

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-4844 of 2017

PRESENT:

Mr. Justice Khadim Hussain M.Shaikh
Mr. Justice Arshad Hussain Khan

Deedar Ali Kalhoro

Vs

Federation of Pakistan & others

Petitioner Deedar Ali Kalhoro
Through Mr. Shakeel Ahmed Advocate.

Respondent No.1 Federation of Pakistan Through Secretary Ministry of
Industries & Production, Islamabad
Through Mr. Muhammad Nishat Warsi, DAG.

Respondent No.2 & others Pakistan Industrial Development Corporation Through
its Chairman.
Through Mr. Khalid Javed Advocate

Date of Hg: 11.02.2019

JUDGMENT

ARSHAD HUSSAIN KHAN, J: The Petitioner through instant constitutional petition has sought the following reliefs:-

- a) To restrain the Respondents from conducting /further proceedings in alleged enquiry/any enquiry against the subject matter of FIR No.24/2016 registered with FIA Commercial Banks Circle, Karachi.
- OR
- Direct the Respondents to defer the alleged inquiry till disposal of case pending before learned Special Judge Anticorruption [Central] at Karachi in subject matter.
- b) To declare the enquiry conducted so far against the Petitioner as illegal, unlawful, unconstitutional and void ab initio.
 - c) Suspend the Operation of Letter No.IDC-2 [1683] dated 09.05.2017 whereby the services of Petitioner were suspended and direct the Respondents to resume the services of the Petitioner.
 - d) Direct the Respondents to release the salaries of the Petitioner for the months of April-2017, May-2017 & June-2017 forthwith.

- e) Pass any orders deemed just and proper in the circumstances of the case, to redress the grievances of the Petitioner.

2. Briefly stated the facts of the instant petition as averred therein are that presently the petitioner [under suspension] is serving as Deputy General Manager (I&E) in Grade E-V with respondent No.2 and according to him he has enjoyed a spotless service since his date of joining i.e. 22.07.1990, and he has neither been served with any show-cause notice/explanation nor subjected to any enquiry and he has left no stone unturned to perform his duties honestly with hard work. Further the petitioner was awarded appreciation in recognition of his efficiency, honesty and devotion. It is further stated that in the year 2012, respondent No.2 was intending to get proper lease documents from Karachi Metropolitan Corporation [KMC] for plot Nos. D-6, D-7&D-8, Bath Island Quarters, Karachi, which were purchased by the respondent in the year 1955 from Karachi Metropolitan Corporation [KMC] and for this purpose a Review Committee was constituted by respondent No.2, comprising following members:

- i. S. Rehan ul Hasnat, General Manager [A&P]
- ii. Yasir Nabi Memon, General Manager [Legal] &
- iii. Deedar Ali Kalhoro, Deputy General Manager [I&E], (the petitioner).

The said Committee reviewed and performed the task as assigned in the year 2012.

3. It is also stated that on 28.04.2016 a complaint was filed with Federal Investigation Agency [FIA Commercial Banks Circle, Karachi] by Zahid ur Rehman Mughal, Company Secretary of respondent No.02, which was subsequently converted into inquiry No.26/2016 and finally on 18.10.2016 an FIR No.24/2016 was registered under Sections 409, 420, 468, 471, 109 PPC read with Section 5(2) Act-II, PCA, 1947, and only the petitioner, from the above said Committee, was implicated as an accused amongst others. In the said case final charge sheet under Section 173 Cr.P.C. has been submitted by the FIA, and the case is still pending adjudication before Learned Special Judge Anticorruption [Central] at Karachi. It is further stated that the petitioner continued to serve respondent No.2 in his

official capacity as Deputy General Manager [I&E] when the petitioner was on pre-arrest bail so also after his release on post arrest bail.

4. It is further stated that the petitioner was served with a show cause notice No.IDC-2 [1683] dated 16.03.2017 under Rule 24[o] of PIDC Service Rules wherein it was alleged that the petitioner personally communicated to C.E.O., respondent No.3 on 13.03.2017 that the Contractor of M/s Trade Centre has given bribe of Rs.5,00,000/- to G.M. [A&P] for CEO, respondent No.3. That on 14.03.2017, the contractor of M/s. Trade Centre and the petitioner were called in the office of CEO, [respondent No.3] where the said contractor denied the assertions of the petitioner; which shows the non-serious attitude of the petitioner towards his duties; thus, why disciplinary action should not be taken against him. The said notice was duly replied by the petitioner, through his letters dated 17.03.2017 & 10.04.2017 wherein the petitioner denied the allegations and showed his serious stand over the narrations made before CEO, respondent No.3. It is further stated that upon reply of the petitioner, being annoyed, respondent No.3, in connivance with others, suspended the service of the petitioner, vide letter No.IDC-2 [1683] dated 09.05.2017 as per rule No.26 of PIDC Service Rules. It is also stated that following the said suspension Engineer Javed Iqbal, General Manager [A&L] was nominated as an Enquiry Officer, vide letter No.IDC-1(8)/(102) dated 16.06.2017 titled "Enquiry against Mr. Deedar Ali Kalhoro, DGM (E&I)-suspended" and the said nominated Enquiry Officer, vide his letter No.PIDC/ROL/858 dated 20.06.2017 under Section 27 [a & b] of PIDC Service Rules directed the petitioner to submit written defence, which the petitioner has filed through his letter dated 29.06.2017. Thereafter, the petitioner was called for personal hearing by the enquiry officer, vide letter No.PIDC/ROL/876 Dated 07.07.2017, and the petitioner did appear before the said enquiry officer. However, subsequently, the salary of the petitioner was stopped.

5. It is also stated that the fundamental rights of the petitioner are being infringed and injured at the hands of the respondents and the petitioner has been left with no other option but to file the instant constitutional petition.

6. Upon notice of the present petition, preliminary legal objections on behalf of respondents 2, 3, 4 & 5 were filed on 23.08.2017 refuting the contents of the memo of petition, it is stated that there are no statutory service rules of respondent No.2, the rules filed by the petitioner [Annexure-1] are non-statutory rules. Such rules are only instructions, which are used for internal use of respondent No.2 and as such any violation thereof cannot be enforced through writ jurisdiction. It is also stated that the relationship between the petitioner and the answering respondent is that of “Master and Servant”, therefore, the petition filed under Article 199 of the Constitution is not maintainable in law.

7. It is further stated in the preliminary legal objections that the petitioner has challenged the issuance of show cause notice dated 16.03.2017 followed by the departmental enquiry into the charges leveled against him, the matter relates to terms and conditions of service of the petitioner with respondent No.2 [PIDC], no adverse order has been passed against the petitioner as such the constitutional petition under Article 199 is not maintainable in law. It is further stated that the petitioner is not entitled to seek restraining orders against the departmental inquiry proceedings or the legal proceedings relating to criminal offence vide FIR No.24/2016 duly registered by the FIA. It is also stated that the petitioner is involved in a serious criminal offence causing huge financial losses to respondent No.2, which runs in millions of rupees. The respondent also sought dismissal of the present petition being not maintainable in law.

8. Since learned counsel for the Respondents has challenged the maintainability of the present petition, therefore, this Court put on notice the learned counsel for the petitioner to satisfy this Court on the question of maintainability of the present petition.

9. Learned counsel for the petitioner during the course of his arguments while re-iterating the contents of the petition has contended that the petition is maintainable in law. He further contended that after a lapse of about four years Mr. Zahid ur Rehman Mughal, Company Secretary of Respondent No.02, filed Complaint dated 28.04.2016,

which was subsequently converted into inquiry No.26/2016 and finally on 18.10.2016, an FIR No.24/2016 was registered which clearly reflects the same was registered with some malafide intentions. Learned counsel submits that as far as the petitioner is concerned, he has committed no wrong.

10. Learned counsel also argued that the alleged suspension of the petitioner is in gross violations of Rule 26[d] of PIDC Service Rules and most importantly no charge etc., is given in the said letter. Learned counsel further argued that the alleged inquiry against the petitioner is illegal, unlawful, malafide and is initiated in violations of the PIDC Rules.

11. Learned counsel for the petitioner further argued that the respondents have neither framed any charge nor delivered the same to Enquiry Officer and nor provided to the petitioner for which they are conducting the inquiry and the respondents are bound to frame the charge in terms of the above Rules. It is also argued by learned counsel that the said enquiry is being conducted as per the final charge sheet / challan submitted by the FIA under Section 173 Cr.P.C. before the Learned Special Judge Anticorruption [Central] at Karachi, and it can be said that two trials against one and same charge are in progress which is unlawful, malafide and unconstitutional. Learned counsel for the petitioner has further argued that the respondents have not provided the opportunity to cross-examine the witnesses against him in violation of Rule 27[c] of PIDC Rules. He has argued that the Article 10-A of the Constitution of Islamic Republic of Pakistan provides the right of fair trial, the respondents cannot deprive the petitioner from fair trial and the alleged enquiry cannot be initiated arbitrarily for flimsy reasons. Learned counsel argued that it is a well settled principle of law that if the enquiry / investigation is malafide or without jurisdiction, the High Court in exercise of its constitutional jurisdiction under Article 199 is competent to correct such proceedings and pass necessary orders to ensure justice and fair play. Lastly, learned counsel argued that there is no other efficacious remedy available with the petitioner but to invoke the constitutional jurisdiction of this Honourable Court for the relief(s) as prayed in the memo of the

petition. Learned counsel in support of the case has relied upon the following case law:

- (i) 2005 SCMR 605 MUHAMMAD SHOAB ROOMI v. SECRETARY/ADDITIONAL SECRETARY, EDUCATION DEPARTMENT, GOVERNMENT OF PUNJAB and others.
- (ii) 2010 SCMR 1484 EXECUTIVE COUNCIL, ALLAMA IQBAL OPEN UNIVERSITY ISLAMABAD Through Chairman and another v. M. TUFAIL HASHMI.
- (iii) 2008 PLC (CS) 671 Dr. MALLICK MAROOF IMAM v. FEDERATION OF PAKISTAN through Secretary Establishment Division, Islamabad and 7 others.

12. On the other hand, learned counsel for the respondents during the course of his arguments while reiterating the contents of para-wise comments has contended that the petition as framed and filed is not maintainable in law. He has further argued that the petitioner's salaries have already been released and the petitioner has acknowledged to have received the same, hence the petition also to that extent has become infructuous. It is argued that the relationship between the petitioner and the answering respondent is that of "Master and Servant", therefore, the petition filed under Article 199 of the Constitution is not maintainable in law and is liable to be dismissed. While concluding the arguments, learned counsel in support of his stance has relied upon the following case law:

- (i) 1998 PLC (CS) 607 NAZIR AHMED SHAIKH v. GOVERNMENT OF SINDH Through Secretary Services and General Administration Department [S&GAD] Sindh, Karachi, and another.
- (ii) PLD 2010 SC 676 PAKISTAN INTERNATIONAL AIRLINE CORPORATION and others v. TANVEER-UR-REHMAN and others.
- (iii) 2013 SCMR 1383 ABDUL WAHAB and others v. HBL and other.
- (iv) SBLR 2017 Sindh 31 PAKISTAN AIRLINE PILOTS ASSOCIATION and others v. PAKISTAN INTERNATIONAL AIRLINE CORPORATION & another.
- (v) 1994 SCMR 2232 Mrs. ANISA REHMAN v. P.I.A.C. and another.

- (vi) 2013 PLC (C.S) 465 ANJUMAN FALAH-E-BAHBOOD v. GOVERNMENT OF PAKISTAN and others.

Besides above, the learned counsel also relied upon following un-reported orders/judgments:

- (i) Order dated 31.12.2014 passed by Honourable Supreme Court of Pakistan in Civil Appeal No. 173-K of 2010 in the case of Pakistan Industrial Development Corporation & others v. Raja Muhammad Ilyas & others.
- (ii) Order dated 28.08.2012 passed by Honourable Supreme Court of Pakistan in Civil Petitions No. 842-K And 844-K of 2011 in the cases of Fazal Hussain Bhatti and others v. Federation of Pakistan through its Secretary Ministry of I.T. Islamabad & others.
- (iii) Judgment dated 16.01.2019 passed by Honourable Supreme Court of Pakistan in Civil Appeal No. 585 of 2018 in the case of Pakistan Airline Pilots Association and others v. Pakistan International Airline and another.
- (iv) Order dated 19.05.2017 passed by learned Division bench of this Court in CP. No. 6209 of 2016 in the case of Haider Ali v. NED University of Engineering & Techonology & others.

13. Mr. Muhammad Nishat Warsi, learned DAG, representing respondent No.1, has supported the stance taken by the learned Counsel for the Respondents- PIDC.

14. We have heard the learned counsel for the parties on the point of maintainability, perused the documents available on the record and have examined case law cited at the bar as well as the relevant law on the point of subject controversy.

15. From the perusal of the record, it appears that the whole controversy between the petitioner and the respondents PIDC revolve around the show cause notice No.IDC-2 [1683] dated 16.03.2017 issued by the Respondent PIDC, under Rule 24[o] of PIDC Service Rules, whereby the petitioner was asked why the disciplinary proceedings should not be initiated against him for the acts mentioned in the said show cause notice. Thereafter, on 09.05.2017 under Rule 26 of PIDC Service Rule, the services of the petitioner, was suspended and his salary was stopped. The petitioner challenged the said act of the respondents in the present petition on the ground that the same are

violative of service Rules as well as the fundamental rights guaranteed under the constitution of Pakistan. Learned counsel for the petitioner at the very outset of his arguments has submitted that he does not press his prayer regarding release of the salary of the petitioner as upon notice of the present petition the respondent-PIDC released the salary of the petitioner and the same is continued till date. The petitioner through instant petition seeks enforcement of service Rule of PIDC in respect of the charges levelled against him in the show cause notice, which relate to the terms and condition of service of the petitioner with Respondent -PIDC.

16. It is an admitted position that the service rules framed by the Pakistan Industrial Development Corporation (Private) Limited [PIDC] are not statutory. It is now well settled that non-statutory Rules cannot be enforced by means of a constitutional petition. Reliance in this regard is placed in the case of 'Abdul Wahab and others v. HBL and others (2013 SCMR 1383) wherein the Honourable Full Bench comprising of six members of the Hon'ble Supreme Court of Pakistan observed as under:-

"It is settled law that, where a service grievance is agitated by a person/employee who is not governed by statutory rules of service, before the High Court(s), in terms of Article 199 of the Constitution, such petition shall not be maintainable, reference in this behalf can be made to PLD 2010 SC 676 (Pakistan International Airline Corporation v. Tanweer-ur-Rehman) and PLD 2011 SC 132 (Pakistan Telecommunication Co. Limited v. Iqbal Nasir)."

Similar view was also taken by the Honourable Supreme Court of Pakistan in the case of Pakistan Defense Housing Authority v. Mrs. Itrat Sajjad Khan & Others (2017 SCMR 2010).

17. On the touchstone of the above discussion, it is clear that the Service Rules, the Policy and the Procedure enacted by the Board of Directors, which is a non-statutory body, of Respondent No.2 i.e. PIDC, for the internal control and management of the employees of the PIDC, are without the approval of the Federal Government and have not been enacted or notified as official law, are non-statutory in nature and, therefore, any employee aggrieved of actions taken under

these Rules, cannot resort to this Court under the writ jurisdiction. The relationship of the Petitioners with the PIDC is governed by the principle of master and servant and as such the petition is not maintainable.

18. The case law cited by learned counsel for the petitioner have been perused and considered with due care and caution but are found distinguishable from the facts of the instant case and hence the same are not applicable. Whereas the legal precedents relied upon by the counsel for the respondents support the stance of the respondents and applies to the present case.

19. The upshot of the above discussion is that the petition being not maintainable is hereby dismissed.

JUDGE

JUDGE

Karachi

Dated : **07.03.2019**

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