

## **IN THE HIGH COURT OF SINDH, AT KARACHI**

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-1595 of 2017**

Fazl-e-Akbar ..... Petitioner

Versus

Pakistan Defence Housing Authority ..... Respondent

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**Date of hearing: 22.02.2018**

Mr. Tariq A. Memon Advocate for the Petitioner

Mr. Malik Naeem Iqbal Advocate for the Respondent

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

**ADNAN-UL-KARIM MEMON,J:-** Through the instant Petition, the Petitioner is seeking declaration to the effect that his termination from service letter dated 31.10.2016 issued by Respondent-Authority is without jurisdiction/powers and may therefore be suspended.

2. Brief facts of the case are that Petitioner was appointed as Function Supervisor in (BS-08) in Pakistan Defence Authority Sunset Club (a subsidiary of Pakistan Defence Officers Housing Authority) on contract basis for a period of one year vide office Order dated 16.07.2014. Petitioner has submitted that the Respondent-Authority confirmed the service of the Petitioner vide letter dated 10<sup>th</sup>September 2015. Petitioner has averred that on

certain allegations he was issued final show cause notice dated 06.09.2016. Petitioner has claimed that he rebutted the allegations of the Respondent-Authority, finally the services of the Petitioner were terminated vide impugned letter dated 31.10.2016. Petitioner has added that the aforesaid termination letter was issued without assigning reasons and thus was illegal. Petitioner being aggrieved and dissatisfied with the impugned termination letter dated 31.10.2016 has filed the instant petition on 10.03.2017.

3. Upon notice, Respondent-Authority filed para-wise comments and denied the allegations as alleged by the petitioner.

4. Mr. Tariq A. Memon learned counsel for the Petitioner has contended that the Termination Order dated 31.10.2016 issued by Respondent-Authority is gross violation of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973; that the Respondent-Authority has wrongly terminated the service of the Petitioner under para 3 a (2) (c) of DHA Service Rules, which clearly imply that the Petitioner was not terminated from the services but was demoted to a lower post; that such termination of the Petitioner from service is not permissible under PDHA Service Rules 2008; that the action on the part of the Respondent-Authority is arbitrary and whimsical which negates the principle of natural justice and provisions of the Constitution; thus a nullity in the eyes of law; that Petitioner is being victimized by the officials of Respondent-Authority; that Petitioner has been condemned unheard on the issues involved in the instant matter; that the Petitioner has pleaded his innocence before the competent

authority of PDHA but no fruitful result came out till date. Learned counsel for the Petitioner in support of his contention has relied upon the case of Pakistan Defence Officers Housing Authority Vs. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010) and argued that the Petitioner was a regular employee of Respondent-Authority could not be removed or dismissed from service on disciplinary grounds without a proper inquiry and personal hearing; that the impugned termination letter dated 31.10.2016 is ultra vires the Constitution; that the case of the Petitioner needs to be remanded to the Respondent-Authority for De-novo enquiry in terms of Rule 8(b) (4) of PDHA Service Rules 2008, or any other provision. He lastly prayed for allowing the instant Petition.

5. Mr. Malik Naeem Iqbal learned counsel for the Respondent-Authority has firstly raised the question of maintainability of instant Petition; he then added that the Respondent-Authority has not acted malafidely nor violated any provisions of law or prescribed Rules in discharging their duties; that Petitioner has misquoted para 3 a (2) (c) of PDHA Service Rules 2008, which provides punishment i.e. dismissal from service rather than demotion; that this assertion of learned counsel is misleading, in order to achieve his favorable result from this Court which disentitle him to the relief claimed for; that the Respondent-Authority is a Body Corporate which is controlled and regulated by President's order No. 7 of 1980, having no statutory Rules of service; that Presidential Order No. 7 of 1980 clearly depicts that Pakistan Defence Officers Housing Authority service rules, 2008

were framed by the Governing Body of the said Authority in exercise of the power conferred under section 22 read with section 13 of the Presidential Order No. 7 of 1980; that the service rules of the Respondent-Authority lay down the terms and conditions of service of their employees; that the aforesaid service rules are basically instructions for the internal control or management of the Respondent-Authority and are therefore non-statutory. Learned counsel in support of his contention has relied upon the decision rendered by the Honorable Supreme Court of Pakistan in the case of Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010) and argued that if a service grievance is agitated by a person/employee who is not governed by the statutory rules of service, in terms of Article 199 of the Constitution such Petition is not maintainable. He relied upon the decision given by the Honorable Supreme Court of Pakistan in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383). However, he has admitted that the Hon'ble Supreme Court has articulated in para 50 of the Judgment delivered in the case of Pakistan Defence Housing Authority vs. Lt. Col. Javed Ahmed (2013 SCMR 1707), under which a writ could be maintained in respect of:-

- i) Violation of Service Rules or Regulations framed by the statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.***
- ii) Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.***

Learned counsel has relied upon the decision given by the Honorable Supreme Court of Pakistan in the case of Muhammad Zaman and others v. Government of Pakistan (2017 SCMR 571) and argued that the Hon'ble Supreme Court has dilated upon the issue of statutory and non-statutory Rules of Service and has held as follows:-

***“the test of whether rules/regulations were statutory or otherwise was not solely whether their framing required the approval of the Government or not, rather it was the nature and efficacy of such rules/regulations. Court had to see whether the rules/regulations in question dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute in matters of crucial importance, in which event they would be statutory.”***

Learned counsel further argued that where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through a writ jurisdiction and these would be governed by the principle of 'Master and Servant'. He lastly prayed that the instant Petition being not maintainable is liable to be dismissed.

6. We have heard the learned counsel for the parties and perused the material available on record and the case law cited at the bar.

7. Upon perusal of the pleadings and arguments extended thereon by the learned counsel for both the parties, an important question of law requires our determinations, which is as follows:-

**(i) Whether, Pakistan Defence Officers Housing Authority service rules, 2008 are non-statutory rules of service and a writ could be maintained in respect of service grievance by an employee?**

8. The issue of maintainability of a Petition filed by an Employee of Pakistan Defence Housing Authority has been decided by the Honorable Supreme Court of Pakistan in the case of Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010), wherein it was held that Employee of PDHA cannot approach this court in Constitutional Jurisdiction, as they are regulated by the Pakistan Defence Housing Authority Service Rules 2008, which are non-statutory.

9. For the aforesaid reasons, we without touching the merits of the case, hold that the Petition is not maintainable.

10. In view of the foregoing, the Constitutional Petition in hand is dismissed with no order as to cost along with all the pending application(s).

11. The petitioner, however, may avail any other remedy available to him under the law.

Karachi  
Dated: 26.2.2018

JUDGE

JUDGE