

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

**Mr. Justice Muhammad Shafi Siddiqui**

**Mr. Justice Adnan-ul-Karim Memon**

## C.P. No. D- 6110 of 2015

Muhammad Abid Shahzad .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

## C.P. No. D- 7524 of 2015

Arsalan Subeet .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

## C.P. No. D- 7530 of 2015

Shahana Rizvi .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

## C.P. No. D- 7596 of 2015

Fouzia Munir .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

## C.P. No. D- 7654 of 2015

Mirza Mansoor Baig .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

## C.P. No. D- 454 of 2016

Mansor Ahmed Khan .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

## C.P. No. D- 455 of 2016

Farhan Ahmed .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

**C.P. No. D- 456 of 2016**

Iftikhar Ahmed Siddiqui .....Petitioner  
*Versus*  
Federation of Pakistan & others .....Respondents

**C.P. No. D- 6001 of 2016**

Syed Anees Ali .....Petitioner  
*Versus*  
Federation of Pakistan & others .....Respondents

**C.P. No. D- 6051 of 2016**

Sohrab Ali Khan .....Petitioner  
*Versus*  
Federation of Pakistan & others .....Respondents

**C.P. No. D- 6070 of 2016**

Niaz Hussain Awan .....Petitioner  
*Versus*  
Federation of Pakistan & others .....Respondents

**C.P. No. D- 6071 of 2016**

Muhammad Ashar Afaq .....Petitioner  
*Versus*  
Federation of Pakistan & others .....Respondents

**C.P. No. D- 2854 of 2016**

Muhammad Bakhtiar Ahmed .....Petitioner  
*Versus*  
Federation of Pakistan & others .....Respondents

**C.P. No. D- 3879 of 2016**

Ghousia Jehangir .....Petitioner  
*Versus*  
Federation of Pakistan & others .....Respondents

**C.P. No. D- 6342 of 2016**

Muhammad Ashar Afaq .....Petitioner  
*Versus*  
Federation of Pakistan & others .....Respondents

**C.P. No. D- 399 of 2017**

Salman Hussain Zubairi .....Petitioner  
*Versus*  
Federation of Pakistan & others .....Respondents

**C.P. No. D- 2955 of 2017**

Syed Faisal Uddin .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

**C.P. No. D- 3119 of 2017**

Ahmed Amin Brohi .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

**C.P. No. D- 5200 of 2017**

Noman .....Petitioner

*Versus*

National Database & Registration Authority  
(NADRA) & others .....Respondents

**C.P. No. D- 2129 of 2018**

Raza Khan Sawati & others .....Petitioners

*Versus*

Federation of Pakistan & others .....Respondents

**C.P. No. D- 2536 of 2018**

Yousuf Abrar .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

**C.P. No. D- 2730 of 2018**

Inam ul Haq .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

**C.P. No. D- 2731 of 2018**

Mustaqem Ahmed Memon .....Petitioner

*Versus*

Federation of Pakistan & others .....Respondents

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**Date of hearing:** 29.8.2019

**Date of short order:** 29.8.2019

Mr. M.M. Aqil Awan, advocate for the Petitioner in C.P No.D-5200 of 2017.

Mr. Azhar Faridi, advocate for the Petitioners in C.P No.D-455 and 456 of 2016.

Chaudhry Muhammad Ashraf Khan, advocate for the Petitioners in C.Ps. No.D-454/2016, 6001/2016, 2854/2016, 6070/2016, 6342/2016, 2955/2016, 2731/2018, 2129/2019, 2536/2018, 2730/2018, 399/2017, 2129/2018, 7524/2015 and 3879/2016.

Mr. Sameer Ghazanfar, advocate for the Petitioner in C.P No.D-6110 of 2015.

Mr. Abdul Hafeez Jagirani advocate for the Petitioner in C.P No.D-3119 of 2017.

Ms. Durdana Tanveer, Assistant Attorney General

Chaudhry Muhammad Farooq advocate for Respondent/NADRA

Alongwith Ms. Samina Iqbal, advocate for NADRA

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

**ADNAN-UL-KARIM MEMON-J.** Basically, the Petitioners have impugned the disciplinary proceedings i.e. dismissal from service orders and issuance of Show Cause Notices by the Respondent-National Database and Registration Authority (NADRA).

2. Learned Counsel for all the Petitioners consented that Petition bearing No. 5200 of 2017 may be treated as leading Petition and same may be disposed of at Katcha Peshi stage along with other connected petitions.

3. At the very outset, we have asked a question from the learned Counsel representing the parties to satisfy this Court with regard to maintainability of the captioned Petitions on the premise that the Rules and Regulations of NADRA are non-statutory.

4. Mr. Muhammad Aqil Awan, learned Counsel for the Petitioners in CP No.D-5200 of 2017 argued that, first of all the instant petitions are maintainable and can be heard and decided on merit by this Court, on the premise that the present Petitions relate to the service issues of the Petitioners, who admittedly, are not a Civil Servants as defined under Section 2(1) (b) of Civil Servants Act 1973, but employees of a Statutory Authority, thus cannot invoke the jurisdiction of the Federal Service Tribunal, the only remedy if any, lies by way of filing the Constitutional Petition under Article 199 of the Constitution, in view of the decision rendered by Full Bench of this Court in

Muhammad Dawood and others vs. Federation of Pakistan and others [2007 PLC CS 1046] and the Honorable Supreme Court in the cases of *Defence Housing Authority vs. Lt. Col Syed Jawaid* [2013 SCMR 1707] and *Muhammad Rafi and others vs. Federation of Pakistan and others* [2016 SCMR 2146]. He next argued that the employees of a Statutory Authorities, who were proceeded under Government Servants (Efficiency and Discipline) Rules, 1973 can invoke the jurisdiction of this Court under Article 199 of the Constitution. In support of his contention, he heavily relied upon the decision given by the Hon'ble Supreme Court in the case of DHA (supra) and argued that the right of Appeal is a substantive right as provided under the law and it was a statutory intervention, thus Constitutional Petitions filed by the Petitioners, seeking enforcement of their fundamental rights are maintainable. He next added that under the aforesaid statutory intervention, he is supported by the decisions of the Honorable Supreme Court in the cases of *P.T.C.L. and others Versus Masood Ahmed Bhatti and others* (2016 SCMR 1362), *Zarai Taraqiati Bank Limited Vs Said Rehman* (2013 SCMR 642), *Pir Imran Sajid and others Versus Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others* (2015 SCMR 1257), *Masood Ahmed Bhatti and others Versus Federation of Pakistan through Secretary, M/O. Information Technology and Telecommunication and others* (2012 SCMR 152), *Mrs. Anisa Rehman versus P.I.A.C. and another* (1994 SCMR 2232), *Karachi Development Authority And Another Versus Wali Ahmed Khan and others* (1991 SCMR 2434) and *Justice Khursheed Anwar Bhindar versus Federation of Pakistan and others* (PLD 2010 SC 483). He next argued that the Rules and Regulations of NADRA are statutory and in this regard he referred various sections of NADRA Regulations 2002.

5. Learned Counsel for all the Petitioners in the connected Petitions adopted the arguments of Mr. M.M Aqil Awan, learned Counsel for the Petitioners in CP. No. D-5200 of 2017. However, Chaudhary Muhammad Ashraf, learned

Counsel for the Petitioners in C.Ps No.D-454/2016, 6001/2016, 2854/2016, 6070/2016, 6342/2016, 2955/2016, 2731/2018, 2129/2019, 2536/2018, 2730/2018, 399/2017, 2129/2018, 7524/2015 and 3879/2016 added that the Respondents have non-suited the petitioners by invoking Rule-2(2) of Government Servants (Efficiency & Discipline) Rules, 1973 read with Regulation No.24 of NADRA Employees Service Regulations, 2002 whereby some of the Petitioners have been served with Show Cause Notices and in some cases major penalty i.e. dismissal from service has been imposed upon the Petitioners. Per learned Counsel the aforesaid Rules-1973 are statutory, therefore, these Petitions are maintainable and can be heard and decided on merits.

6. At this juncture, we asked from the learned Counsel for the Petitioners, as to how they maintain the instant petitions, in view of the latest decision rendered by the Hon'ble Supreme Court in reported case of *Major Retd. Syed Muhammad Tanveer Abbas and other connected appeals vs. Federation of Pakistan through its Secretary, Ministry of Interior & others* (2019 SCMR 984) as cited supra, whereby the Appeals of the employees of NADRA were dismissed by the Hon'ble Supreme Court vide Judgment dated 13.5.2019 on the premise that they have no Statutory Rules of service, therefore, Constitutional Petition under Article 199 of the Constitution is not maintainable. In reply, he assisted this Court on the issue of maintainability of the instant Petitions. The learned Counsel argued that the Petitioners are regular employees and not contractual employees of NADRA, therefore, the aforesaid decision is distinguishable from the facts obtaining in the present petitions; that the present matter may be decided on the basis of Judgment passed by the Hon'ble Supreme court in the case of *Pakistan Defense Officers Housing Authority vs. Mrs. Itrat Sajjad Khan and others* [2017 SCMR 2010]. He next argued that the impugned termination orders and Show Cause Notices are in gross violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Further that the action on the part of Respondent-Authority was arbitrary and capricious thus untenable in

law; that the Honorable Supreme Court in the case of Mrs. Itrat Sajjad Khan supra declared Rule 8(b) (1) of the Service Rules for the Employees of the Pakistan Defence Officers Housing Authority-2008, which provides dispensation of service of an employee by giving him/her one month's notice or one month's pay in lieu thereof, as ultra vires of the Constitution and law as is the same in the present cases. Learned Counsel, while relying upon the case of Mrs. Itrat Sajjad Khan supra, has also contended that the Honorable Supreme Court in the said case directed to reinstate the employee of DHA, who was terminated in violation of principles of natural justice. He further argued that the case of the present Petitioners and Mrs. Itrat Sajjad Khan supra is on the same footings, hence the Petitioners are entitled to be reinstated in the service and Show Cause Notices served upon some of the Petitioners may be vacated. Lastly, learned Counsel for the Petitioners argued that, the petitioners challenged the termination of their service and issuance of Show Cause Notices on the ground that the same were arbitrary and had been issued without giving any reason; that Section 24-A of the General Clauses Act, 1897, obliges every person exercising powers conferred by a statute, to act "reasonably, fairly, justly and for the advancement of the purpose of the enactment." It also stipulates that the person making any order under the power conferred by any enactment shall, so far as necessary or appropriate, "give reasons for making the order". Therefore, unreasoned orders of termination (without holding of enquiry) and issuance of Show Cause Notices to some of the Petitioners are violative of Section 24-A of the General Clauses Act. In support of their contentions, they relied upon the decision of the Honorable Supreme Court rendered in the case of Government of Pakistan v. Farheen Rashid (2011 SCMR 1). They next submitted that there is no other efficacious and adequate remedy available with the Petitioners but to invoke the Constitutional Jurisdiction of this Court for the relief(s) as prayed in the Memo of Petitions.

7. Chaudhry Muhammad Farooq, learned Law Officer of NADRA has referred to his synopsis filed on behalf of Respondent-Authority and argued that the instant petitions are not maintainable and further stated that the case law cited by the learned Counsel for the Petitioners are distinguishable from the facts of these cases, therefore, the Petitioners cannot claim similar treatment in this regard, whereas enforcement of non-statutory rules of service of statutory authority 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 cases. He invited our attention to the various decisions of this Court and the Hon`ble Supreme Court of Pakistan on the aforesaid proposition, whereby the Petitions were dismissed; therefore, no interference in the present matters is required by this Court. He lastly prayed for dismissal of the instant Petitions. Upon query of application of Efficiency & Discipline Rules, 1973 in the cases of Petitioners, he replied that the application of Efficiency & Discipline Rules, 1973 is only adoptive as a part of NADRA Service Regulations 2002 to regulate the internal administrative and procedural departmental action but it had not been applied through any statutory provision of law; that the purpose of only to afford opportunity of defence to NADRA employees, otherwise it is neither statutory nor mandatory for external reference. We posted another question to him whether regular enquiry in the cases of Petitioners has been conducted. He replied that in all subject cases the regular enquiry has been conducted and full opportunity of Show Cause Notice and Personal Hearing has been accorded. At this juncture, learned Counsel representing the Petitioners have refuted the claim of Assistant Director (Legal) for NADRA and argued that nothing has been done.

8. We have heard the learned Counsel for the parties on the question of maintainability of the instant petitions and perused the material available on record and case law cited at the bar.



9. The issue of maintainability of the captioned Constitutional Petitions has been raised, in view of the latest verdicts by the Honorable Supreme Court of Pakistan in the reported cases of Major Retd. Syed Muhammad Tanveer Abbas and other connected appeals vs. Federation of Pakistan through its Secretary, Ministry of Interior & others (2019 SCMR 984), Chairman NADRA, Islamabad, through Chairman, Islamabad and another Versus Muhammad Ali Shah and others (2017 SCMR 1979) and Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010), as such we would confine our self to that issue only and refrain ourselves to dilate upon the merits of the cases, if we find the instant matters are not maintainable under the law.

10. Upon perusal of the pleadings and arguments extended thereon by the learned Counsel for both the parties, an important question of law requires our determination, whether the Respondent-Authority is a statutory authority, having non- statutory rules of service; hence the service matter of NADRA is to be governed by the Principle of `Master` & `Servant`?

11. To proceed with the question of maintainability of the captioned Petitions, we have noticed that the National Database & Registration Authority is the creation of a Statute established under Section 3 of the NADRA Ordinance, 2000. Section 35 of the Ordinance empowers the Authority and its officers and employees on such terms and conditions as it may deem fit in order to carry out the purpose of this Ordinance. While Section 44 empowers the Federal Government to make Rules for carrying out the purpose of Ordinance and Section 45 empowers Authority to make Regulations by Notification for carrying out its functions under the Ordinance and any other matter. Sub-Clause (2) of 37 and 45 clarifies that such regulations may provide for appointment of the officers mentioned in Section 35. The Authority pursuant to Section 35, 37 and 45 notified its Regulations on 1.11.2002 vide S.R.O. 118 (KE)/2002. According to Regulation No.3 of the Regulations, employees of the Authority are to be governed by these regulations with regard to their terms and conditions

of service. Regulation No.4 of the Regulations empowers the Authority to sanction, create, re-designate or abolish any post, discipline or cadre with the Authority as it may deem fit. Regulation 23 of the NADRA Employees (Service) Regulation, 2002 stipulates that the Government Servants (Efficiency & Discipline) Rules, 1973 are made applicable to NADRA employees. The service rules of the Respondent-Authority lay down the terms and conditions of service of their employees. We may observe here that mere adoption of Statutory Rules of the Government or their application by reference will not automatically lend a statutory cover or content to those rules. In this context, the Honorable Supreme Court of Pakistan has already settled this principle in *M.H. Mirza v. Federation of Pakistan through Secretary, Cabinet Division, Government of Pakistan, Islamabad and 2 others* (1994 SCMR 1024). The aforesaid Service Rules are basically instructions for the internal control or Management of Respondent-Authority and are therefore non-statutory.

**12.** The case of the Petitioners is governed by the principle of 'Master and Servant', therefore the Petitioners do not have any vested right to seek reinstatement in service or call in question the disciplinary proceedings initiated against them in pursuance of the charge sheets. It is well settled law that contract employee cannot claim any vested right, even for regularization of service. The Hon'ble Supreme Court of Pakistan in the case of *Chairman NADRA, Islamabad through Chairman, Islamabad and another Vs. Muhammad Ali Shah and others* (2017 SCMR 1979) has held that the writ or Constitutional jurisdiction of High Court under Article 199 of the Constitution cannot be invoked by a contractual employee of a statutory organization, such as NADRA. For convenience sake, the relevant portion of the Judgment passed by the Hon'ble Supreme Court of Pakistan is reproduced herein below:-

"10. NADRA had opposed the petitions before the High Court. NADRA also took a specific plea that the NADRA Ordinance, and in particular section 35 thereof did not envisage outside interference in the affairs of NADRA and NADRA itself in alone competent to employ people, and this is required to be done in accordance with the prescribed mythology. NADRA had also raised the legal objection with regard to the jurisdiction of the High Court.

Surprisingly, these legal questions did not receive an answer from the High Court.”

11. Pursuant to the powers conferred by section 45 read with sections 35 and 37 of the NADRA Ordinance, NADRA had enacted the Regulations. The Regulations attend to the method of appointment and qualification of employees (Regulation 8), designate the appointing authority (Regulation 9), specify the Selection Boards and Selection Committee (Regulation 10), set out the procedure for initial appointment (Regulation 11), require that merit and provincial quota be observed (Regulation 12), require candidates to be medically fit (Regulation 13) and require verification of the character and antecedents of potential employees (Regulation 14). It is not clear whether the prescribed procedure for the selection and appointment (as mentioned in the Regulations) was followed, however, NADRA had elected to regularize all contractual employees and there is no challenge to such regularization. NADRA, the appellant herein, is aggrieved by the impugned judgment which has struck down NADRA's letter dated March 6, 2012 “to the extent of equivalency table” attached, therewith and given directions to “re-designate their [the petitioners before the High Court] pay scales as mentioned in the Notifications No. F&A/ NADRA/ HQ/2002-2003, dated 21.6.2003 with all consequential benefits”

12. The referred to NADRA's letter dated March 6, 2012 had enclosed “Option Form” which was required to be “filled by all eligible employees” and the Option Form was to be submitted “latest by 22<sup>nd</sup> March 2012”. The regularization process initiated by NADRA would proceed towards completion after the eligible contractual employees had submitted their Option Forms. However, before the submission of his/ her Option Form a contractual employee would continue as such, that is remain a person who was employed on contract by NADRA. The private respondents therein, who were the petitioners before the High Court, however, challenged certain terms/ components of NADRA's letter dated March 6, 2012; in doing so they undermined their own status of becoming regular or permanent employees of NADRA. If they did not accept NADRA's letter dated March 6, 2012, or any part thereof, they would remain as contractual employees of NADRA. The High Court could not renegotiate, alter and / or amend the terms of regularization that were offered by NADRA for the simple reason that the High Court did not have jurisdiction to do so. Therefore, till such time that the employees were regularized they would continue to be governed by the terms and conditions of the contract which they had with NADRA. **The writ or constitutional jurisdiction of High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization, such as NADRA** (see Pakistan Defence Officers Housing Authority v. Jawaid Ahmed reported as 2013 SCMR 1707, Pakistan Telecommunication Co. Ltd. v. Iqbal Nasir reported as PLD 2011 Supreme Court 132 and P.T.C.L v. Masood Ahmed Bhatti reported as 2016 SCMR 1362). It was only after the terms and conditions as offered by NADRA had been accepted and the Option Form had been submitted that the status of a contractual employee would convert to that of a regular employee of NADRA. Before accepting the terms offered by NADRA and submitting the Option Form the status of a contractual employee would remain as such and he/she would not be able to seek recourse to the constitutional jurisdiction of the High Court.

13. Therefore, for all the reasons mentioned shows, both these appeals are allowed and the impugned judgment dated March 6, 2014 of the Peshawar High Court is set aside and the petitions (W.Ps. Nos. 3210 and 3437 of 2012) filed before the Peshawar High Court are dismissed.” **(Emphasis added)**

13. This Court has already decided the cases of similar nature vide common Judgment dated 12.03.2018 passed in the case of Major (R) Syed Muhammad Tanveer Abbas and Mansoor Pasha in Constitution Petition No. D-6555 of 2017

and C.P. No. D-931 of 2016. The relevant portion of the judgment is reproduced as follows:-

“13. The next question for our consideration would be the maintainability of a writ filed by an employee of Authority against a statutory body having non statutory rules of service, seeking enforcement of the terms and conditions of his service rules. We are of the considered view that if a service grievance is agitated by a person/employee, who is not governed by the statutory rules of service, in terms of Article 199 of the Constitution; such petition shall not be maintainable. Our view is supported by the case law decided by the Honorable Supreme Court of Pakistan in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383).

14. Our view is further strengthened by the case decided by the Honorable Supreme Court of Pakistan in the case of Muhammad Zaman and others v. Government of Pakistan (2017 SCMR 571). The Hon’ble Supreme Court has dilated upon the issue of statutory and non-statutory Rules of Service and held as follows:-

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

15. In the light of above dicta laid down by the Honorable Supreme Court of Pakistan, we are of the considered view that where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal uses, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.

16. In view of the foregoing, the Constitutional Petitions in hand are not maintainable, hence, are dismissed with no order as to cost.”

14. This Court vide order dated 28.3.2018 passed in CP No.D-571/2016 dismissed the Petition of NADRA Employee on the premise that NADRA has no Statutory Rules of service. The aforesaid judgment was assailed before the Hon’ble Supreme Court of Pakistan in Civil Petition No.653-K/2018, which was dismissed as not pressed vide order dated 06.08.2018, with the following observation:-

“Learned ASC for the petitioner states that review petition has been filed by the petitioner against the impugned judgment which is pending in the High Court. He states that he does not press this petition and will approach this Court if the review petition is decided against the petitioner. The petition is dismissed as not pressed.”

The aforesaid Petitioner being aggrieved by and dissatisfied with the order dated 28.3.2018 passed by this Court in the aforesaid matter preferred Review Application, which was too dismissed vide order dated 26.01.2019. At this stage, Ch. Muhammad Ashraf learned Counsel for the Petitioners in CP

No.D-454/2016 and other connected Petitions in his abortive attempt argued that the aforesaid Petitioner did not press his petition before the Hon'ble Supreme Court on the premise that review application is pending before this Court; that the aforesaid petition has been dismissed by this Court on the sole ground that Petitioner is a contract employee, whereas he was not contract employee but a regular employee of NADRA. We posted him a question that this Court has not decided the aforesaid matter on the sole ground of the status of the petitioner as a contractual employee, but we have decided the issue of statutory and non-statutory Rules of the service of the Petitioner. He again emphasized that the NADRA Regulations-2002 are statutory in its nature and his arguments are same as in the aforesaid matter decided by this Court.

15. To appreciate the contentions raised by the learned Counsel for all the Petitioners in its proper perspective, we think it appropriate to have a glance on various Judgments rendered by the Honorable Supreme Court on the aforesaid proposition.

16. First decision of a five Member Bench of the Honorable Supreme Court in the case of Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed [2013 SCMR 1707] after examining the statute through which the Respondent-Authority and other statutory bodies were established and functioning, in Para-27 of its judgment held them to be statutory bodies performing some of the functions of the Federation/State and, therefore, "person" within the meaning of Article 199(1)(a)(ii) read with Article 199 (5) of the Constitution and if their actions or orders are violative of the statute creating those bodies or of rules/regulations framed under a statute, the same could be interfered with by the High Court under Article 199 of the Constitution. References are being made to the other 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 such Government owned and controlled authorities are also a “person” within the meaning of Article 199(1) (a) (ii) read with clause (5) thereof.

17. Having dilated upon on the aforesaid proposition, the instant Petitions relate to the service of the Petitioners, whereby Respondent-Authority dispensed with their service, on certain allegations and during the inquiry proceedings, however, some of them were served with Show Cause Notices on certain allegations and were found guilty of the charges of Misconduct, which they are asking for setting aside, through the instant Petitions. Petitioners, who admittedly, are not a Civil Servant as defined under Section 2(1)(b) of Civil Servants Act, 1973, but employees of a statutory authority, having non-statutory rules of service, thus cannot invoke the jurisdiction of the Federal 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 case of *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.

**18.** 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 Petitioners to invoke the Constitutional Jurisdiction of this Court?

**19.** The record reveals that disciplinary proceedings were initiated against some of the Petitioners and finally culminated in the dismissal from service orders. However, in other cases the Petitioners have assailed the issuance of Show Cause Notices and disciplinary proceedings initiated against them by Respondent-NADRA under Regulations 2002. 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-Authority, which in our view cannot be thrashed out in a Writ Petition.

**20.** The learned Counsel for the Petitioners while arguing the case has heavily relied upon *Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed* (2013 SCMR 1707) to stress that in view of the Judgment of the Honorable 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.

**21.** For the aforesaid reasons, we are of the view that the relationship of 'Master and Servant' exist between the Petitioners and the Respondent-Authority, hence, their grievance pertains to the terms and conditions of service which cannot be enforced through a Writ. As to the Service Rules-2002, these

are non-statutory and mere instructions for internal control and management of the employees of the Respondent-Authority. 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).

**22.** Applying the aforesaid principles of law to the cases of the Petitioners, we feel no hesitation in drawing inference that the Respondent-Authority is statutory entity and Petitioners are not governed under statutory rules of service, hence their terms and conditions of service are not enforceable through Constitutional Petition. The case of Petitioners is neither covered under enforcement of terms of Removal from Service Ordinance-2000 nor is violation of Rule of natural justice attracted in absence of infringement or any vested rights of the Petitioners or any disciplinary proceedings undertaken against them under any statutory rules of service. These service rules are non-statutory, therefore, for all intent and purpose, these are for internal use, hence, the law laid down by the Honorable Supreme Court in Pakistan Defence Officers Housing Authority case (supra), does not support the case of the Petitioners as there has been no violation of statutory rules of service. Merely invoking the Government Servants (Efficiency & Discipline) Rules, 1973 does not make Regulations 2002 as statutory to institute Writ Petition under Article 199 of the Constitution.

**23.** We, thus, are of the view that it is for the Respondent-Authority to place its employees in accordance with its Service Rules and Regulations, which is an internal matter of the Respondent-Authority, thus does not need 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 reported case of Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals (2019 SCMR 984). 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.

**24.** To understand the term statutory and non-statutory Rules, we seek guidance from the decision rendered by the Honorable Supreme Court in the case of the *Principal Cadet College, Kohat and another v. Mohammad Shoab Qureshi* (PLD 1984 SC 170). The Honorable Supreme Court has held that unless rules of



service of a statutory body are made or approved by the Government, such rules could not be regarded as statutory but mere instructions for guidance. However, in the case of *Shafique Ahmed Khan v. NESCOM through Chairman, Islamabad* (PLD 2016 SC 377) as well as in the case of *Muhammad Zaman and others v. Government of Pakistan* (2017 SCMR 571), the Honorable Supreme Court while widening the scope of such criterion held that "the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires approval of the Federal Government or not, rather it is the nature and area of efficacy which determine their status. Rules dealing with instructions for internal control or management are treated as non-statutory while those, whose area of efficacy is broader and/or complementary to the parent statute in the matter of crucial importance, are statutory.

25. We seek further guidance from the decision of the Honorable Supreme Court on the point whether the service rule of the Respondent-Authority is non-statutory. The Honorable Supreme Court has held in the case of Mrs. Itrat Sajjad Khan supra as under:-

"In this perspective scrutiny of President's Order No. VII of 1980 through which the appellant Authority was created as well as its service rules of 2008 would reveal that the Management of the Authority vest in the governing body of the Authority comprising of Secretary, Ministry of Defence, Government of Pakistan as its Chairman and as many Members as detailed in section 5 of the Order, 1980. For its day to day working, the Authority has an executive board comprising of a President who is the Corp Commander posted at Karachi and other Members as detailed in section 5(2) of the Order, 1980. The Executive Board of the Authority has the power to acquire land under the law, undertake any work in pursuance of any scheme or project; no master plan, planning or development scheme can be prepared by any local body or agency for the specified area without prior consultation with, and approval of the Executive Board. The Authority through the Executive Board has the power to raise funds for the purpose of its working, capital in a manner the Board may think proper, through loans or levy of any charges which may be prescribed by it under the Rules. The Administrator functions in accordance with the policy laid down by the Governing Body. All schemes/projects/works carried out by the Authority are deemed under the law to be schemes for public purposes. The Authority in terms of section 13 of Ordinance, 1980 may appoint such officers, functionaries, employees, experts, consultants and advisors as it may consider necessary for the performance of its functions under the Order and in such manner and on such terms and conditions as may be prescribed by the Rules. The employees of the Authority are deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code. The Governing Body, as provided under section 22 of the Order, 1980 may, by notification in official gazette, make rules for carrying out the purpose of the Order, 1980 whereas the executive board has the power to make regulations not inconsistent with the provisions of the Order and the Rules as it may consider necessary or expedient for the administration and management of the affairs of the Authority. It appears that in exercise of the power as conferred under section 22, service rules for the employees of the Pakistan Defence Officers Housing Authority in term of section 13 were framed in the year 2008 which though were duly approved by the governing body of the Authority but have not been notified in the official gazette. The service rules of the appellant lay down the terms and conditions of service of their employees such as policy of appointment, leave, entitlement and discipline. The rules though are made under the statutory power conferred on the Governing Body by section 22 read with section 13 of the Presidential Order of 1980 which do not require the approval of the Government. In the circumstances, it is to be seen as to whether the rules framed by the appellant-Authority while exercising

statutory powers under section 22 of the Presidential Order of 1980 which do not require the approval of the Federal Government could be termed statutory.”

26. Our view is further strengthened by another decisions of the Honorable Supreme Court rendered in the cases of *Syed Nazir Gillani v. Pakistan Red Crescent Society* (2014 SCMR 982) and *Abdul Wahab and others v. HBL and others* (2013 SCMR 1383). The Honorable Supreme Court held that where a service grievance is agitated by a person/employee who is not governed by the statutory rules of service, before this Court, in terms of Article 199 of the Constitution such petition shall not be maintainable. Likewise in the case of *Muhammad Zaman and others v. Government of Pakistan* (2017 SCMR 571), the Honorable Supreme Court has reiterated principle regarding incompetency of a writ by an employee of a body having non-statutory rule as non-statutory rules could not be enforced through a Writ.

27. Now coming to main issue involved in the present Petitions, we seek further guidance from the decision rendered by the Honorable Supreme Court in the case of Mrs. Itrat Sajjad Khan supra. The Honorable Supreme Court has held as under:-

“No doubt the employees of statutory corporations in absence of violation of law or any statutory rules of service cannot press into service constitutional jurisdiction of the High Court and after we have come to the conclusion that the service rules framed by the C.P No.D-7319 of 2018 17 appellant were not statutory but for their internal guidance and, therefore, their enforcement through writ jurisdiction does not appear to be in consonance with the law settled by this Court. The directions imparted through the impugned judgment by the High Court to initiate proceedings against the respondent in terms of Removal from Service (Special Powers) Ordinance, 2000 after its repeal in the year 2010 vide Removal from Service (Special Powers) (Repeal) Act, 2010 also appear to be result of poor assistance. However, the question which escaped the attention of the High Court and needs our consideration is as to whether Rule 8(b)(1) of the Service Rules framed by the appellant in 2008 for their employees which authorizes the Administrator to dispense with the services of an employee by giving him one month's notice or a month's pay in lieu thereof without assigning any reason or providing an opportunity of hearing is violative of the principle of natural justice, which always has been treated as violation of law. The said rule further appears to be against the principles of public policy which requires the public functionaries to maintain transparency and to exercise their powers in good faith in the public interest and not on the basis of personal likes or dislikes or on the basis of whims and fancies and, therefore, it needs to be examined as to whether such rule could be allowed to be retained in the service rules (though non-statutory) of the appellant a statutory body. Rule 8 of the Service Rules 2008 of the appellant is reproduced below for the sake of convenience:-

"8. Termination/Resignation/Dismissal from Service a. Termination / Dismissal (1) Termination. Termination of service of an employee under the clause of 'Misconduct' as per DHA Rules Chapter IV. An employee terminated due to absence from duty under this clause will be entitled for gratuity and other emoluments under normal rules. (2) Dismissal. In case an employee commits an offence of a serious nature as determined by the competent authority, he/she will be dismissed under relevant DHA Rules. Such an employee will not be eligible for gratuity and other benefits except provident fund (his/her share only). b. Rules for Governing Termination/Dismissal / Resignation (1) The Administrator may dispense with the services of an employee by giving him one month's notice or one month's pay in lieu thereof Similarly, an employee may resign from service by giving one month's notice or by paying one month's pay in lieu thereof. (2) Withdrawal of an Employee's Resignation (a) Before acceptance by the Administrator - the resignation shall

be deemed to have been withdrawn. (b) After its acceptance, but before the employee is relieved - the Administrator may allow/disallow withdrawal based on the merits of the case. (3) An un-confirmed/temporary, daily wager, trainee, part time employee and visiting faculty shall not be entitled to any notice or salary in lieu thereof on termination of service. Similarly, such employee may resign without any advance notice. (4) A regular employee shall not be removed or dismissed from service on disciplinary grounds without a prior 'show cause' notice. (5) An employee who absents himself/herself without leave or overstays leave, he/she will be served with three notices each after every ten days to rejoin duty. In case of failure to report for duty, his/her services will be dispensed with under 'Misconduct'. (6) In case of retrenchment/closure of a Section/Department/ Project/work area, services of an employee can be dispensed with being surplus/no longer required".

28. We are cognizant of the fact that the Honorable Supreme Court in the case of *Major Retd. Syed Muhammad Tanveer Abbas vs. Federation of Pakistan through its Secretary, Ministry of Interior & others and another connected Appeal* (2019 SCMR 984) vide judgment dated 13.5.2019 has clarified the issue involved in the present proceedings and has held as under:-

"9. We now turn to consider the DHA case. The employee was inducted into service by DHA in 1999. After some years certain differences arose and her services were "dispensed" with in 2012. The Service Rules 2008, which applied to the employee, provided as follows in material part: "8. Termination/Resignation/Dismissal from Service ... b. Rules for Governing Termination/Dismissal/Resignation (1) The Administrator may dispense with the services of an employee by giving him one month's notice or one month's pay in lieu thereof. Similarly, an employee may resign from service by giving one month's notice or by paying one month's pay in lieu thereof. ..." In this Court, two questions were considered: firstly, whether DHA was a "person" within the meaning of Article 199(1)(a)(ii), read with clause (5) thereof, of the Constitution; and if so, whether the 2008 service rules were statutory in nature or otherwise. The first question was answered in the affirmative, which meant that the writ petition in the High Court was maintainable. As regards the second, it was concluded that the service rules were non-statutory in nature. It was then observed as follows (emphasis supplied): "15. No doubt the employees of statutory corporations in absence of violation of law or any statutory rules of service cannot press into service constitutional jurisdiction of the High Court and after we have come to the conclusion that the service rules framed by the appellant were not statutory but for their internal guidance and, therefore, their enforcement through writ jurisdiction does not appear to be in consonance with the law settled by this Court.... However, the question which escaped the attention of the High Court and needs our consideration is as to whether Rule 8(b)(1) of the Service Rules framed by the appellant in 2008 for their employees which authorizes the Administrator to dispense with the services of an employee by giving him one month's notice or a month's pay in lieu thereof without assigning any reason or providing an opportunity of hearing is violative of the principle of natural justice, which always has been treated as violation of law. The said rule further appears to be against the principles of public policy which requires the public functionaries to maintain transparency and to exercise their powers in good faith in the public interest and not on the basis of personal likes or dislikes or on the basis of whims and fancies and, therefore, it needs to be examined as to whether such rule could be allowed to be retained in the service rules (though non-statutory) of the appellant a statutory body...." It was noted that the employee, after completing her period of probation, served DHA as a "regular employee for almost two decades", but that her "services were dispensed with without assigning any reason or providing an opportunity of hearing" (para 16). It was further observed as follows (ibid): "The contention of the ASC for the appellant [i.e., DHA] that the respondent was a contract employee and as per her appointment letter her services could be terminated on one month's notice as recorded in the leave granting order is against the record/appointment letter of the respondent. The respondent of course was a regular employee as the only condition in her letter of appointment was of successful completion of probationary period of one year which was completed by her in the year 2000. Additionally this ground was not raised before us by the ASC for the appellant and admitted her to be regular employee whose services

were dispensed with under Rule 8(b)(1). The admitted fact on record reflected that both the appellant as well as the respondent had grievances against each other ... There is nothing on record to show nor the learned counsel for the appellant was able to disclose that in view of a specific provision available in the service rules for initiating disciplinary proceedings against the regular employee in the shape of Rule 8(b)(4) why the Administrator had to resort to the provision of Rule 8(b)(1) if there was no bias of personal likes or dislikes or that such decision was not based on whims and fancies or carried no mala fide. The provisions of Rule 8(b)(1) which empower a statutory corporation/public functionary to terminate the services of its employees without cause, of course, clearly violates the principle of natural justice/law and, therefore, its retention in the service rules of the appellant cannot be allowed being ultra vires the Constitution and the law." After citing from the case of Muhammad Ashraf Tiwana v. Pakistan and others 2013 SCMR 1159, it was finally concluded as follows: "18. In view of what has been discussed above and the fact that we have declared the provision of Rule 8(b)(1) as ultra vires the Constitution, therefore, declare the letter dated 11th September, 2012 whereby the services of the respondent were dispensed with, as illegal and without lawful authority. The respondent would be deemed to be in service and entitled to all consequential benefits. However, the appellant would be at liberty to initiate proceedings, if deemed fit, against the respondent in terms of Rule 8(b)(4) or any other provision but strictly in accordance with law. The appeal in above terms stands decided." 10. When the DHA case is compared with the appellants' case, there are certain obvious similarities, the first and most important being of course that both involved situations of termination from service. Apart from that, in our view, as held by this Court in relation to DHA, there can hardly be any doubt that NADRA is also a "person" within the meaning of Article 199(1)(a)(ii) read with clause (5) thereof. Equally, it is also clear that the 2002 Regulations, like the DHA service rules of 2008, were non-statutory in nature. It also cannot be in doubt that the termination clauses involved in the present appeals are in all material respects the same as Rule 8(b)(1) of the DHA service rules. This is apparent on a bare reading of the said provisions. The crucial question therefore is whether the termination clauses involved here can be treated in the same manner as Rule 8(b)(1), and the same or similar relief accorded the present appellants? 11. It will be recalled that learned counsel for NADRA, seeking to distinguish the DHA case, laid emphasis on the fact that, according to him, the present appellants were only contractual employees whereas the respondent in the cited decision was a "regular" employee. The basis for this submission is clearly para 15 of the DHA case, which has been reproduced above in material part. The options offered to the NADRA employees in terms of the 2012 scheme were contained in its letter of 06.03.2012 (also set out in para 3 of the NADRA case). The subject was "Regularization of NADRA Employees" and para 1 of the scheme stated as follows: "The regularization of NADRA contractual employees has been approved by Competent Authority with effect from 29 February 2012". Reading the contents of the scheme as a whole, we are of the view that by regularization was meant those employees who took Option II. The employees, such as the appellants, who took Option I remained, as before, contractual employees. It follows that the equivalence, if any, between the respondent in the DHA case and the NADRA employees would be with those who took Option II, and not those who selected Option I. We are therefore, with respect, unable to agree with learned counsel for the appellants that their case was at par with that of the respondent in the DHA case. 12. Learned counsel for the appellants had also sought to rely on the fact that the revised terms of the contract as per Option I made the contract "open ended" (see para 2 herein above), i.e., without any fixed term or duration. It was also submitted that in the letter of 06.03.2012, above the table setting out the respective terms and conditions of the two options, it was stated as follows: "NADRA is offering employment till superannuation under following two options for all those contractual employees hired on/before 28 February 2011". Relying on this sentence learned counsel submitted that the intent even as regards Option I was that under all normal circumstances the employee was to be retained till the age of retirement and that the termination clause had therefore to be applied accordingly. More precisely, it was submitted on the foregoing basis that a termination without notice or assigning any reasons was impermissible. We have carefully considered this submission, which is certainly not without apparent merit or plausibility. In the end however, it cannot be accepted. The reason is that the contract did have a terminus. It was simply that it was not set out (as is otherwise customary) with

reference a particular period of time (i.e., specific years etc.). The period was however there: the age of superannuation. The “open ended” nature of the contract cannot, with respect, be construed in the manner as submitted by learned counsel. 13. As noted above, learned counsel also relies on a decision of the Lahore High Court, Samina Kanwal v. Director Punjab Forestry Research Institute Faisalabad 2011 PLC (CS) 1553. We may note that a leave petition was filed in this Court against the aforesaid decision, being CA 980/2011. It was disposed of by order dated 20.02.2014. The challenged judgment was set aside and the matter remanded to the Lahore High Court for decision afresh. It appears that the matter (ICA 281/2010) is still pending in that Court. In such circumstances it will not be appropriate for us to comment upon the same here. 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.”

29. In the light of forgoing decisions of the Honorable Supreme Court, admittedly, the service rules of the Respondent-Authority are non-statutory and non-statutory Rules cannot be enforced by means of a Constitutional Petition in terms of Article 199 of the Constitution.

30. The case law relied upon by the learned counsel for the Petitioners are distinguished from the facts obtained in these matters.

31. In view of the above legal position of the cases, the instant Constitution Petitions are not maintainable in law, hence are dismissed along with listed application(s).

32. These are the reasons of our short order, whereby we have dismissed the captioned Petitions on 29.8.2019.

**JUDGE**

**JUDGE**