

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No.D-7084 of 2022**

*(Ahmed Gul and 03 others v. Federation of Pakistan and 03 others)*

Mr. Shan-ur-Rehman, advocate for the petitioners

Mr. Talha Abbasi, advocate for respondents No.2 to 4  
Syed Yasir Ahmed Shah, Assistant Attorney General

Date of hearing

& Decision: 28.02.2023.

## **ORDER**

Through this petition, the petitioners have challenged the legality of their termination from service letters dated 08.09.2022 issued by the Additional Director, Creek Vistas, Pakistan Defense Officers Housing Authority Karachi on the charges of misconduct, one of the letters is reproduced as under:

“1. It has been observed that since employment in SMC Creek Vistas, you have been found highly ill-disciplined and irresponsible towards profession. Poor performance and irresponsible attitude on your part has created panic situation for the Management of SMC Creek Vistas which is No More accepted/tolerable in any way.

2. Forgoing in view, Management has decided to terminate you from SMC Creek Vistas on the disciplinary ground with effect from 9 Sep 2022. Get clearance from all concerned and report to Finance department SMC Creek Vistas with NO Demand Certificate for finalization of your account accordingly. Minute sheet has been approved by Executive Director Adm/svcs.”

2. Petitioners, inter alia, submitted that they were appointed between 2009 and 2011 as a Firefighter, Sweepers, Receptionists, and Labour on a contract basis in Defence Authority Service Management Centre (‘DA SMC’). To utter shock and dismay, their services were terminated by DHA on the purported plea of poor performance without asserting the facts.

3. Mr. Shan-ur-Rehman, learned counsel for the petitioners, contended that the petitioners are hard-working employees who have never indulged in such activities of misconduct as proposed by DHA in the impugned termination letters dated 08.09.2022 are nonspeaking passed by incompetent authority, hence, illegal, void and not sustainable in the eyes of the law. Learned counsel submitted that under Chapter IV, Rule 4(A) of the Service Rules, a major punishment could only be imposed by the office of the Administrator, PDOHA if

the charges are proved beyond any show of doubt, whereas the Additional Director, Creek Vistas has no power and authority to terminate the services of the Petitioners; that the due process of law for termination on disciplinary grounds, as envisaged under Chapter IV, rule 6 of the Service Rules and the relevant law as laid down by the Honorable Apex Court of Pakistan in several judgments have not been adhered to; that no-show cause notice was issued to the petitioners before termination, nor any inquiry was held; that it is now a well-established principle of law that even if service rules are non-statutory, no employee can be terminated which is sheer violation of the principle of natural justice. The learned counsel submitted that there is no provision under the Service Law permitting the employer to terminate the services without show cause notice containing the explicit reasons or cause of termination even in the case of termination simpliciter and for disciplinary proceedings on account of misconduct, as the separate procedure is laid down which emphasizes the issuance of show cause notice, holding inquiry unless dispensed with by the competent authority considering all attending circumstances of the case and after the personal hearing, appropriate action may be taken under the law.

4. Mr. Talha Abbasi, learned counsel representing respondents No.2 to 4, has raised the question of maintainability of the instant petition on the ground that it has been argued that there is no violation of DHA Rules as such the petition is not maintainable. It has been further contended by the learned counsel that the claim of petitioners cannot be considered by this Court while exercising its constitutional jurisdiction under Article 199 of the Constitution as it involves disputed facts and determination of such right through evidence. While concluding his arguments, learned counsel for the respondents submitted that besides having no case on merits, the petitioners are otherwise not entitled to invoke the constitutional jurisdiction of this Court as DHA has no statutory rules of service to be enforced, therefore, Constitutional Petition is not maintainable. He prayed for the dismissal of the petition.

5. We have heard the learned counsel for the parties, and perused the record with their assistance.

6. Admittedly, neither show cause notice had been issued to the petitioners nor their explanation sought, nor any inquiry was held to probe the allegations before the petitioner's services were terminated on the ground of unsatisfactory performance. Besides service rules of DHA have not been invoked to terminate their services. In such circumstances, we are of the considered view that the right

to life enshrined under the Constitution of Pakistan would include the right to livelihood for the reason that the order of termination of services of employee visits with civil consequences of jeopardizing not only his/her livelihood but also the career and livelihood of his/her dependents, and that therefore, before taking any action putting an end to the tenure of the employee, fair play required that a reasonable opportunity to put forth his/her case be given and a domestic/departmental inquiry conducted, complying with the principles of natural justice.

7. As in the present case, admittedly no opportunity had been given to the petitioners nor any inquiry held to ascertain the alleged unsatisfactory performance and irresponsible attitude. Primarily, the principles of natural justice must be read into the Service Rules of DHA-2008, as otherwise, it would be arbitrary, unjust, and unfair being a statutory body created under Pakistan Defence Officers Housing Authority Ordinance, 1980.

8. The Hon'ble Supreme Court of Pakistan in the case of Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed, **2013 SCMR 1707**, has dealt with such a situation in paragraph 50 of the judgment, which supports the case of petitioners.

9. Adverting to the issue of enforcement of Service Rules for the employees of respondent authority is concerned, since the respondents have not invoked the provisions of Service Rules 2008, thus no deliberation could be made on the subject point as this lis is simply decided in terms of the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Pakistan Defence Officers Housing Authority and others and keeping in view the principle of natural justice.

10. On the grounds discussed above, the orders of termination of the services of the petitioners not being sustainable on the aforesaid analogy, the resultant position is that the petitioners have to be necessarily reinstated in service with consequential benefits including back wages.

11. This petition is allowed in the above terms.

**JUDGE**

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