

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 5859 of 2019

Kamran Chandio,
Petitioner through:

Mr. Muhammad Ali Lakhani, advocate

Date of hearing:

17.09.2019

Date of order:

17.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J. Basically, Petitioner through the instant Petition is seeking declaration to the effect that the enquiry proceedings initiated against him by the Respondent-Defence Housing Authority is bias one and independent enquiry commission be constituted to probe the allegations against him.

2. We confronted the learned Counsel with the order dated 22.8.2019 passed by this Court in HCA No.267/2019, whereby the Petitioner was allowed to cross-examine the witnesses whose statements were recorded earlier and now again he has filed the captioned petition on the plea that the enquiry process commenced against him is bias one and an independent enquiry be conducted in accordance with law.

3. Mr. Muhammad Ali Lakhani, learned Counsel for the Petitioner replied that the Court of enquiry constituted by the Respondent-DHA is bias against the Petitioner and he apprehends that due process and fair trial in his case will not take place, therefore, he has approached this Court for directions to the Respondent-DHA to constitute afresh Committee to hold an enquiry in an independent and transparent manner without being prejudiced by the earlier recommendations given.

4. We have noticed that the Respondent-Authority is a Body Corporate which is controlled and regulated by President's order No. 7 of 1980, having no statutory Rules of service; that Presidential Order No. 7 of 1980 clearly depicts that Pakistan Defence Officers Housing Authority service rules, 2008 were framed by the Governing Body of the said Authority in exercise of the

power conferred under section 22 read with section 13 of the Presidential Order No. 7 of 1980; that the service rules of the Respondent-Authority lay down the terms and conditions of service of their employees; that the aforesaid service rules are basically instructions for the internal control or management of the Respondent-Authority and are therefore non-statutory. On the aforesaid proposition, the decision rendered by the Honorable Supreme Court of Pakistan in the case of Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010) is clear in its terms 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 is not maintainable. The Honorable Supreme Court of Pakistan in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383) held that 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 use, any violation thereof cannot normally be enforced through a writ jurisdiction and these would be governed by the principle of 'Master and Servant'. The issue of maintainability of a Petition filed by an Employee of Pakistan Defence Housing Authority has been decided by the Honorable Supreme Court of Pakistan in the case of Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010), wherein it was held that Employee of PDHA cannot approach this court in Constitutional Jurisdiction, as they are regulated by the Pakistan Defence Housing Authority Service Rules 2008, which are non-statutory.

5. For the aforesaid reasons, we without touching the merits of the case, hold that the Petition is not maintainable.
6. In view of the foregoing, the Constitutional Petition in hand is dismissed in limine with no order as to cost along with all the pending application(s).
7. The petitioner, however, may avail any other remedy available to him under the law.

JUDGE

JUDGE