I)(g)(iv) of State Life Employees (Service) Regulations, 1973 with immediate effect.**

**You are directed to surrender the State Life Insurance Corporation of Pakistan, Identity Card, Medical Book (if any) and other related material in your custody to the Zonal Head, Karachi Eastern Zone. You have a right to file appeal/representation under Regulation No.33 of State Life Employees (Service) Regulations, 1973.**

**This is issued with the approval of the Competent Authority i.e., Executive Director (P&GS), State Life Insurance Corporation of Pakistan.**

**(Dr. Mughal Baig)**

**Deputy General Manager (P&GS)**

14. We are of the view that in a service matter this Court has the jurisdiction under Article 199 of the Constitution to examine the propriety of an impugned action taken against the Petitioner, when the action of the statutory company having statutory rules of service, 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.

15. Perusal of the dismissal from service Letter dated 11.10.2012 reveals that the Petitioner has been dismissed on the basis of an inquiry report. Record further reveals that in the Inquiry Proceedings initiated against her, the findings given are as under:-

#### CONCLUSION / RECOMMENDATIONS

- 5.1 In view of the prima facie evidences submitted by the Management Representative, her unsatisfactory defense and statements of the witnesses following allegations are found true.**
- i) Availing of leave frequently without prior approval and proper permission, excessively and beyond her entitlement by Dr. Itret Malik.**
  - ii) Habitual late comer and leaving office before office timing without intimating to seniors.**
  - iii) Dr. Itret Malik misbehaved with her superiors and avoided the office orders.**
- 5.2 She has been found guilty of misconduct under Regulations 30(2)(i), (v), (vi), (viii) and (ix) of State life employees ( Service) Regulations, 1973.**
- 5.3 If agreed to by the observations/ findings of the Committee, competent Authority may like to award her with punishment under State Life Service Regulations, 1973, as well as recoveries if any, arising as a result of further probe ( as specified at para 4.28 above ) or otherwise in respect of unauthorized increments, credit of leave, bonuses, gratuity, provident fund etc.**
- 5.4 The Committee finds it appropriate to recommend that Management may like to revisit standing instructions regarding excessive absences, habitual late coming and misconduct and such guidelines/instructions may be issued afresh with any**

necessary updates. It is also recommended to initiate strict action against any other employee involved in such practices and it may be ensured that justice prevails and nobody should be allowed to take any salary/compensation without working or contributing for the Corporation. Furthermore, action may also be taken against those officers protecting such habitual late comers/absentees.

5.5 The enquiry report consists of 30 (thirty) pages, along with 54 annexures ( A to BB) and 54 pages (01 to 54) of question/ answers of accused & statements of witnesses in original.

Nabia Sohail	Mushtaq Ahmed	Naveed Akhtar
AGM ( A& C ) PO	AGM ( F&A ) PO	Manager ( P&GS) PO
Convener Enquiry Committee	Member Enquiry Committee	Member/Secretary Enquiry Committee

16. Thus, it is prima facie clear that the enquiry committee based its findings on the following points:-

**i) Availing of leave frequently without prior approval and proper permission, excessively and beyond her entitlement by Dr. Itret Malik.**

**ii) Habitual late comer and leaving office before office timing without intimating to seniors.**

**iii) Dr. Itret Malik misbehaved with her superiors and avoided the office orders**

17. Another moot question which arises in the present proceedings is as to whether the disciplinary proceedings conducted against the Petitioner were in accordance with law or not ?

18. Under State Life Employees (Service) Regulation 1973, the term "Misconduct" is defined. Regulation 31 contemplates minor and major penalties. Regulation 31 (ii) empowers the authorized officer to direct enquiry against an employee of the SLIC through an enquiry officer or an enquiry committee or if he is satisfied, he may order that there would be no enquiry against the said person. If it is decided that there should be an enquiry either by an enquiry officer or an enquiry committee then the procedure as laid down

under Regulation No. 31 is to be followed. The requirements enumerated under Regulation 31 are that; charge shall be framed and the said employee would be allowed to reply to the charge after which evidence is to be recorded by examining witnesses in support of the charge by allowing opportunity to the said employee to cross examine the said witnesses. The said employee is also permitted to produce his/her own witnesses in his/her defence. In the present case no inquiry into the allegations leveled by the Respondent-Company against the Petitioner was conducted in the manner as prescribed under the law and the required procedure, which includes issuance of charge sheets also was not followed, so as, to ensure the transparency in arriving at the decision of imposing major penalty of dismissal from service upon the Petitioner. The charges / statement of allegations against the Petitioner, as discussed supra, clearly depicts that the same were to be established through proper enquiry as provided under Regulation No. 31 of State Life Employees (Service) Regulations, 1973.

19. Record further reflects that the enquiry committee was constituted vide order of enquiry dated 20.7.2012 to hold an enquiry against the Petitioner on the allegations leveled in the charge sheet under Regulation No.31(2)(ii) of State Life Employees (Service) Regulations, 1973, which is reproduced herein below:-

- “31 Procedure for award of punishment.-(1) The authority competent to award punishment in the case of an employee shall be the authority competent to make appointment in his case.**
- (2) For the punishment of dismissal, the following procedure shall be compulsory:-**
- (i) A Charge Sheet, along with a statement of**

**allegation leveled against the employee, shall be served on him. While serving the Charge Sheet employee shall be given reasonable time, not being less than 7 days, produce any evidence in is defense. He will also be allowed to be in person if he so wishes.**

- (ii) An enquiry officer shall be appointed to examine the defense offered by the accused and to give a report thereon indicating whether or not the charges made against the employee are established.**
- (iii) The report of the enquiry officer shall be considered by the competent authority who may accept or reject the report or for reasons to be recorded in writing order a fresh enquiry.**

**On receipt of final report of enquiry, the competent authority shall give his decision.**

**Provided that where the appointing authority happens to be lower than the Chairman Executive Director or (Zonal Head) prior approval of the Chairman, Executive Director or (Zonal Head) as the case may be shall be obtained before passing an order of dismissal.**

**The discharge of a person:-**

- (a) appointed on probation, during the probation.**
- (b) appointed, otherwise than under contract to hold temporary appointment, on the expiry of the period of appointment.**
- (c) Engaged under contract, in accordance with the terms of his contract does not amount to dismissal within the meaning of this regulation.**

20. We have perused the enquiry proceedings which were conducted by way of questionnaire without recording the evidence of the parties on oath and opportunity of cross-examination of the witnesses to the Petitioner.

21. In order to appreciate the aforesaid legal proposition as to whether the enquiry procedure, which is provided under Regulation No.31 (2)(ii) of State Life Employees (Service) Regulations, 1973 question arises whether the same could be carried out and conducted by way of questionnaire alone?

22. It is a well settled law that if the enquiry officer has decided that there should be an enquiry then the procedure laid down in the aforesaid Regulation has to be followed and the



requirements enumerated therein had to be adhered to i.e. charge shall be framed and the said employee would be allowed to give reply of those charges after which evidence is to be recorded by examining the witnesses in respect of the charges. The said employee can also produce witnesses in his/ her defence. In the present case, it is noted that, this procedure has not been followed in its letter and spirit and the witnesses were not examined in respect of the charges on oath as provided under the law, which was necessary before imposing the major penalty upon the said employee. The manner in which enquiry proceedings were conducted by way of questionnaire, without examination of witnesses, in support of the charge or defence in our view could not be approved as it was not in consonance with the requirements of the Regulation No.31(2)(ii) of State Life Employees (Service) Regulations, 1973. We are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Pakistan Defense Housing Authority & others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707). In the enquiry report no comment has been made upon the said plea taken by the Petitioner and deliberation made thereon. Hence, in our view, the action suggested by the enquiry committee for dismissal from service of the Petitioner, which is in disregard of the procedural requirements and is violative of the principles of natural justice, was not sustainable under the law. Our view is supported by the decision rendered by the Honorable Supreme Court in the case of Jan Muhammad Vs. The General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440) wherein it was held as follows:-

***“6. In Government Servants ( Efficiency and Discipline) Rules, 1973, “ misconduct” is defined. Rule 4 contemplate***

*minor and major penalties. Compulsory retirement is included in major penalties. Rule 5 empowers authorized officer to direct enquiry against Government servant through an Enquiry Officer or Enquiry Committee or if he is satisfied, may order that there would be no enquiry in the interest of security of the country. If it is decided that there should be enquiry either by Enquiry Officer or Enquiry Committee then procedure laid down in Rule 6 is to be followed and the requirements enumerated therein are that charge shall be framed and Government servant proceeded against would be allowed to reply to the charge after which evidence is to be recorded by examining witnesses in support of the charge allowing opportunity to the affected Government servant to cross-examine the witnesses and he can also produce witnesses in his defence. It appears that in the instant case this procedure as such was not followed in letter and spirit and witnesses were not examined in support of the charge. It was necessary for that reason that ultimately major penalty has been imposed upon the appellant. The manner in which enquiry proceedings were conducted by way of questionnaire without examination of witnesses in support of charge or defence cannot be approved as it is not consistent with requirements of Rule 6 of the above-mentioned Rules. Before the Service Tribunal in written objections filed on behalf of respondents order of compulsory retirement has been defended on other unconnected grounds that appellant was inefficient and unwilling worker. In the enquiry report no comment is made upon plea of appellant that his immediate superior officer recommended that appellant was overburdened with his own work and should not be given additional work. For the facts and reasons mentioned above, we are of the view that order of compulsory retirement is not sustainable as enquiry was not held in accordance with procedure laid down in Rule 6 of Government Servants (Efficiency and Discipline) Rules, 1973. We, therefore, set aside impugned judgment of Service Tribunal and order of compulsory retirement of appellant and direct that he be reinstated with back benefits. Since we are striking down order of compulsory retirement of appellant on the ground that enquiry was not held as required under the rules, it is open to the respondents to take action against the appellant on that ground but strictly according to law and rules.*

***Appeals is allowed.***

23. We are further fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the cases of Saad Salam Ansari Vs. Chief Justice High Court of Sindh through Registrar reported in (2007 SCMR 1726), Muhammad Naeem Akhtar Vs. Managing Director Water & Sanitation Authority, LDA, Lahore reported in (2017 SCMR 357) and Chairman State Life Insurance Corporation and others Vs. Hamayun Irfan and others (2010 SCMR 1495).

24. From the facts and the reasons mentioned above, we are of the view that the order of dismissal from service dated 11.10.2012 is not sustainable under the law as enquiry was not held in accordance with the procedure as laid down under Regulation No.31(2)(ii) of State Life Employees (Service) Regulations, 1973.

25. In view of the above facts and circumstances of the case discussed above, the instant Constitutional Petition is allowed, the impugned order dated 11.10.2012 is set aside, the Chairman of the Respondent-Company is directed to reinstate the Petitioner in service forthwith on her original position, and conduct an impartial inquiry into the allegations leveled against her, by giving her an opportunity of hearing as per the law, which inquiry should be completed within two months from the date of this judgment. So far as the matter of back benefits is concerned the same would depend upon the result of the fresh enquiry proceedings which would be done strictly in accordance with law, rules and regulations of the Respondent-Company.

26. The instant Constitutional Petition stands disposed of in the above terms along with the listed application(s).

Karachi  
Dated: .05.2018

JUDGE

JUDGE