

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-1946 of 2006

Present:

Mr. Justice Aqeel Ahmed Abbasi.

Ghulam Shabir Pechuho ----- Petitioner

Versus

Pakistan International Airlines Corporation & others ----- Respondents

Date of hearing: 05.12.2016

Date of order: 23.01.2017

Petitioner: Through M/s. M. M. Aqil Awan & Danish Rasheed, advocates

Respondent No.1: Through Mr. Khalid Javed, advocate.

ORDER

Aqeel Ahmed Abbasi, J: While deciding the aforesaid petition a difference of opinion arisen between the Honourable Judges of a division Bench of this Court in the aforesaid petition, following order was passed by the Hon'ble Bench on 10.08.2015:-

"2. A difference of opinion having arisen in respect of C.P.No.D-1946/2006, let this petition be placed before the Hon'ble Chief Justice for such orders as are considered appropriate, whether by way of referring the petition to a third learned Judge or other, to consider the following question:

'Whether C.P.No.D-1946/2006 is maintainable?'

2. Matter was accordingly, placed before the Hon'ble Chief Justice for appropriate orders, pursuant to which, the Hon'ble Chief Justice vide order dated 09.10.2015 has been pleased to nominate the undersigned as Referee Judge in the above matter to consider "as to whether C.P.No.D-1946/2006 is maintainable?".

3. Briefly the relevant facts as recorded by Hon'ble Munib Akhtar, J, in the judgment are that the petitioner, namely, Ghulam Shabbir Pechuho son of Ghulam Nabi Pechuho, was inducted in the service of PIA as Cadet Flight Engineer and was promoted to Junior Flight Engineer and then as Senior Flight Engineer. Thereafter, from around 13.10.1994, he was appointed as Director, Flight Services. Learned counsel submitted that throughout, and especially in the post last mentioned, the services of the petitioner were found to be satisfactory, with the result that on 11.04.1995, he was recommended for permanent confirmation as Corporate Director of PIA. Reference was made to the "strong recommendation" made by the Managing Director of PIA on 12.04.1995 in this regard, which was accepted the same day by the Chairman. Learned counsel submitted that the petitioner served in this capacity till 10.12.1996, when he was suddenly asked to report to his "parent department" for flying duties as a flight engineer. Learned counsel submitted that this directive amounted to a reversion or demotion of the petitioner. It was without cause or notice. The petitioner was not given an opportunity of hearing and no grounds were disclosed for the reversion. Learned counsel submitted that being aggrieved by the aforesaid action the petitioner filed a petition in this Court in 1996, which subsequently abated on account of the insertion of section 2-A in the Federal Service Tribunals Act, 1973. The petitioner filed an appeal before the said Tribunal. However, those proceedings subsequently abated on account of the decision of the Supreme Court in Muhammad Mubeen ul Islam and others v. Federation of Pakistan and others PLD 2006 SC 172. That led to the petitioner's return to this Court with his grievance, and the filing of the present petition. Learned counsel emphasized that the record as stated, and the narrative given by the petitioner, was unchallenged. The

petitioner had been permanently promoted to the higher post, but was wrongfully reverted in gross violation of the principles of Natural justice and the law. Learned counsel prayed that the petition be allowed.

4. Conversely, in view of the submissions, as recorded by the Hon'ble Senior Judge in the subject decision on behalf of respondent, it appears that the learned counsel for respondent did not as such disputed the narratives given by the petitioner in the above petition, however, raised two preliminary objections i.e. (i) that petition was hit by laches and the (ii) that petition was not maintainable as the respondent i.e. P.I.A. did not have any statutory rules of service. These preliminary objections were strongly contested by the learned counsel for the petitioner, whereas, both the learned counsel for the parties, during the course of hearing before the Hon'ble Divisional Bench in the instant case, placed reliance in number of cases relating to subject controversy. In order to appreciate the reasons of conflicting views taken by the Hon'ble Judges in the instant petition, it will be advantageous to examine the relevant finding as recorded by both the Hon'ble Judges in the subject judgment. The following paragraphs contained the relevant facts, submissions of the learned counsel for the parties and the case law, which has been relied upon by the Hon'ble Senior Member of the Bench, while reaching to the conclusion that Constitutional Petition is maintainable under the facts and circumstances of the instant case :-

"8. I have considered the rival submissions. The law laid down by the Supreme Court in terms of the judgments relied upon by learned counsel for PIA is clear. In addition, reference may be made to another (unreported) judgment, *PIA Corporation v. Syed Suleman Alam Rizvi and others* (CA 213-K/2010, dated 01.04.2015). (The short order was placed before us during the course of arguments. Subsequently, the reasons also became available.) The appeal to the

Supreme Court was against a decision of this Court, whereby a constitutional petition filed by the respondents was allowed and PIA was directed “to pay to the private Respondents certain benefits, being their employment benefits such as encashment of accumulative leave and leftover increments since 1997 onwards”. Before the Supreme Court, counsel for PIA (who also represented the corporation before us) challenged the maintainability of the proceedings on the same ground as taken in this petition, and in support relied on the same judgments that have been relied upon here. Certain other grounds were also taken. The Supreme Court upheld the challenge of maintainability and disposed off the appeal in the following terms:

“9. We, therefore, allow this appeal and set aside the impugned judgment. The private Respondents may however, if so advised, file suit for redressal of their grievance before the appropriate forum, which may, keeping in view that the matter has already been delayed inordinately and also that the private Respondents are of advanced ages, be disposed of, as expeditiously as possible.”

9. In my respectful view, the aforementioned judgments of the Supreme Court delineate, establish and represent the approach to be taken with regard to challenges mounted by employees of those statutory corporations that do not have statutory rules regulating the terms and conditions of service. In my respectful view, the case of *Anisa Rehman* must therefore be viewed and applied in this perspective. In *Anisa Rehman*, the appellant, an employee of PIA was reverted from pay group VII to pay group VI. When she impugned this action before this Court in constitutional jurisdiction, the petition was dismissed in limine on the ground that the relationship was that of master and servant. She appealed to the Supreme Court. Leave to appeal was granted “to consider the question, whether the principles of Natural justice can be pressed into service by the appellant in the present case keeping in view the judgment of this Court in the case reported as PLD 1987 Supreme Court 304 (Pakistan and others v. Public-at-Large and other (Shariat Appellate Bench))’.

10. From a perusal of the judgment it appears that two points were agitated on behalf of the appellant. It was contended that PIA

did, in fact, have statutory rules regulating the terms and conditions of service of its employees. This point was repelled and after citing a number of previous decisions, the Supreme Court reaffirmed the position that PIA did not have any such statutory rules. As is clear from the (subsequent) judgments referred to herein above, that continues to be the case. The Supreme Court also observed, on a consideration of earlier case law, that “if there is a violation of any statutory rule or law a Constitutional petition is competent against a Corporation/Cooperative Body etc” (pg. 2237). It then framed the question: “whether violation of the principles of Natural justice can be equated with violation of law in order to warrant issuance of writ in exercise of Constitutional jurisdiction under Article 199 of the Constitution” (pp.2237-8). After considering certain decisions, it gave judgment in terms of para 7 (pp.2239-40) in a passage relied upon by learned counsel for the petitioner. The Supreme Court noted that in its reply to the appellant’s petition in this Court, PIA had admitted that no show cause notice had been issued to her nor had she been heard before the impugned order reverting her from a higher pay grade to a lower one was made. The Supreme Court observed: “The above violation can be equated with the violation of a provision of law warranting pressing into service Constitutional jurisdiction under Article 199 of the Constitution, which the High Court failed to exercise. The fact that there are no statutory service rules in [PIA] and its relationship with its employees is that of Master and Servant will not negate the application of the above Maxim *audi alteram partem*” (pg. 2240). The Supreme Court did clarify that where the relationship was governed by the rule of master and servant, an employee, “in the absence of violation of law or any statutory rule”, “cannot press into service Constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service, his remedy for wrongful dismissal is to claim damages” (*ibid*). In the circumstances as before it, the Supreme Court allowed the appeal. The impugned order was set aside, but it was observed that “it will be open to [PIA] to take fresh action after hearing the appellant in accordance with the law” (*ibid*).

11. It is to be noted that in *Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawaid Ahmed* 2013 SCMR 1707 (“PDOHA”) it was observed at pg. 1738 (para 42) with reference to *Anisa Rehman* that in that case, “the scope of judicial review was further enlarged despite Regulations being non-statutory and violation of principles of Natural justice was held to be a valid ground to invoke writ jurisdiction under Article 199 of the Constitution”. Learned counsel for PIA referred to *Pakistan International Airlines Corporation and others v. Tanveer ur Rehman* PLD 2010 SC 676 (“*Tanveer-ur-Rehman*”) at pg. 689 (para 19), and the observation that if the impugned action “has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction”. *Anisa Rehman* was cited in *Tanveer-ur-Rehman*, but was distinguished by the Court: see at pg. 690 (para 23). However, in *PDOHA*, the Supreme Court explained the reason why *Anisa Rehman* had been so distinguished: see pp.1744-45 (paras 53-54). Furthermore, at pg. 1742 (para 50), the Court summarized the principles that emerged from consideration of the earlier case law. In para 50(iv), it was clearly held that “[w] here 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”. In view of the foregoing, in my respectful view, the principle enunciated by the Supreme Court in *Anisa Rehman* continues to remain good law notwithstanding what may respectfully be described as the more recent jurisprudential trend set out in the subsequent judgments of the Court.

12. In the present petition, the ground agitated before us is that the impugned action was taken contrary to the principles of Natural justice. As noted above, the record and the narrative given by the petitioner has not been seriously challenged or disputed by PIA. It must therefore be accepted for present purposes that the impugned order of 10.12.1996, whereby the petitioner was directed to “report to his parent department for flying purposes”, was made without issuing any show cause notice, or disclosing any grounds for the action to the petitioner or giving him an opportunity of

hearing. This order clearly had a detrimental effect on the petitioner and was to his disadvantage. It was tantamount to his actual, or at least effective, demotion. In my view, the principle enunciated in *Anisa Rehman* is applicable in the present facts and circumstances. Therefore, for that reason, the petition is maintainable and the objection taken by the learned counsel for PIA cannot, with respect, be accepted.”

5. However, Mrs. Ashraf Jehan, J, having the privilege of going through the judgment authored by Munib Akhtar, J, in the instant case, had taken a different view regarding maintainability of Constitutional Petition in cases relating to statutory Corporations, having no statutory rules or regulations. The learned Judge, after having placed reliance in the case of *Pakistan International Airlines Corporation and others v. Tanweer-ur-Rehman* PLD 2010 SC 676, *Abdul Wahab and others v. HBL and others* 2013 SCMR 1383, *Nazir Gillani v. Pakistan Red Crescent Society and another* 2014 SCMR 982 and *Pakistan Defence Officer Housing Authority v. Lt. Col. Syed Jawaid Ahmed* 2013 SCMR 1707 and unreported judgment in the case of *PIA Corporation v. Syed Suleman Alam Rizvi and others* in Civil Appeal No.213-K/2010, has been pleased to hold that in view of the aforesaid judgments on the subject controversy, a Constitutional Petition is not maintainable in respect of employees of a corporation having non-statutory rules, as there exists a relationship of Master and Servant. It will be advantageous to reproduce hereunder the relevant finding as recorded by Mrs. Ashraf Jehan, J, in this regard, containing reasons for dis-agreeing with the decision of Munib Akhtar, J, which reads as follows:-

“For this purpose guidance can also be sought from a five Member Bench judgment of this Court in the case of *Abdul Bari v/s. Government of Pakistan and two others* (PLD 1981 Karachi 290) wherein the scope of Article 199 vis-à-vis 212 of the Constitution

has been discussed and it has been held that the grounds of attack based on the plea of malafide, ultra vires or coram non iudice will not by itself undo the bar of jurisdiction under Article 212 of the Constitution nor it would extend the jurisdiction of the High Court under Article 199 of the Constitution to entertain the grievance of a civil servant on such grounds. In the present case the guidance as regard the forum where the Petitioner can agitate his grievance can be taken from the judgment in case of Pakistan Defence Officer's Housing Authority v/s. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707) and other connected cases of similar nature including one case of P.I.A (Civil Appeal No.1162 of 2012). In this case in paragraph 50 of the judgment Honourable Supreme Court has held as under:-

'50. The principles of law which can be deduced from the foregoing survey of the precedent case-law can be summarized as under:--

- (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 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 writ jurisdiction and they would be governed by the principle of 'Master and Servant'.
- (iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of Natural justice cannot be dispensed with in disciplinary proceedings.
- (iv) 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.
- (v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000) all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution."

6. M/s. M. M. Aqil Awan and Danish Rasheed, learned counsel for the petitioner while supporting the decision of the learned Senior Member of the Bench regarding maintainability of Constitutional Petition in the instant case, have vehemently argued that the Judgment authored by Hon'ble Munib Akhter, J, in this regard depicts correct factual and legal position, which has emerged from careful examination of the facts of instant case, and also the ratio decidendi of various decisions of the Hon'ble Supreme Court, which have been relied upon by the learned counsel for the petitioner during the course of arguments. Per learned counsel, ratio of the cited decision of the Hon'ble Supreme Court is that, *"if there is violation of any statutory rules or law, Constitutional Petition is competent against the Corporation/Corporate Body, which may not have statutory rules to regulate service of its employees"*. It has been further contended by the learned counsel that the question which requires consideration under such circumstances of instant case is, *"as to whether violation of principles of Natural justice can be equated with the violation of law in order to warrant issuance of writ under Article 199 of the Constitution"*. Learned counsel for the petitioner further argued that the Rule of Master and Servant is applicable only to the cases when the employee has prayed for reinstatement of service and not otherwise, whereas, in case if a petitioner is enforcing a principle of law for redressal of his grievance by invoking constitutional jurisdiction under Article 199, then existence of non-statutory rules will not come in his way, and consequently, necessary relief, even of reinstatement, can be granted by this Court under Article 199 of the Constitution. According to learned counsel for the petitioner, the effect of application of Master and Servant Rule is that an employee of a Corporation in the absence of violation of law or any statutory rule cannot press into service the constitutional jurisdiction or civil jurisdiction for

seeking relief of reinstatement in any service matter, and his remedy against wrongful dismissal is to claim damages. However, per learned counsel, if there has been violation of principles of Natural justice, including Maxim of audi alteram partem, the same amounts to violation of law warranting issuance of writ under Article 199 of the Constitution. Learned counsel in this regard heavily relied on the case of **Anisa Rehman v. PIAC and another 1994 SCMR 2232 (Relevant 2240)** and submits that in the afore cited case, the Hon'ble Supreme Court, after having examined large number of decisions on the subject controversy, has been pleased to hold that if there is violation of any statutory rule or law a Constitutional Petition is competent against the Corporation/Corporate Body, which may not have statutory rules to regulate service of its employees. Learned counsel further argued that the aforesaid principle had become part of law in Pakistan and any action taken without following those principles would also amount to violation of law. Learned counsel for the petitioner has placed further reliance in the case of **Pakistan Defence Officers Housing Authority (PDOHA) v. Ltd. Col. Syed Jawaid Ahmed 2013 SCMR 1707** with particular reference to para 50(iv) of the judgment, and submitted that the principle as laid down in the case of Anisa Rehman has been followed by the Hon'ble Supreme Court in this judgment, wherein, it has been held that the scope of judicial review was further enlarged despite regulation not being statutory, whereas, violation of principle of Natural justice was held to be a valid ground to invoke writ jurisdiction under Article 199 of the Constitution. Per learned counsel, the Hon'ble Supreme Court has summarized the principles that emerged from number of reported judgments of the Hon'ble Supreme Court on the subject, in para 50 of the above cited judgment (**Pakistan Defence Officers Housing Authority**

(PDOHA) v. Ltd. Col. Syed Jawaid Ahmed 2013 SCMR 1707), whereas, per learned counsel, in terms of sub-para (iv) of para 50, it has been held that *“where the action of statutory authority in a service matter is in disregard of the procedural requirement and is violative of principles of Natural justice, it can be interfered with in writ jurisdiction”*. Learned counsel for the petitioner argued that the decision of the Hon’ble Munib Akhtar, J, in the instant petition is based on the detailed scrutiny of all the relevant case law in respect of service matters relating to the employees of Corporation, including PIAC, having no statutory rules, and the principles as laid down in the cited decisions of the superior Courts, have been correctly applied to the facts of the present case, which facts have not been disputed either by the respondents or Hon’ble Mrs. Ashraf Jehan, J, who has taken a different view on legal points, however, without pointing out any error in the decision authored by Hon’ble Munib Akhtar, J, regarding maintainability of Constitutional Petition. Learned counsel for the petitioner have referred to para 12 of the judgment of Hon’ble Munib Akhtar, J, which has already been reproduced hereinabove. It has been contended by the learned counsel for the petitioner that while taking a conflicting decision, the Hon’ble Member of the Bench has not taken cognizance of the fact that, in none of the cited decisions, it has been held in categorical terms that No Constitutional Petition can be filed against an impugned order or action taken by any statutory body or Corporation, having no statutory rules, even in cases, where action is contrary to law or has been taken in violation of principles of Natural justice. Per learned counsel, the case law, which has been relied by the Hon’ble Member of the Bench are not attracted to the facts of the instant case for the reason that either the cases relied upon are the cases of the Civil Servants, where bar of Article 212 of the Constitution is attracted,

or the cases in which, the principle as enunciated in the case of Anisa Rehman. Per learned counsel, Anisa Rehman's case has not been pressed as a ground to challenge the impugned order/action has been approved and followed in the case of **PDOHA v. Lt. Col. Syed Jawaid Ahmed 2013 SCMR 1707**, to the effect that, where the action of the statutory authority in a service matter, is taken in total disregard of the procedural requirements, and has been taken in violation of principles of Natural justice, it can be interfered with in writ jurisdiction. It has been prayed by the learned counsel for the petitioner that the view taken by the Hon'ble Munib Akhtar, J regarding maintainability of the instant petition, under the facts and circumstances of the instant case, may be approved, as it does not suffer from any error or illegality, whereas, the descending decision of Hon'ble Mrs. Ashraf Jehan, J may be disapproved, as it does not depict the correct legal position as established by the Hon'ble Supreme Court in the afore cited judgments on the subject controversy. Learned counsel for the petitioner while concluding their arguments have placed the copy of a recent order dated 24.08.2016 of the Hon'ble Supreme Court passed in Civil Appeal No.185-186-K/2015, in the case of Muhammad Rafi and Sajid Iqbal v. Federation of Pakistan and others, wherein, according to learned counsel for the petitioner, a three Members Bench of the Hon'ble Supreme Court of Pakistan, after having placed reliance in the case of **PDOHA v. Lt. Col. Syed Jawaid Ahmed 2013 SCMR 1707**, has been pleased to hold that if an aggrieved person can satisfy that the act of the authority is violative of the service regulation even if they are non-statutory, then constitutional jurisdiction of the High Court under Article 199 can be invoked against such public authority. Per learned counsel, reference to para 50 of the afore-cited judgment has been made in this regard by the Hon'ble Supreme Court, whereas, the similar

objection had been taken in the above case before the Hon'ble Supreme Court on behalf of the respondent, which has been taken in the instant petition, to the effect that, since service regulations of the Civil Aviation are not statutory in the instant petition, therefore, petition would not lie. However, per learned counsel, such objection has been duly repelled by the Hon'ble Bench of the Supreme Court in above recent judgment.

7. Conversely, learned counsel for the respondent has vehemently opposed the contention of the learned counsel for the petitioner and has disputed the decision authored by Munib Akhtar, J in the instant petition, which according to learned counsel for the respondent, does not depict correct legal position, which has emerged from the cited decision of the Hon'ble Supreme Court regarding maintainability of Constitutional Petition in respect of employees of statutory Corporations having non-statutory rules. It has been contended by the learned counsel for the respondent that instant petition was not maintainable on the point of latches as well as on the ground of maintainability for the reason that the PIAC has no statutory rules, therefore, there exists the relationship of Master and Servant between the petitioner and the respondents, hence the writ jurisdiction under Article 199 could not be invoked in view of various decisions of the Hon'ble Supreme Court in this regard. Per learned counsel, the petitioner otherwise, does not have any prima-facie case on merits, which fact has been duly acknowledged by Hon'ble Munib Akhtar, J in para-14 of his decision, therefore, any indulgence by this Court, while exercising constitutional jurisdiction was not warranted. It has been argued by the learned counsel for the respondent that since the action taken by the respondent in the instant case does not suffer from any legal or procedural illegality nor there is any violation of principles of Natural justice, as alleged by the petitioner, therefore, the petition was not

maintainable. Learned counsel for the respondent has referred to relevant passages of the cited decisions of the Hon'ble Supreme Court, and argued that Hon'ble Supreme Court has been pleased to hold that where a service grievance is agitated by a person/employee, who is not governed by the statutory rules of service, before the High Court in terms of Article 199 of the Constitution, such petition is not maintainable. Learned counsel also referred to relevant paras of decision of Mrs. Ashraf Jehan, J, and argued that the view taken by the learned Judge relating to maintainability of Constitutional Petition is correct in law and facts of instant case. Learned counsel for the respondent, in addition to verbal submissions hereinabove, has also referred to the written synopses of the arguments, and has also placed reliance in the following reported cases to support his contention regarding non-maintainability of the Constitutional Petition:-

1. Abdul Wahab and others v. HBL and others 2013 SCMR 1383.
 2. Pakistan International Airlines Corporation and others v. Tanweer-ur-Rehman and others. PLD 2010 SC 676
 3. Pakistan International Airlines Corporation and another v. Shahabuddin and 2 others 1993 PLC (CS) 1 (Rel. 5-B)
 4. Syed Nazir Gillani v. Pakistan Red Crescent Society and another 2014 SCMR 982
 5. Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed 2013 SCMR 1707
 6. PIA Corporation v. Syed Suleman Alam Rizvi and others 2015 SCMR 1545
 7. Pakistan International Airlines Corporation v. Aziz-ur-Rehman Chaudhry and another 2016 SCMR 14
 8. Muhammad Ashraf and others v. United Bank Limited and others 2015 PLC (C.S) 1313
8. As regards the recent decision of a three Members Bench of the Hon'ble Supreme Court of Pakistan dated 24.08.2016 in Civil Appeal Nos.185-K & 186-K of 2015, relied upon by the learned counsel for

the petitioner, learned counsel for the respondents submits that such decision of the Hon'ble Supreme Court in Civil Appeals No.185-K & 186-K of 2015 is contrary to ratio of the earlier decisions of larger Bench of the Hon'ble Supreme Court on the subject issue, hence, the same is per incuriam, and cannot be applied to the facts of the instant case. It has been prayed that the decision of the learned Senior Member of the Bench (i.e. Munib Akhtar, J) regarding maintainability of Constitutional Petition may be declared to be contrary to law as settled by Hon'ble Supreme Court in the afore-cited cases, whereas, descending decision of Mrs. Ashraf Jehan, J in this regard may be declared to be in conformity with the ratio of the afore-cited decisions of the Hon'ble Supreme Court on the subject controversy. Per learned counsel, it may be declared that instant Constitutional Petition is not maintainable, as there is relationship of Master and Servant between the petitioner and the respondent i.e. P.I.A.C.

9. I have heard the learned counsel for the parties, perused the record and the relevant case law as relied upon by both the learned counsel in support of their respective contention. From careful examination of hereinabove decision of both the Hon'ble Judges relating to maintainability of a Constitutional Petition in respect of a service dispute pertaining to employees of statutory corporation, which do not have statutory rules, it has been observed that both the Hon'ble Judges, after having placed reliance on number of almost same decisions of the Hon'ble Supreme Court in service matters, including the cases relating to employees of statutory corporations, having no statutory rules, have drawn different conclusions regarding maintainability of a Constitutional Petition under Article 199 of the Constitution. Decision of my learned brother, namely, Mr. Munib Akhtar, J declares that there is no absolute bar regarding maintainability of a Constitution Petition in

respect of employees of statutory corporation, having no statutory rules. It has been held by the Hon'ble brother Judge in the instant case that where "the action of a statutory authority in a service matter is in disregard of the procedural requirement and is violative of the principles of Natural justice, it can be interfered with in writ jurisdiction". In order to apply the aforesaid legal proposition to the facts of the instant petition, the Hon'ble Judge has been further pleased to hold that the impugned order dated 10.12.1996, whereby, the petitioner was directed to "report to his parent department for flying purposes" **was made without issuing any show cause notice or disclosing any grounds for the action to the petitioner or giving him an opportunity of hearing.** It was further held that the impugned order clearly had a detrimental effect on the petitioner and was to his disadvantage, which tantamounts to his actual or at least his effective demotion, therefore, the principle enunciated in Anisa Rehman case i.e. "violation of the principles of Natural justice can be equated with violation of law" is fully attracted in the instant case. It has been held that in appropriate cases, where violation of principles of Natural justice has been alleged, a writ can be issued in exercise of constitutional jurisdiction under Article 199 of the Constitution is fully applicable to the present case.

10. On the contrary, from perusal of the judgment of Mrs. Ashraf Jehan, J, it appears that while dis-agreeing with the judgment of Mr. Munib Akhtar, J, relating to maintainability of a Constitution Petition, after having referred to the extracts from the various decisions of the Hon'ble Supreme Court in service matters as referred to hereinabove, the learned Judge has been pleased to conclude that, a writ is not maintainable in service matters pertaining to employees of a statutory corporation, having no statutory rules, as there exists relationship of Master and Servant between the

employees and the statutory corporation. In other words, it has been held that there is absolute bar of constitutional jurisdiction under Article 199 of the Constitution. It will not be out of place to note that while deciding the issue regarding maintainability of a Constitutional Petition in respect of employees of statutory corporation having no statutory rules, both the Hon'ble Judges of the Bench have placed reliance upon the same decisions of the Hon'ble Supreme Court, however, by forming separate opinions on such decisions, however, it appears that the relevant facts giving rise to filing of instant petition, have not been disputed. From perusal of the decision of my learned brother Judge in the instant case, it has been observed that after detailed scrutiny of the facts of instant case, and examination of the ratio decidendi of various cited decisions of the Hon'ble Supreme Court on the subject controversy, it has been concluded that in appropriate cases, if an employee of a statutory corporation having no statutory rules, is aggrieved by any act or decision of such statutory authority and the act or decision of such authority in service matter is violative of law and principles of Natural justice (including Maxim of audi alteram partem) can seek redressal of his grievance by filing Constitutional Petition under Article 199 of the Constitution, whereas, the relationship of Master and Servant will not operate as a bar for invoking the constitutional jurisdiction in such matters. On the other hand, from perusal of the decision of (Mrs. Ashraf Jehan, J) it appears that such aspect of the matter has not been dilated upon by the Hon'ble Judge. The three member bench of the Hon'ble Supreme Court in its recent decision dated 24.08.2016 passed in Civil Appeal Nos.185-K & 186-K of 2015 in the case of Muhammad Rafi & Sajid Iqbal v. Federation of Pakistan and others, after having taken cognizance of both the conflicting views regarding maintainability or otherwise of a Constitutional Petition, has been pleased

to remove such ambiguity, and it has been held that an aggrieved person can invoke the constitutional jurisdiction of the High Court under Article 199 of the Constitution in respect of any act or decision of a public authority, if he satisfies that the act or decision of the authority is violative of the law and service regulations, even if they are non-statutory. Since, similar arguments were advanced by the learned counsel for the parties in the afore-cited case before the Hon'ble Supreme Court, it will be advantageous to reproduce the relevant paras of the decision of the Hon'ble Supreme Court dated 24.08.2016 passed in Civil Appeal Nos.185-K & 186-K of 2015 in the case of P.I.A., which read as follows:-

“6. Admittedly, the Service Regulations of the Civil Aviation authority are non-statutory as they are not approved by the Federal Government, besides these Regulations do not confer power on the competent Authority to keep in abeyance or cancel the appointments, which were made pursuant to the process undertaken by the Authority after observing all Codal formalities. From a factual perspective, we have noticed that the Civil Aviation Authority has no concrete cavil to support its decision of scrapping the said appointment process. However, they submit that the order of placing appointments of the Appellants in abeyance was made on the ground that the process initiated by the Authority was not transparent. This contention is not supported by the fact that no action of the competent Authority against those who have initiated the process for appointments of the Appellants and others. If an Authority, after complying with the Codal formalities, appoints any person, it cannot take a summersault after the offer letters issued and once they are accepted in the case in hand.

7. The ground that the process which the person has passed in order to be awarded an appointment was not transparent, is not sufficient reason for the competent Authority to scrap the appointments of Appellants who had passed through the proper recruitment process. The Service

Regulations of the Civil Aviation Authority do not suggest that once the offer letter has been issued and accepted, the Civil Aviation Authority can scrap the process on the grounds that it was not transparent. There would have been some force in this contention of the Counsel for the Respondents (Civil Aviation Authority) if it was brought on record that persons who initiated the said process were also proceeded against departmentally for misconduct but there is nothing on record that suggests this, rather the Counsel when put to this question also concedes that no action has been taken by the competent Authority against the persons who were involved in the process of appointment of the Appellants.

8. 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.

9. We, for the aforesaid reasons, allow these Appeals holding that the action of the Civil Aviation Authority to scrap the appointments of the Appellants and/or keep them in abeyance after the offer letters were accepted by the Appellants is contrary to the spirit of the Service Regulations of the Civil Aviation Authority. The said action cannot draw any force in the advertisement under which the Authority had reserved the powers to withdraw from the process once the process was complete and the Selection Committee/ Board had recommended the appointments of the Appellants. The impugned judgments are set aside. The Appellants shall be reinstated in service in terms of the offer letters issued by the Respondents."

11. In the aforesaid decision, the Hon'ble Supreme Court while placing reliance in the Full Bench decision in the case of **PDOHA v. Lt. Col. Syed Jawaid Ahmed 2013 SCMR 1707** with particular reference to para 50 of

the said judgment has been pleased to hold that an aggrieved person can invoke the constitutional jurisdiction of the High Court against a public authority if he satisfies that act of the authority is violative of service regulations, even if such regulation are non-statutory. It will be pertinent to note that in sub-para(iv) of para 50 of the five (05) member bench of the Hon'ble Supreme Court of Pakistan in the case of **PDOHA v. Lt. Col. Syed Jawaid Ahmed 2013 SCMR 1707**, it has been categorically held that where the action of the statutory authority in service matters is in disregard of the procedural requirement, and in violative of the principles of Natural justice, it can be interfered with in writ jurisdiction. The Hon'ble Supreme Court of Pakistan in the afore-cited judgement, while reaching to the conclusion as contained in para 50 of the said judgment, was pleased to place reliance in large number of cases of the Hon'ble Supreme Court relating to service matters, including the case of **Anisa Rehman v. PIAC and others 1994 SCMR 2232**, wherein, the Hon'ble Supreme Court was pleased to hold as under:-

"7. From the above stated cases, it is evident that there is judicial consensus that the Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read into as a part of every statute if the right of hearing has not been expressly provided therein. In the present case respondent No.1 in its comments to the writ petition (at page 41 of the paper book) admitted the fact that no show-cause notice was issued to the appellant nor she was heard before the impugned order dated 6th August, 1991 reverting her to Grade VI from Grade VII was passed. In this view of the matter there has been violation of the principles of natural justice. The above violation can be equated with the violation of a provision of law warranting pressing into service Constitutional jurisdiction under Article 199 of the Constitution, which the High Court failed to exercise. The fact that there are no statutory service rules in respondent No.1 Corporation and its relationship with its employees is of that Master and Servant will

not negate the application of the above Maxim audi alteram partem. The above view, which we are inclined to take is in consonance with the Islamic Injunctions as highlighted in the case of Pakistan and others v. Public at Large (supra), wherein, it has been held that before an order of retirement in respect of a civil servant or an employee of a statutory Corporation can be passed, he is entitled to be heard.

The effect of the application of the master and servant rule is that an employee of a Corporation in the absence of violation of law or any statutory rule cannot press into service Constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service, his remedy for wrongful dismissal is to claim damages.”

12. The above principle laid down in the case of **Anisa Rehman v. PIAC and others 1994 SCMR 2232** was followed by the Hon’ble Supreme Court in the case of **PIAC v. Nasir Jamal 2001 SCMR 934** and has also been approved in the case of **PDOHA v. Lt. Col. Syed Jawaid Ahmed 2013 SCMR 1707** in para-42 at page 1738, para-45 at page 1739 as well as in para-50 at page 1742 and has also been followed with approval by three (03) member bench of the Hon’ble Supreme Court in a recent decision dated 24.08.2016 passed in Civil Appeals No.185-K & 186-K of 2015 in the case of Muhammad Rafi and Sajid Iqbal v. Federal of Pakistan and others, as referred to hereinabove.

13. In view of hereinabove facts and circumstances of this case, I am of the considered opinion that the principle as enunciated in the case of **Anisa Rehman v. PIAC and others 1994 SCMR 2232** followed in the case of **PIAC vs. Nasir Jamal 2001 SCMR 934**, **PDOHA v. Lt. Col. Syed Jawaid Ahmed 2013 SCMR 1707** and also in the recent decision of the Hon’ble Supreme Court passed in the **Civil Appeals No.185-K & 186-K of 2015 in the case of Muhammad Rafi and Sajid Iqbal v. Federal of Pakistan and others** relating to maintainability of a Constitutional Petition under Article

199, where an aggrieved employee of statutory corporation having no statutory rules can satisfy that the action or decision of the statutory authority in a service matter is in dis-regard of procedural requirement and is violative of principles of Natural justice (Maxim of audi alteram partem) such act or decision of the statutory authority can be challenged by filing a Constitutional Petition under Article 199, whereas, the relationship of Master and Servant would not operate as a bar to entertain a Constitutional Petition. Since in the instant case, the learned brother (Munib Akhtar, J) has been pleased to hold that action of statutory authority was in violation of principles of Natural justice, therefore, the principle as laid down by the Hon'ble Supreme Court in the afore-cited decisions is fully attracted to the facts of the instant case. Accordingly, I would respectfully concur with the view taken by my learned brother (Munib Akhtar, J) in the instant case, relating to maintainability of Constitution Petition, as it depicts correct factual and legal position which has emerged in the instant case, and thus hold that instant Constitution Petition is maintainable. Whereas, for the reasons as discussed hereinabove, I am not inclined to concur with the view taken by my learned Sister (Mrs. Ashraf Jehan, J) in the instant case, as it does not depict correct factual and legal position relating to maintainability of Constitution Petition, under the facts and circumstances of the instant case.

The point of difference which arose between the two Hon'ble Judges of this Court in the instant case, is therefore, answered in the aforesaid terms.

JUDGE