

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

**Const. Petition No. D – 5101 of 2015**

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI.  
JUSTICE MRS. ASHRAF JEHAN.**

***Lt. Col. Syed Jawaid Ahmed***

***Vs.***

***Pakistan Defence Officers Housing Authority &  
others***

***Petitioner:*** through Mr. Muhammad Arshad Khan Tanoli, advocate a/w Mr. Danish Rasheed Khan, advocate.

***Respondents:*** through Mr. Naeem Iqbal, advocate and Mr. Mir Hussain, Asstt. Attorney General.

***Date of Hearing:*** 10.09.2018.

***Date of Order:*** 10.09.2018.

**ORDER**

**Aqeel Ahmed Abbasi, J:-** Through instant petition, petitioner has impugned the letter dated 07.08.2015 issued by the Additional Director (Pers), Pakistan Defence Officers Housing Authority, whereby, request of the petitioner for allotment of staff plot as per policy has been declined, whereas, following relief(s) has been sought:-

*“The Petitioner above named begs to pray this Honourable Court that it may be pleased to pass an order in favour of the Petitioner directing the Respondents to allot the staff plot as service back benefit forthwith and further declare that the Respondent’s order dated 07.08.2015 is against the law and is liable to be cancelled.”*

2. Briefly, the facts as stated in the memo of petition and reiterated by the learned counsel for the petitioner are that the petitioner joined DHA on 5<sup>th</sup> November, 1999 in B.P.S 19 as AD (Vigilance). Later the petitioner was posted to DA Degree College as Admin Officer on 2<sup>nd</sup> January, 2002. Till then the category of the Petitioner was in non-teaching cadre and as per DHA Service Rules, the petitioner was due for retirement on 25<sup>th</sup> November, 2004, whereas, the eligibility for staff plot in non-teaching category was 3 years. However, according to learned counsel, due to Post graduation, and keeping in view the impeccable record of the petitioner of Army Service as a Instructor in various capacities, he was transferred in the teaching cadre, and was posted as Vice Principal in the SKBZ College, being run by DHA Karachi in the year 2004. In view of change of cadre from non-teaching staff to teaching staff terms and conditions of service of the petitioner were also changed, particularly, length of service, which was extended upto age of superannuation i.e. upto 14<sup>th</sup> January 2012, whereas, condition relating to allotment of staff plot also changed and the petitioner was entitled to allotment of plot after completion of 10 years of Service which became due on 31<sup>st</sup> December, 2009. The petitioner had to suffer as far as allotment of staff plot was concerned which was due after three years as non-teaching staff but by re-categorization into teaching staff its allotment was due after 10 years of service.

3. According to learned counsel for the petitioner, during period of his service, petitioner performed his duties diligently and satisfactorily, and was also awarded commendation certificate on 22.08.2008 by the outgoing Principal of SKBZ, who also recommend the petitioner to be appointed as Principal of the SKBZ College. However according to learned counsel, instead of considering the petitioner for appointment as Principal, the respondents, with malafide intention and in order to accommodate their dear one on such post, terminated the service of the petitioner vide letter dated 09.09.2008, which was challenged by the petitioner before the Sindh High Court by filing a Constitutional Petition No.D-1933/2008, and the same allowed by a Divisional Bench of this Court vide judgment dated 18.05.2009, whereby, order of termination was set-aside and the petitioner was directed to be re-instated in the service. However, inspite of the judgment passed by the Hon'ble Court, as referred to hereinabove, the petitioner was not allowed to join his duty, nor his arrears towards pay and allowances were paid to the petitioner by the respondents w.e.f. September 2008 to May 2009. Respondents also did not return his official accommodation, and the staff car to humiliate the petitioner, who was compelled to approach the Sindh High Court again by filing a contempt application (CMA No.9839/2010) in C.P.No.D-1933/2008, which was also allowed vide order dated 12.04.2011 and the respondents were directed to pay all the back benefits to the petitioner in terms of order passed by this Court in the above petition within a period of one month.

4. According to learned counsel for the petitioner, respondents filed CPLA against the judgment of the Sindh High Court dated 18.05.2009 in C.P.No.D-1933/2008 before the Hon'ble Supreme Court i.e. Civil Appeal No.39/2010, however, the above appeal along

with other connected appeals, involving similar legal controversy, was dismissed by the Hon'ble Supreme Court vide combined judgment dated 02.05.2013, whereby, the order passed by the Divisional Bench of this Court in C.P.No.D-1933/2008 in the case of petitioner was upheld. In the meanwhile, petitioner had retired from his service on attaining the age of superannuation on 14.01.2012. However, respondents failed to make payment of the back benefit of his service, therefore, petitioner was again compelled to file another application i.e. CMA No.4029/2012 before the Divisional Bench of this Court in C.P.No.D-1933/2008, which was also granted by a Divisional Bench of this Court vide order dated 01.12.2012, with the directions to the respondents to deposit the petitioner's gratuity amount with the Nazir of this Court within two weeks from the date of the order, and further, that in case order of reinstatement is upheld by the Hon'ble Supreme Court, petitioner shall, subject to approval of relevant Committee, be allotted staff plot, according to his entitlement. However, according to learned counsel for the petitioner, instead of complying with the order passed by this Court in the aforesaid terms, respondents filed a review application i.e. CMA No.20986/2013, however, the said application was dismissed vide order dated 15.07.2015 and it was held that petitioner is entitled to full payment in terms of order dated 12.04.2011 and the respondents were directed to ensure that such payment is made within ten days positively, whereas, it was further clarified that the claim of the petitioner regarding his entitlement to a plot as per Authority's applicable policy is still outstanding and will be taken up subsequently. Per learned counsel, pursuant to Court's orders, the claim of the petitioner relating to his financial dues on his retirement, including the amount of gratuity has been settled by respondents,

however, respondents did not consider the claim of the petitioner for allotment of plot as per DHA Rules/Policy inspite of clear directions by the Court to this effect, and denied such claim vide letter dated 19.12.2013 without providing any opportunity of being heard, whereas, no valid reasons were assigned. Therefore, petitioner was compelled to file another contempt application i.e. CMA No.22372/2013 in Constitutional Petition No.D-1933/2008, which application was finally decided vide a detailed order passed by a Divisional Bench of this Court on 26.05.2015, whereby, in terms of paragraph 8 of such order, respondents were directed to provide opportunity of being heard to the petitioner within 60 days, and to append the adverse remarks on which Committee intends to act in terms of Rule 5 of DHA Rules, and then to make afresh recommendation in terms of Rule 5 and communicate the same to the petitioner within 15 days, whereas, in case of any adverse decision by the Committee/DHA, the petitioner was allowed to pursue such remedy as may be available to him in accordance with law, by way of filing fresh proceeding. Per learned counsel, since the respondent did not comply with the directions of the Divisional Bench of this Court as referred to hereinabove as neither proper opportunity of being heard was provided nor the petitioner was confronted with any adverse remarks/material on which Committee denied the claim of the petitioner for allotment of plot. According to learned counsel, on 16.06.2015, petitioner appeared before the Committee for allotment of plot, however, the petitioner was not confronted with any adverse material/A.C.R., which could justify such refusal. Per learned counsel, the allegations against the petitioner upon which his service was terminated, have already been proved to be false and frivolous by a Divisional Bench of this Court as well as by the Hon'ble

Supreme Court in the aforesaid proceedings, whereas, even if such allegation/charges could have been proved against the petitioner after proper inquiry and petitioner would have been awarded major punishment, even then, entitlement of the petitioner for allotment of plot could have been delayed by “two years only” as per DHA Service Rules. However, per learned counsel, the respondents having developed a grudge against the petitioner, and in total disregard and dis-respect to the orders passed by this Court as well as by the Hon’ble Supreme Court, once again declined the request of the petitioner for allotment of staff plot vide impugned letter dated 07.08.2015, which neither contained any reason nor there has been any reference to the relevant decision or the proceedings of the Committee. Per learned counsel, the petitioner is being continuously harassed and being for having agitated his grievance before this Court against his illegal termination from service, whereas, refusal to allow staff plot to the petitioner is also part of such malafide actions of the respondent. According to learned counsel, the impugned letter dated 07.08.2015 issued by the respondents is totally illegal without lawful authority, hence the same is liable to be set-aside. It has been prayed by the petitioner that the respondents may be directed to allot a staff plot to the petitioner as per DHA rules/policy, while keeping in view the orders already passed by the Divisional Bench of this Court in the aforesaid petition, as according to learned counsel, respondents have no material whatsoever against the petitioner, whereby, the request of the petitioner for allotment of plot could have been declined.

5. Conversely, learned counsel for the respondents has raised an objection with regard to maintainability of instant petition, whereas, it has been argued that the orders passed by Divisional

Bench of this Court in C.P.No.D-1933/2008 and by the Hon'ble Supreme Court in Civil Appeal No.39/2010, have duly been complied with, and all the retirement benefits, including gratuity, have also been paid to the petitioner. Per learned counsel, there has been no violation of Court's order, DHA Rules or the Policy for allotment of staff plot as alleged by the petitioner in the instant case. It has been further contended by the learned counsel that as per Court's order, Notice was issued to the petitioner by the Committee formulated as per DHA Rules, and thereafter, Committee was of the opinion that in view of charges against the petitioner with regard to his conduct, the petitioner is not entitled to the service benefit i.e. allotment of staff plot. Per learned counsel, as per DHA Rules/Policy, which exercising the authority in terms of Rule 5, the Committee has declined claim of the petitioner for allotment of plot in accordance with DHA Rules and the policy formulated in this regard. Learned counsel for the respondent further argued that claim of the petitioner for allotment of staff plot is otherwise, subject to fulfillment of other conditions, whereas, every employee of DHA cannot otherwise, be allotted staff plot as a matter of right. Per learned counsel, without prejudice to above, such claim of allotment of plot to the petitioner cannot be considered by this Court, while exercising its constitutional jurisdiction under Article 199 of the Constitution as it involves disputed facts and determination of such right through evidence. While concluding his arguments, learned counsel for the respondents submitted that besides having no case on merits, the petitioner is otherwise not entitled to invoke the constitutional jurisdiction of this Court as DHA has no statutory rules, therefore, Constitutional Petition is not maintainable.

6. We have heard the learned counsel for the parties, perused the record with their assistance and have also gone through with the judgment dated 18.05.2009 passed by a Divisional Bench of this Court in C.P.No.D-1988/2008, which was duly approved by the Hon'ble Supreme Court vide order dated 02.05.2013 in Civil Appeal No.39/2010. We have also examined the orders passed by a Divisional Bench of this Court in C.P.No.D-1933/2008 in the case of the petitioner, whereby vide judgment dated 18.05.2009, petition filed by petitioner was allowed, and termination was set-aside, and petitioner was directed to be reinstated in service with all back benefit. As per record, the aforesaid judgment was assailed by the respondents (DHA) before the Hon'ble Supreme Court in Civil Appeal No.39/2010, however, the said appeal along with other connected appeals, involving similar legal controversy, was dismissed by the Hon'ble Supreme Court vide combined judgment dated 02.05.2013 and resultantly, the order passed by the Divisional Bench in C.P.No.D-1933/2008 in the case of the petitioner was upheld. It is pertinent to mention that the objection with regard to maintainability of constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, in cases of employees of organizations, having no statutory rules, was also raised by the respondents in the aforesaid petitions as well, however, such objection has been dealt with by the Divisional Bench in its judgment dated 18.05.2009 in C.P.No.D-1988/2008, wherein, it has been held that in case of violation of law and Principle of Natural justice, which includes "right of being heard", constitutional petition of this Court can be invoked under Article 199 of the Constitution. The aforesaid judgment of the Divisional Bench of this Court was assailed by the respondents before the Hon'ble Supreme Court in Civil Appeal



No.39/2010, however, the aforesaid Civil Appeal along with other connected appeals was dismissed by the Hon'ble Supreme Court and the order passed by the Divisional Bench of this Court on merits as well as on the ground of maintainability was duly approved. Recently, the issue of maintainability of a constitutional petition in respect of employee of a Statutory body, having no Statutory rules, came up before a Divisional Bench of this Court in the case of Ghulam Shabir Pechuho v. P.I.A. and others (C.P.No.D-1946/2006), however, while deciding the aforesaid petition there was difference of opinion between two Hon'ble Judges on the point of maintainability of constitutional petition, and the petition was disposed of vide conflicting judgment dated 10.08.2015. However, the matter was referred to the Referee Judge by the orders of Hon'ble Chief Justice to resolve the difference of opinion between Hon'ble Judges of this Court on the point of maintainability. Incidentally, undersigned was the Referee Judge in said petition, wherein, after examining the relevant case law of this Court as well as of the Hon'ble Supreme Court, the issue of maintainability has been decided through reported judgment in the case of M/s. Ghulam Shabir Pechuho v. PIA & others (SBLR 2017 Sindh 1113) in the following terms:-

*"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 dis-regard 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 6<sup>th</sup> 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."*

7. While applying the ratio of above cited decisions to the facts of the instant case, it has been observed that petitioner's claim for allotment of staff plot has been once again declined without providing any reasonable opportunity of being heard, nor the petitioner was confronted with the adverse remarks (if any), inspite of Court's directions to this effect vide order dated 26.05.2015 passed by the Divisional Bench of this Court in the case of petitioner in C.P.N0.D-1933/2008 (CMA No.2237/2013). This reflects upon the non-compliant approach of the respondents to Court's order on the one hand, and also their malafide and vindictiveness on the other hand, towards petitioner, who has been compelled to approach this Court to seek justice, whereas, all the adverse orders or actions taken against the petitioner by respondents, have already been declared to be illegal by this Court as well as by the Hon'ble Supreme Court in the above referred cases. It will be advantageous to reproduce hereunder the directions of the Divisional Bench of this Court as contained in para 8 of order dated 26.05.2015 passed on CMA No.22372/13 in Constitutional Petition No.D-1933/2008).

“8. Accordingly, this application is disposed of in terms that (subject to what is stated below) the letter dated 19.12.2013 whereby DHA communicated the recommendation of the committee to the petitioner is set aside. DHA shall ensure that within a period of 60 days the petitioner is given an opportunity of hearing by the committee in terms as herein above stated and explained. **The notice be issued to the petitioner for the hearing date must have appended to it the adverse remarks on which the committee intends to act in terms of Rule 5.** The committee shall consider whatever it is that the petitioner has to say (and he must appear on his own behalf) and shall then make a fresh recommendation in terms of Rule 5 and communicate the same to the petitioner within 15 days of the hearing. If the petitioner fails to attend to the committee on the date given for the hearing, it shall be deemed that he chosen not avail the opportunity and the letter of 19.12.2013 shall be deemed to operative and effective. If the petitioner applied for an adjournment on or for the date given, DHA may in its absolute discretion entertain one such request and give a fresh date for the hearing. However, if such a request is made but turned down or no communication is received by the petitioner from DHA on his request, he must attend to the committee on the date given and failure to do so, or refusal to proceed, will entail the consequence just stated. Finally, in case the petitioner is available to him in accordance with law by way of fresh proceedings, but no contempt or other application in the present proceedings/petition will be permissible or entertained.”

8. From perusal of hereinabove finding as recorded by a Divisional Bench of this Court in the case of petitioner, which has otherwise attained finality, as no appeal was filed against the aforesaid order by the respondents, it has been observed that the earlier recommendations of the Committee relating to claim of the petitioner for allotment of staff plot, were set-aside on the ground that no reasons were assigned, and petitioner was not provided opportunity of being heard, therefore, directions were issued to the respondents that petitioner shall be provided opportunity of being



heard through a Notice of hearing, whereas, respondents shall communicate the adverse remarks (if any), on which the Committee intends to act in terms of Rule 5 of the DHA Rules, 2008, and thereafter, to make fresh recommendations, which shall be communicated to the petitioner within 15 days from the date of hearing. However, record shows that instead of providing opportunity of being heard to the petitioner by issuing a Notice of hearing and communicating the adverse remarks (if any) to the petitioner, the respondents have once again vide impugned letter dated 07.08.2015 declined the request of petitioner in a arbitrary manner, whereas, neither any reasons have been disclosed, nor the petitioner has been confronted with any adverse remarks or material, which could otherwise justify the aforesaid act of the respondents.

9. It will be advantageous to reproduce herein-under the relevant letter dated 07.08.2015 issued by Additional Director ((Pers), Pakistan Defence Officers Housing Authority, Karachi, whereby, the request of the petitioner for allotment of staff plot has been declined, the same reads as follows:-

***“Pakistan Defence Officers Housing Authority***

*2/B, EAST STREET, PHASE-I, DHA KARACHI-75500, (PAKISTAN)*

*Pers Branch No. Extn 2005, UAN-111 589 589 Fax: 5886408*

*Date: 7 Aug 2015*

*To: Lt Col Syed Jawaid Ahmed (Retd)  
C-9, Bhayani Heights,  
Near Maskan Chowrangi  
Abdul Hassan Isphahani Road,  
Karachi  
Ph: 0334-3166877*

*Sub: CP-1933/08 – Allotment of Staff Plot*

*Ref: Your Fax dated 8 June 15 addsd to Dir P&A*

*Consequent upon the judgment passed by the Honourable High Court on 26 May 15, you were given a notice to appear before the board for hearing on the subject convened on 16 Jul 15.*

*The board was assembled on 29 Jul 2015 where you were granted the opportunity to explain your case. The board after due deliberation has not recommended your case for allotment of staff plot.*

*Sd/-  
Lt Col  
Nasir Ali (Retd)  
Addl Director (Pers)”*

10. From perusal of hereinabove letter and the documents furnished by the respondents in the instant case, it is clear that petitioner was neither confronted with any adverse remarks or material on which the Committee has proceeded against the petitioner in terms of Rule 5 of DHA Rules, 2008/Policy for allotment of staff plot, nor any reason whatsoever has been assigned by the Committee, while declining the claim of the petitioner relating to allotment of staff plot, inspite of the fact that specific directions were issued by Divisional Bench of this Court to this effect. Learned counsel for the respondents while confronted with hereinabove factual position, could not controvert the same, nor could produce any material contrary to the available record, however, submitted that petitioner was provided an opportunity of being heard, and thereafter, the Committee has exercised its discretion, while refusing the claim of the petitioner. We do not find any substance in such contention of learned counsel for the respondents, particularly, in view of specific directions by Divisional Bench of this Court, requiring the respondents to consider the request of the petitioner for allotment of staff plot after providing opportunity of being heard by issuing specific Notice and confronting the petitioner with adverse remarks/material (if any), so that the petitioner could explain his position and justify his claim for allotment of staff plot. Moreover, discretion vested in a public functionary or authority, has to be exercised in good faith, lawfully, fairly and in a transparent manner,

and not in a arbitrary and unjustified manner, as it has been exercised in the instant case. Nothing has been produced on record, which could otherwise justify that petitioner is not entitled for allotment of staff plot in terms of DHA Rules/Policy. On the contrary, it appears that petitioner has been discriminated, while declining his request for allotment of staff plot in violation of law, rules and Principle of Natural Justice.

11. In view of hereinabove facts and circumstances of the instant case, we are of the considered opinion that the impugned letter dated 07.08.2015, whereby, the request of the petitioner for allotment of staff plot has been declined, is illegal and has been issued without lawful authority, hence liable to be set-aside, whereas, the Committee constituted for such purpose failed to comply with the specific directions issued by Divisional Bench of this Court in its order dated 26.05.2015 on Misc. Application No.2237/2013 (in C.P.No.D-1933/2006) and further, did not exercise the discretion vested in it, fairly, justly and in accordance with law. Accordingly, instant petition was allowed vide our short order dated 10.09.2018 and above are the reasons for such short order. Consequently, respondents are directed to complete the process of allotment of allot staff plot to the petitioner, namely, Lt. Col. Syed Jawaid Ahmed as per DHA Rules/Policy, preferably, within a period of three months' from the date of receipt of this detailed order and submit compliance to this Court through Member Inspection Team-II, within one month thereafter.

Petition stands allowed in the above terms alongwith listed application(s).

**JUDGE**

**JUDGE**

A.S.