

IN THE HIGH COURT OF SINDH KARACHI

Present

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1016 of 2013

Nadeem Ahmed

VERSUS

Federation of Pakistan & 04 others

Date of hearing: 15.05.2019

Date of decision: 21.05.2019

Mr. Abdul Salam Memon, Advocate for Petitioner.

Mr. Muhammad Humayun, Advocate for Respondents No.2 to 6.

Mr. Muhammad Nishat Warsi, DAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON-J: Basically, the Petitioner seeks disposal of the instant Petition, with the prayer to set aside the disciplinary proceedings initiated against him by the Pakistan State Oil Company Limited [**“Respondent-Company”**], on account of Misconduct which finally culminated in his dismissal from service on 05.7.2013.

2. We asked from the learned Counsel to satisfy this Court with regard to maintainability of the instant Petition on the premise that Respondent-Company is a non-statutory company, having no statutory rules of service; hence the service matter of Petitioner is to be governed by the principle of `Master` & `Servant`.

3. Mr. Abdul Salam Memon, learned counsel for the petitioner, in reply to the query, has submitted that this Petition is maintainable under the law and invited our attention to the decision rendered by this Court in the case of Bakht Siddique and 61 others vs. Federation of Pakistan and others [**2017 PLC (C.S) 1192**]. In the said decision the Bench has observed that Pakistan State Oil Company Limited is a `person` within the meaning of Article 199(1) (a) (ii), read with clause (5) of the Constitution, hence, Petition against Respondent-Company is maintainable.

4. There is no cavil to the aforesaid proposition set forth by this court affirmed by the Honorable Supreme Court in Civil Petitions No.409-K to 414-K of 2017 [**2018 SCMR 1181**]. However, we may observe that in the aforesaid matter; the issue of Regularization of service of the employees of Respondent-Company was involved. In our view, the regularization of the employees is not part of the terms and conditions of service of the employees for which there has to be some statutory rules but it depends upon the length of service of the said employee. The question involved in the present proceedings however is altogether different as discussed supra.

5. Learned Counsel attempted to convince us that during pendency of this petition, the Petitioner was dismissed from service without providing ample opportunity of hearing to him, therefore, he wants that at least directions may be issued to the Respondent-Company to conduct a fresh inquiry into the allegations of his Misconduct; that the Respondent-Company had transgressed the basic spirit of law, while exercising the powers not vested in them and this court is empowered under the Constitutional jurisdiction

to protect the rights of any individual regarding fair trial as guaranteed under Articles 4, 10-A, 11 of the Constitution as well as Section 24-A of the General Clauses Act, 1897; that the penalty of dismissal from service imposed upon the Petitioner was unjustified; that under the similar circumstances this Court has allowed petition against Respondent-Company; that Respondent-Company is a public utility company providing basic amenities to the public at large, therefore, was a body Corporate performing functions in connection with the affairs of the State and therefore, amenable to the Constitutional jurisdiction of this Court; that the disciplinary proceedings merged into dismissal from service of the petitioner can be called in question under Article 199 of the Constitution; that when any action of the public functionaries is based on malafide, coram-non-judice or without jurisdiction the same could be assailed through a Constitutional Petition by an aggrieved person; that the fundamental right of the petitioner as guaranteed by Article 10-A of the Constitution had been violated and he had been dismissed from service without resorting with the principles of due process of law, and this court can take cognizance under the Constitution; that the larger Bench of the Hon'ble Supreme Court has already held that the Constitutional Petition is maintainable against Pakistan State Oil Company Limited; that the concept of Master and Servant cannot be stretched to confer unbridled powers to the Respondent-company so as to act whimsically, capriciously or in violation of the principles of natural justice and well settled norms of law and justice; that there is/was much difference between the word `Misconduct` and `Negligence` and, therefore, the Petitioner should

not have been dismissed from service on the purported ground of `Misconduct`, therefore, the impugned orders are liable to be set aside. He lastly prayed for allowing the instant petition. The learned Counsel, in support of above contention, has also placed reliance in the cases of MAZHAR ILYAS NAGI and others v. GOVERNOR, STATE BANK OF PAKISTAN and others [2018 PLC (C.S.) 99], Messrs.' STATE OIL COMPANY LIMITED---Petitioner v. BAKHT SIDDIQUE and others--- Respondents [2018 SCMR 1181], TAHIR MAHMUD v. QASIM M. NIAZI and others [2014 PLC (C.S.) 1199], KAMRAN AHMAD v. WATER AND POWER DEVELOPMENT AUTHORITY through Chairman and 3 others [2014 PLC (C.S.) 332], AEROTRON (PRIVATE) LIMITED through Managing Director and 2 others---Petitioners v. FEDERATION OF PAKISTAN through Principal Secretary to the Prime Minister (Chief Executive) and 9 others--- Respondents [2014 CLD 1185], FEDERAL GOVERNMENT M/o DEFENCE, RAWALPINDI---Appellant v. Lt. Col. MUNIR AHMED GILL---Respondent [2014 SCMR 1530], AHMAD HASSAN BUCHA v. CHAIRMAN, NADRA and others [2015 PLC (C.S.) 381], PAKISTAN DEFENCE OFFICERS' HOUSING AUTHORITY and others---Appellants v. Lt. Col. Syed JAWAID AHMED--- Respondent and other connected appeals [2013 SCMR 1707], RIFFAT HASSAN and 9 others v. FEDERATION OF PAKISTAN through Chairman, Federal Board of Revenue/Secretary, Revenue Division and another [2011 PLC (C.S.) 562], MEHTAB AHMED v. CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU, KARACHI and 2 others [2010 PLC (C.S.) 876], TANVEER-UR-REHMAN v. PAKISTAN INTERNATIONAL AIRLINE CORPORATION [2009 PLC (C.S.) 28], Dr. MALLICK MAROOF IMAM v. FEDERATION OF PAKISTAN through Secretary, Establishment Division, Islamabad and 7 others [2008 PLC (C.S.) 671], MUHAMMAD DAWOOD and others v. FEDERATION OF Pakistan and others

[2007 PLC (C.S.) 1046] and ABDUL HAMEED and others v. MEMBER (REVENUE), BOARD OF REVENUE and others [2005 PLC (C.S) 1367].

6. The learned Counsel for the Petitioner has briefed us that the Petitioner was initially appointed in the year 1989 and subsequently, he was reinstated in service in the year 1993. However, in the year 1997 his services were again terminated on the ground of Political affiliations, but later on he was again reinstated, in the light of Sacked Employees (Reinstatement) Ordinance, 2009 (**“Ordinance, 2009”**). Learned Counsel has drawn our attention to the charge sheet dated 01.11.2012, whereby Respondent-Company served him with the allegations of un-authorized absence from duty and insubordination / failure to obey the legitimate instructions of the Company. Petitioner was further charge sheeted vide letter dated 22.02.2013 with the accusation that he disobeyed the legitimate instructions of the Company and remained on unauthorized leave. The aforesaid charge sheet was followed by another charge sheet dated 06.3.2013 with the allegations that his performance was unsatisfactory / negligent, he caused damage to the property of the Company and his activities had caused disrepute to the credibility of the Company. Petitioner replied to the aforesaid charge sheets with vehemence and denied the allegations leveled against him, with the plea that, he applied for leave without pay vide email dated 20.12.2011, his request was processed and approved in December 2011 by the then Managing Director of the Respondent-Company, subsequently his remaining leave was cancelled in July 2012, without intimation, on the accusation of involvement in the

Import of Base Oil Tender Inquiry. Learned counsel in support of his contention, relied upon the Statement dated 11.3.2015, filed on behalf of the Petitioner (available at page 191 of the court file) and denied the allegations of his involvement in the Import of Base Oil Tender Inquiry. Petitioner, in his abortive attempt justified his absence in the enquiry proceedings on the medical grounds by relying upon the medical certificates. Petitioner being aggrieved by and dissatisfied with the initiation of the aforesaid Inquiry proceedings against him filed the instant Petition on 11.3.2013, through his Attorney.

7. Learned Counsel for the Petitioner has drawn our attention to the order dated 13.3.2013 passed by this Court, whereby Respondent-Company was directed not to take any coercive action against the Petitioner till the next date of hearing. He further invited our attention to the order dated 31.10.2018, whereby the 'Dismissal from service' order dated 05.7.2013 issued by Respondent-Company was kept in abeyance. At this stage, we asked from the learned counsel that when his services were reinstated and all disciplinary proceedings were merged into reinstatement order, then what remains for him to agitate now. He replied that the Respondent-Company reinstated the service of the Petitioner and he was taken back on duty from the date of his joining, in compliance with the interim order dated 31.10.2018 passed by this Court and the matter is yet to be decided by this court on merits. He finally prayed that this Petition may be disposed of with the directions to the Respondent-Company to

provide a fair hearing to the Petitioner on the aforesaid charges, in the light of Article 10-A of the Constitution.

8. Conversely, Mr. Muhammad Humayun, learned Counsel representing Pakistan State Oil Company Limited, has raised the question of maintainability of the instant Petition, on the grounds that the Respondent-Company is not established under the Statutes, but incorporated as a Company under the Companies Ordinance, 1984, having non-statutory Rules of service and is being managed by the Human Resource Manual; that service matters of the employees of Respondent-Company are governed under the rule of `Master` & `Servant`, thus no writ lies against Respondent-Company. Learned Counsel referred to the comments filed on behalf of the Respondent-Company and further argued that the Authorities of the answering Respondent-Company have not acted malafidely nor violated any provisions of law or service Rules in discharging their duties; that the Petitioner had earlier been served with Show Cause Notices, thereafter, he was served with three Charge Sheets on account of `Misconduct`, thereafter he was issued notices to appear before the Inquiry Officer, but the Petitioner miserably failed to appear before the Inquiry Officer, thus, all procedures were adopted. Consequently, the Petitioner was dismissed from service by the Competent Authority of the Respondent-Company, vide letter of dismissal dated on 5.7.2013. He lastly prayed for dismissal of the instant Petition. In support of his contention, he relied upon the case of DIG NH & NP Karachi v. Ghulam Mustafa Mahar another (2019 SCMR 95) and other unreported order dated 13.8.2018 passed by the Hon'ble Supreme

Court passed in Civil Petition No.603-K/2018, and argued that the service matter of the employees of the Respondent-Company ought to be decided in accordance with the law laid down in the case of PAKISTAN INTERNATIONAL AIRLINE CORPORATION AND OTHERS VS. TANWEER-UR-REHMAN AND OTHERS (PLD 2010 SC 676). For convenience sake, an excerpt of the order dated 13.8.2018 is reproduced as under:-

“Mr. Shahid Anwar Bajwa, learned ASC for the petitioners submits that since the dismissal of the respondent has been upheld by the judgment impugned herein however, through the same, petition filed by the respondent has been held to be maintainable which is contrary to law. He however submits that he will be satisfied if it is observed by this Court that the judgment impugned shall not be treated as a precedent and the question of maintainability of the petition regarding the service matter of the employees of the petitioner-company shall be decided in accordance with the law laid down in the case of *Pakistan International Airline Corporation and others vs. Tanweer-UR-Rehman and others* (PLD 2010 Supreme Court 676). The request being reasonable is granted. The petition is disposed of accordingly.

9. Mr. Muhammad Nishat Warsi, learned DAG, representing Respondent No.1 has adopted the arguments of learned counsel for the Respondent-Company and further stated that the case law cited by the learned counsel for the petitioner are distinguishable from the facts of this case and argued that regularization of service is not part of the terms and conditions of service, therefore, the Petitioner cannot claim similar treatment in this regard, whereas enforcement of non-statutory rules of service of non-statutory company are altogether different and the same cannot be enforced through Constitutional Petition. He added that rule of Master and Servant is attracted in the present case. He invited our attention to the various decisions of this Court on the aforesaid proposition, whereby the Petitions were dismissed; therefore, no interference in

the present matter is required by this Court. He lastly prayed for dismissal of the instant Petition.

10. The learned counsel for the Petitioner, in exercising of his right of rebuttal has emphasized that it would be unfair if the Petitioner is shorn off his right of hearing, and would be violative of his fundamental right to a "fair trial and due process" as ordained in Article 10-A of the Constitution; thus, the Petitioner can invoke Constitutional jurisdiction of this Court under Article 199 of the Constitution to seek enforcement of his right guaranteed under Article 4 of the Constitution, which inter alia mandates that every citizen shall be dealt with in accordance with law.

11. We have heard the learned Counsel for the parties at length, so also perused the entire material available on record and the decisions relied upon by the learned Counsel.

12. Firstly with regard to the question of maintainability, references are being made to the decisions rendered by the Honorable Supreme Court in cases of Ramna Pipe and General Mills (Pvt.) Ltd. v. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274), Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383), Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed and other connected appeals [2013 SCMR 1707], Khawaja Muhammad Asif v. Federation of Pakistan (PLD 2014 SC 206), Pir Imran Sajid and others Vs. Managing Director/General Manager Telephone Industries of Pakistan and others (2015 SCMR 1257), Pakistan Telecommunication Employees Trust vs. Muhammad Arif and others [2015 SCMR 1472], Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others(PLD 2016 SC 377),P.T.C.L.

and others vs. Masood Ahmed Bhatti and others [2016 SCMR 1362], *Muhammad Rafi and others Vs. Federation of Pakistan and others* (2016 SCMR 2146), *Muhammad Zaman etc. versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad* (2017 SCMR 571) *Pakistan Defence Housing Authority Vs. Mrs. Itrat Sajjad Khan and others* (2017 SCMR 2010), *Messrs State Oil Company Limited v. Bakht Siddique and others* [2018 SCMR 1181], *Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others* [2019 SCMR 278]. For the reasons given in the aforesaid judgments, in our view, there can hardly be any doubt that Respondent-Company is also a “person” within the meaning of Article 199(1) (a) (ii) read with clause (5) thereof.

13. Now, the question raised by the learned counsel for the Respondents that the Respondent-Company is not established under the Statutes, but incorporated as a Company under the Companies Ordinance, 1984, as such no writ can be issued. Since important question of law is involved in the present proceedings, therefore, we have to see whether the test laid down by the Honourable Supreme Court in the case of *Pakistan Defence Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed* (2013 SCMR 1707), is applicable in the present case. The Honourable Supreme Court while discussing status and the functions of various Government Owned Entities/Authorities/Companies held that these are statutory bodies, performing some of the functions which are the functions of the Federation/State and through the exercise of public power, these bodies create public employments. These bodies are therefore "persons" within the meaning of Article 199(1) (a) (ii) read with

Article 199(5) of the Constitution. If their actions or orders passed are violative of the Statute creating those bodies or of Rules/Regulations framed under the Statute, the same could be interfered with by the High Court under Article 199 of the Constitution.

14. The aforementioned test is applicable on Respondent-Company, which mostly follow the policies laid down by the Government of Pakistan regarding supply of petroleum products, being a Public Sector Company. Therefore, we have no hesitation to hold that the Respondent-Company is a body corporate performing functions in connection with the affairs of the State, which establishes the control of Government over the affairs of the Respondent-Company too, making the Company amenable to judicial review under Constitutional jurisdiction.

15. A reference has been given by the learned counsel for the Respondent-Company to the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383), where he attempted to demonstrate that the Respondent-Company is not "person" as defined under Article 199(5) of the Constitution. In this context, the Honorable Supreme Court has held that two factors are most relevant i.e. the extent of financial interest of the State/Federation in an institution and the dominance in the controlling affairs thereof. In the case of Salahuddin v. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), the Honorable Supreme Court laid down similar test to assess whether a body or authority is a person within a meaning of Article 199 of the Constitution and

held that If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not. The aforesaid view was further affirmed in Aitcheson College, Lahore through Principal v. Muhammad Zubair (PLD 2002 SC 326), by the Honorable Supreme Court.

16. Thus, in view of the above discussion, we do not find any substance in the claim of the learned counsel for Respondent-Company that the jurisdiction to this Court is barred on the ground that the Respondent-Company is not a "person" as discussed above.

17. Much emphasis has been laid on the case of Pakistan International Airlines v. Tanweer-ur-Rehman (PLD 2010 SC 676), by the learned Counsel for the Respondent-Company that the question of maintainability of the petition regarding the service matter of the employees of the Respondent-Company shall be decided in accordance with the aforesaid law laid down by the Honorable Supreme Court.

18. To appreciate the contention of the learned Counsel as stated above. The Honorable Supreme Court in the aforesaid matter has held at paragraph No. 25 that although the 'appellant-Corporation' is performing functions in connection with the affairs of the Federation but since the services of the respondent-employees are governed by the contract executed between both the parties, as is evident from the facts narrated

hereinabove, and not by the statutory rules framed under section 30 of the Act, 1956 with the prior approval of the Federal Government, therefore, they will be governed by the principle of 'Master and Servant'.

19. The learned five Member Bench of the Honorable Supreme Court in the case of Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed and other connected appeals (2013 SCMR 1707) has answered the question raised by the learned Counsel for the Respondent-company at paragraph No. 59, which needs no further discussion on our part. An excerpt of the same is reproduced as under:-

“59. For what has been discussed above, the cases of this Court reported as (Pakistan International Airlines Corporation PLD 2010 SC 676, Executive Council Allama Iqbal Open University 2010 SCMR 1484 and Hyderabad Electric Supply Co. 2010 PSC 1392 Supra), we observe with respect, did not declare or enunciate any principle of law but were rendered in their own peculiar facts and circumstances and may not be treated as precedent on the issue we are seized of, because:--

(i) The issue before this Court in Executive Council Allama Iqbal Open University supra was only whether the Service Tribunal had jurisdiction to hear the appeal in view of the law laid down in Mubeen-us-Salam's case supra and whether the writ jurisdiction under Article 199 of the Constitution could be invoked in the event of violation of Ordinance, 2000.

(ii) In all the above cases, the point that irrespective of the Rules/Regulations being non-statutory the promulgation of Ordinance 2000 was a statutory intervention and any violation thereof would be amenable to writ jurisdiction was not considered. In Hyderabad Electric Supply Co. 2010 PSC 1392 Supra, there was no allegation that there was any violation of any provision of the Ordinance 2000 and enforcement of Service Rules was sought which were found to be non-statutory.

(iii) Neither the mandate of Articles 4 and 10A of the Constitution nor the law laid down in Civil Aviation Authority through Director-General v. Javed Ahmad (2009 SCMR 956) and Azizullah Memon v. Province of Sindh (2007 SCMR 229) was considered in those cases.(**Emphasis Added**)

20. The learned three Member Bench of the Honorable Supreme Court, in the latest verdict in the case of Messrs.' STATE OIL

COMPANY LIMITED---Petitioner v. BAKHT SIDDIQUE and others--- Respondents [2018 SCMR 1181], has clarified the issue of maintainability of the Petition against the Respondent-Company and therefore, we are fortified in our view that the instant Constitutional Petition is maintainable against the Respondent-Company.

21. Having decided on the maintainability, the instant Petition relates to the service of the Petitioner, whereby Respondent-company vide order dated 05.07.2013 dispensed with his service, during the pendency of the instant Petition on the allegations of involvement in the import of base oil tender inquiry and during the inquiry proceedings, he was found guilty of the charges of unsatisfactory, negligent performance, intentional damage to company property and activities bringing disrepute to the company, which he is asking for setting aside, through the instant Petition. Petitioner, who admittedly, is not a Civil Servant as defined under Section 2(1)(b) of Civil Servants Act, 1973, but an employee of a non-statutory Company, having non-statutory rules of service, thus cannot invoke the jurisdiction of Service Tribunal, the only remedy if any, lies by way of Civil Suit before the Civil Court pursuant to the Judgments rendered in the cases of Muhammad Mobeen-ul-Islam Vs. Federation of Pakistan and others (PLD 2006 SC 602) and Muhammad Idrees Vs. Agricultural Development Bank of Pakistan and others (PLD 2007 SC 681). However, the Full Bench of this Court in MUHAMMAD DAWOOD and others v. FEDERATION OF PAKISTAN and others [2007 P L C (C.S.) 1046] found a way out for only the employees of a Statutory

Corporation, Authorities, Bodies, etc. who were proceeded under Removal from Service Ordinance, 2000 to invoke jurisdiction of this Court under Article 199 of the Constitution.

22. Progressing on the aforesaid proposition put forwarded by the learned Counsel, we have to see as to whether there is any violation of Statutory Law, compelling the Petitioner to invoke the Constitutional Jurisdiction of this Court?

23. The record reveals that the contractual services of the Petitioner were terminated, but upon promulgation of the "Ordinance, 2009", the Petitioner was reinstated in service in the year 2009. And thereafter disciplinary proceedings were initiated against him and finally culminated in the dismissal from service vide order dated 05.7.2013. In our view, the disciplinary matters fall within the expression "Terms and Conditions of Service" and admittedly, the same are non-statutory rules of service, which is an internal matter of service of the Respondent-company, which in our view cannot be thrashed out in a Writ Petition.

24. Since the Petitioner is governed as per the terms of his contract appointment letter and terms and conditions of service attached thereto, therefore, there is no violation of the law and if there is any breach of contract including the terms and conditions of the contractual service the same is not enforceable being neither a statute nor conferring any statutory protection to the Petitioner.

25. The learned counsel for the Petitioner while arguing the case has heavily relied upon Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Javaid Ahmed (2013 SCMR 1707) to

stress that in view of the Judgment of the Honourable Supreme Court, regardless whether rules are not approved by the Government, if the authority is Government owned organization and violation of statute, it can be enforced through Constitutional jurisdiction and rule of Master and Servant has been diluted. We have carefully gone through the aforesaid judgment of the Honorable Supreme Court, the ratio *decidendi* in this judgment is, where employees of Government owned and statutory organization are removed from service under Removal from Service (Special Power) Ordinance, 2000, the Constitutional Petition will be maintainable. The relevant observation of the Honorable Supreme Court is as under:--

"It was not disputed before this Court by appellants learned counsel that the respondent-employees were "persons in corporation service" within the meaning of section 2(c) of the Ordinance, 2000 and except in the case of N.E.D. University, they were proceeded against under the said law. This was a 'statutory intervention and the employees had to be dealt with under the said law. Their disciplinary matters were being regulated by something higher than statutory rules i.e. the law i.e. Ordinance, 2000. Their right of appeal (under section 10) had been held to be ultra vires of the Constitution by this Court as they did not fall within the ambit of the Civil Servants Act, 1973, (in Mubeen us Salams' case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC 681). **They could in these circumstances invoke constitutional jurisdiction under Article 199 of the Constitution to seek enforcement of their right guaranteed under Article 4 of the Constitution which inter alia mandates that every citizen shall be dealt with in accordance with law. The judgment of this Court in Civil Aviation Authority (2009 SCMR 956) supra is more in consonance with the law laid down by this Court and the principles deduced therefrom as given in Para 50 above.**"(Emphasis Added).

26. In the aforesaid judgment, the Larger Bench of Honorable Supreme Court has deduced and summarized the following principles of law:--

(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.”

27. Applying the aforesaid principles of law to the case of the Petitioner, we feel no hesitation in drawing inference that the Respondent-Company is non-statutory entity and Petitioner is not governed under statutory rules of service, hence contractual terms and conditions of service are not enforceable through Constitutional Petition. The case of Petitioner is neither covered under enforcement of terms of RSO-2000 nor is violation of rule of natural justice attracted in absence of infringement or any vested rights of the Petitioner or any disciplinary proceedings undertaken against him under any law. These rules are non-statutory, therefore, for all intent and purpose, these are contractual terms for internal use, hence, the law laid down by the Honourable Supreme Court in Pakistan Defence Officers Housing Authority case (supra), does not support the case of the Petitioner as there has been no violation of law.

28. For the aforesaid reasons, we are of the view that the relationship of Master and Servant exist between the Petitioner and

the Respondent-Company, hence, his grievance pertains to the terms and conditions of service which cannot be enforced through a Writ. As to the Service Rules, these are non-statutory and mere instructions for internal control and management of the employees of the Respondent-Company. Guidance could be taken from the Hon'ble Apex Court's judgment enunciating the test of Statutory Rules and non-Statutory Rules [*Shafique Ahmed Khan and others v. NESCOM through Chairman Islamabad and others (PLD 2016 SC 377)*] and *Muhammad Zaman etc. v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (2017 SCMR 571)* where in Paragraph-7 following was held:-

"According to the Judgment delivered in Civil Appeal No.654/2010 etc. titled Shafique Ahmed Khan and others NESCOM through its Chairman, Islamabad, and others the test of whether rules/ regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to Section 54(1) of the Act and Section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [while saving the generality of the power wider Section 54(1) of the Act]. Out of all the matters listed in Section 54(2) of the Act, clause (j) is the most relevant which pertains to the "recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank's contribution, for the officer and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift". A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. **Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition.**

Since it has been held above that the Regulations are non-statutory, therefore, we do not find it necessary to dilate upon the point of laches. In the light of the above, this appeal is dismissed." (Emphasis Added).

29. We, thus, are of the view that it is for the Respondent-Company to place its employees in accordance with its Service Rules and Regulations, which is an internal matter of the Respondent-Company, thus devoid of any Constitutional interference, at this juncture. Our view is supported by the latest decision announced on 13.5.2019 by the Honorable Supreme Court in an unreported case of Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals (Civil Appeals No.26-K & 27-K of 2018). The Honorable Supreme Court, in the aforesaid Appeals has provided guiding principles on the issue of statutory and non-statutory rules of service (NADRA) and its enforcement, contractual service of employees (NADRA) and their remedy and finally the issue of maintainability of Constitutional Petition in like matters, held as under:-

“14. In view of the foregoing discussion, our conclusion ultimately is that the appellants cannot be granted relief in terms of the proceedings and remedy (i.e., constitutional petition) as sought by them. Whether they would have had a case sounding in a civil suit, with appropriate injunctive or other remedy being sought there, is a point not in issue here, and which therefore need not be considered in these appeals.

15. Accordingly, these appeals fail and are hereby dismissed. There will be no order as to costs” **(Emphasis Added)**

30. The case law cited by the learned counsel for the Petitioner mostly related to the issue of Regularization of service of the employees and on the point of maintainability of writ petition, but here the question involved in the present proceedings is with regard to the enforcement of non-statutory rules of service of a non-statutory company, thus are distinguishable from the facts obtaining in the Petition in hand. Since, we have already held in the preceding paragraphs about the issue of maintainability of the petition, therefore, the issue need no further elaboration. We are

fortified on the aforesaid proposition by the latest verdict of the Honorable Supreme Court in the case of Messrs STATE OIL COMPANY LIMITED--Petitioner v. BAKHT SIDDIQUE and others-- Respondents [2018 SCMR 1181], whereby the Honorable Supreme Court has held as under:-

“These petitions are directed against the judgment of the learned High Court, whereby the respondents, who are working for the petitioner company, approached the Court for regularization of their services in the petitioner company. The defence set out by the petitioner was that the respondents are not their employees rather their jobs have been outsourced and they are employees of the contractor. It is also the petitioner's case that the respondents' petition before the learned High Court was incompetent because there is no statutory rules of the petitioner and as per the law laid down in Abdul Wahab and others v. HBL and others (2013 SCMR 1383) these two pleas have not been accepted by the learned High Court and the petition has been dismissed on the ground that in such like cases, where the services or the jobs were outsourced the petitioner itself has regularized the services. Besides, this case is not about the terms and conditions of service rather about regularization, in such a situation the jurisdiction would not be of the Labour Court. Both these points have been debated by the counsel, who states that the petitioner under the law has the authority to outsource the jobs of the respondents and thus for all intents and purposes the respondents are the employees of the contractor.

2. It was also argued that there are disputed questions of fact and such questions could not be resolved in the constitutional jurisdiction of the Court. In this context, the judgments in the cases of Farid Ahmed v. Pakistan Burma Shell and others (1987 SCMR 1463) and PIA and others v. Tanveer-ur-Rehman and others (PLD 2010 SC 676) were relied upon.

3. We heard the learned counsel for the petitioner and found both the submissions not well founded and are misconceived. **The regularization of the employees is not a part of the terms and conditions of service of the employees for which there need to be some statutory rules but it depends upon the length of service** and in terms of equity that a person who has given his prime life and youth to a department is always kept in dark and his services were taken in a very explorative manner. So it is on the principle of the above that they have approached the learned High Court for regularization of their service, where there is no statutory rules or law while exercising its jurisdiction for the purposes of enforcement of the fundamental right to life particularly Articles 9 and 25 of the Constitution. **Therefore, the first objection about the maintainability of the writ petition has no force and is accordingly rejected.**

As regards the question that the respondents were not the employees of the petitioner but the contractor, suffice it to say that it is a normal practice on behalf of such industries to create a pretence and on that pretence to outsource the employment of the posts which are permanent in nature and it is on the record that the respondents have been in service starting from as far back as 1984. This all seems to be a sham or pretence and therefore, it being not a case of any disputed fact and no evidence was required to be recorded. Moreover,

we have seen from the order under challenged that in such like cases where the orders have been passed by the Labour Tribunals, the employees, even those who were under the contractors' alleged employment, have been regularized by the petitioner. And thus keeping in view the rule of parity and equality, all the respondents even if considered to be the employees of the contractor, which is not correct, they having been performing duties of permanent nature should have been regularized. However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long terms benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed.”(Emphasis Added).

31. In the light of above discussion and case law referred, we are not inclined to interfere in the terms and conditions of the service of the Petitioner, in Constitutional Jurisdiction, being non-statutory Rules of Service, therefore, the instant petition is dismissed along with pending application[s], with no order as to costs.

JUDGE

JUDGE

S.Soomro/-