ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-2927 of 2023

Dated:	Order with signature of Judge(s)

1.For orders on Misc. No.14018/2023.
2.For orders on Office Objection No.20.
3.For orders on Misc. No.14019/2023.
4.For orders on Misc. No.14020/2023.
5.For hearing of Main Case.

Yousuf Ali Sayeed, J.
Mohammad Abdur Rahman, J

Date of hearing : 09.06.2023.

Petitioner : Farhan Ahmed Siddiqui through Mr. M. Akber Awan, Advocate.

Respondents : The Secretary/Chairman & Other.

O R D E R

Mohammad Abdur Rahman, J. This Petition has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 challenging a Show Cause Notice / Suspension Order dated 26 October 2022 issued by the Respondent No. 3 to the Petitioner on account of various allegations of misconduct.

2. Railway Construction Pakistan Limited (hereinafter referred to as "RCPL") is a public limited company incorporated and subsisting under the provisions of the Companies Act, 2017 and is a subsidiary of the Federation of Pakistan through the Ministry of Railways. The Petitioner was on 7 January 2022 employed by RCPL as an 'Engineering Consultant' for a period of one year. The terms of service of the Petitioner are regulated by regulations which are known as "Railcop Employees Service Regulations, 2016".

3. On 26 October 2022, the Respondent No. 3 issued a Show Cause Notice to the Petitioner raising the following allegations as against the Petitioner:

(i) that he was involved in financial misappropriation;

(ii) that his action and omissions amounted to financial maladministration;

(iii) that he had misrepresented to RCPL that he was an Engineer despite the fact that he was aware that his name had been listed as an "Invalid Engineers" by the Pakistan Engineering Council;

(iv) that the Petitioner failed to ensure payments were made to Contractors who had performed their obligations to RCPL; and

(v) that the Petitioner failed to generate "required bills" which had caused a financial burden on RCPL.

4. The Advocate for the Petitioner contends that after issuance of the Show Cause Notice dated 26 October 2022 no further action was taken by RCPL thereon and where after on 6 January 2023 his tenure of employment with RCPL stood completed. He has at this stage instituted this Petition and has prayed to this Court to grant the following reliefs:

> "(A) To direct the respondents No. 2 & 3 to suspend the Show Cause Notice / Suspension Order dated 26.10.2022, which is illegal, unlawful & also against the spirits of law laid down by the Superior Courts of Pakistan.
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> (B) To declare that the acts of respondents No. 2 & 3 are illegal, unlawful & having no value in the eyes of law.
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> (C) To restrain the respondents No. 2 & 3 from committing any act prejudicial to the interest of Petitioner.

(D) To restrain the respondents No. 2 & 3 from taking any coercive action against the petitioner on the basis of alleged Show Cause Notice.

(E) Any other relief/relieves which this Hon'ble Court may be deem fit and proper in the circumstance, be granted in the interest of justice."

5. We have heard the counsel for the Petitioner and perused the record. While accepting that it would generally be the duty of RCPL to conduct the inquiry to its logical conclusion[1], we note that the Show Cause Notice while suspending the Petitioner did not suspend the Petitioner's right to his salary or benefits. While the Petitioner has in his Petition contended that he has not been receiving his salary, this is not the grievance in his Petition as he has made no claim for the disbursement of his outstanding salary or for that matter claimed for any benefits that were payable by RCPL to the Petitioner in the Petition.

6. Keeping in mind that no financial loss per se is being claimed by the Petitioner, we note that the Petitioner's tenure of service had also expired on 6 January 2023 no vested right exists in a contractual employee to claim "regularization" of his service as held by the Supreme Court of Pakistan in ***Khushal Khan Khattak University through Vice Chancellor and others[2].*** In particular it was held that:[3]

" … 13. It is settled law that there is no vested right to seek regularization for employees hired on contractual basis unless there was legal and statutory basis for the same. Reliance in this regard is placed on a recent judgment of this Court reported as Government of Khyber Pakhtunkhwa Workers Welfare Board v. Raheel Ali Gohar (2020 SCMR 2068) which provides as under:-

> "6. In any case, this Court in recent judgments has unequivocally held that contractual employees have no automatic right to be regularized unless the same has specifically

[1] ***See Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan*** PLD 1974 SC 393***; Muhammad Amjad V. The Chief Engineer, WAPDA and Another*** 1998 PSC 337***, Zahoor Ahmed Vs. Wapda*** 2001 SCMR 1566**; *Engineer Majeed Ahmed Memon vs. Liaquat University of Medical and Health Sciences Jamshoro*** 2014 SCMR 1263;

[2] 2021 SCMR 977

> been provided for in a law. Most recently, in a judgment of a bench of this Court in Civil Petitions Nos. 4504 to 4576, 4588 and 4589 of 2017 dated 08.01.2013 this court has held that:
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> "Having heard the learned counsel for the parties, we find that contractual employees have no right to be regularized until there is a law provided to that effect and we are not confronted with any such legal proposition. They are the contractual employees and they have to serve till the pleasure of their master and in case of any wrongful termination, which according to them has taken place, they cannot seek the reinstatement. At the best, they can only have the compensation for the wrongful termination by applying to the competent court of law. Resultantly, these petitions are converted into appeals and allowed, and the impugned judgment is set aside."

14. The learned Counsel for the Respondents has not been able to show us any law which conferred a right upon the Respondents to be regularized. The assertion of the learned ASC that since others were regularized, the Respondents should also be regularized despite there being no statutory basis has not impressed us. As noted above, the Respondents could not claim regularization as a matter of right. Even otherwise, all the appointment orders of the Respondents clearly state that they would have no right to claim regularization. Therefore, the Respondents cannot disown the terms and conditions of their own employment contracts and claim permanent employment when at the very inception of their employment they had accepted contractual employment on the conditions that they would have no right to claim regularization.

15. The learned Counsel for the Respondents has not been able to satisfy us how the Respondents could have approached the High Court in its Constitutional Jurisdiction, being contractual employees, for a right that was not conferred upon them in their contracts or otherwise. No vested right was denied to the Respondents nor any right conferred by the Constitution or any Statute was shown to have been violated. As such, the constitutional jurisdiction of the High Court could not have been invoked by the Respondents. Reliance in this regard is placed on the judgment of Raheel Ali Gohar supra where this Court has held that:-

> "8. In addition to these issues, we also find ourselves at odds with the fact that the present Respondents approached the High Court in its writ jurisdiction to seek regularization without there being any law conferring a right that may have been denied and was sought to be enforced by way of a petition under Article 199 of the Constitution.

> It is settled law that as contractual employees, the relationship between the Respondents and the Appellant is governed by the principle of master and servant. In these circumstances, the Respondents did not have the right to approach the High Court to seek redressal of their grievances relating to regularization. As noted above, in case of a contractual dispute the Respondents could have sought appropriate redressal of their grievances before a competent court of law. However, only by virtue of being contract employees, no automatic right of regularization has accrued in their favour. In this regard, reference may also be made to the judgment of this Court in Chairman NADRA, Islamabad and another v. Muhammad Ali Shah and others (2017 SCMR1979)."
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> 16. The learned counsel for the Appellants has drawn our attention to the parawise comments of the Appellants which state that the Respondents were exempted from appearing in the Skill Test in compliance with the order of the learned High Court. This is the admitted position as well. The Respondents were given a second chance and did not qualify for appointment in their interviews on account of poor performance. As such, the learned High Court had no jurisdiction to interfere in the matter and its findings to this effect are not sustainable inasmuch as it is stated that the Syndicate could not have interviewed the Respondents to assess their fitness and suitability to hold their respective posts. To say the least, we are quite surprised by the observation of the learned High Court which in essence bars an employer from assessing the competence and fitness of a person before employing him. This could obviously not be the intent of the said observation."

7. Keeping in mind, that no financial loss has been caused to the Petitioner and that the Petitioner has no "vested right" to continue to be employed with RCPL, the only issue that remains is as to whether any prejudice has been caused to the Petitioner by the issuance of the Show Cause Notice. The law regarding this issue has been very aptly summarized by Athar Minallah J. in ***Messrs Siemens Aktiengesellschaft (Siemens AG) vs. Pakistan through Secretary Revenue Division*** [3] wherein it was held that:[4]

[3] 2016 PTD 1158
[4] *Ibid* at pg 1161-1167

" … 7. Admittedly, no order has been passed nor the proceedings have been completed pursuant to the impugned notices. The impugned notices by no stretch of the imaginations can be treated as adverse orders……

Show Cause Notice is, therefore, the first step of the proceedings in compliance with the mandatory requirements of due process. By no stretch of the imagination can a show cause notice be treated or construed as an adverse order, so as to make a person an aggrieved person or party within the context of Article 199 of the Constitution. It is, rather, to enable the person, the subject, to rebut the allegations contained in the show cause notice. If satisfied with the explanation, the authorised officer is under a statutory duty to vacate the show cause notice and terminate the proceedings. However, the only two exception which may give a cause of grievance and thus make a person an aggrieved person in the context of Article 199 of the Constitution are, firstly, when it is issued by a person who is not authorised under the law or conferred with the power or jurisdiction and, secondly, when the powers and jurisdiction have been exercised by an authorised person for purposes alien to the empowering statute i.e. exercised for mala fide reasons. These are the only two exceptions ordinarily recognised in the precedent law which would make a person an 'aggrieved party' for the purposes of Article 199 of the Constitution, and thus invoke the jurisdiction there under.

The exercise of jurisdiction in the case of a show cause notice would, therefore, be justified when the impugned show cause notice is palpably without jurisdiction and/or mala fide, or has been served in an oppressive manner. The legislature has provided a machinery for enforcement of a right, the party complaining of a breach must first avail the remedy provided under the relevant statute. In the first instance the person, the tax payer, ought to approach the hierarchy and the forums provided for under the statute "The Tariq Transport Company, Lahore v. The Sargodha-Bhera Bus Service, Sargodha, etc." [PLD 1958 SC 437] and "Messrs Amin Textile Mills (Pvt.) Ltd. v. Commissioner of Income Tax and 2 others" [2000 SCMR 201]. What would be the extent of the question of jurisdiction and would any jurisdictional error, e.g. an erroneous interpretation of the law, also render a show cause notice amenable to the jurisdiction under Article 199 of the Constitution? The august Supreme Court in 'Muhammad Ismail v. Fazal Zada' [PLD 1996 SC 246] has divided jurisdictional errors into three categories i.e. want of jurisdiction', excess of jurisdiction and wrong exercise of jurisdiction. The difference has been succinctly illustrated in the said judgment, and, therefore, on the same analogy the jurisdiction under the Ordinance may be discussed. If an authority having no power to decide a case under the statute issues a show cause notice, it will tantamount to lack or want of jurisdiction e.g. the power vests in the Commissioner but a show cause notice is issued by an Assistant Commissioner. Where there is limitation of pecuniary jurisdiction and a show cause notice has been issued by an officer/authority in excess of his/her pecuniary jurisdiction, it will be termed as having acted in excess of jurisdiction. However, if an authority has both pecuniary as well as power to exercise jurisdiction, but misinterprets a law or provision of the

> statute, then it would be wrong exercise of jurisdiction. The latter category of jurisdictional error would not be amenable to the jurisdiction under Article 199. As a corollary, not every jurisdictional error would make a show cause notice amenable to the jurisdiction of this Court under Article 199 of the Constitution. It could not be presumed that the authority vested with powers by the legislature under the relevant statute would act otherwise than in accordance with law. There is always a presumption that the authorities vested with powers under the statute shall exercise the same in accordance with the objects and purposes of the statute, and by strictly adhering to the settled principles. It could also not be assumed that the said authority would neither give a fair and reasonable hearing or would act in a manner prejudicial to the interests of a taxpayer.
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> In the light of the settled principles, it may be concluded as follows:-
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> (i) Show cause notice is not an adverse order unless it could be dearly shown to the satisfaction of the Court that it has been issued by an authority not vested with jurisdiction or it was issued for mala fide reasons.
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> (ii) The exception relating to want of jurisdiction does not include every jurisdictional error. A wrong exercise of jurisdiction or interpretation of the law cannot be treated as want of jurisdiction.
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> (iii) Constitutional jurisdiction is exercised if the Court is satisfied that the person is an 'aggrieved party' within the context of Article 199 of the Constitution and no adequate remedy is provided by law. If adequate statutory remedies are provided under the relevant statute, it is to be taken into consideration while exercising discretion under Article 199 of the Constitution.
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> (iv) By passing or circumventing statutory forums is to be discouraged.
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> (v) The approach should be to advance the object and purpose of a statute and every effort made to uphold the sanctity of the legislative intent rather defeating it."

8. We are of the opinion that the proceedings relating to the Show Cause Notice that were being carried out by RCPL were rendered infructuous ***on the expiry of the term of the Petitioner employment*** with RCPL. We are also of the opinion that the simpliciter issuance of the Show Cause Notice to the Petitioner does not per se cause any prejudice to the Petitioner as no finding has been given as against the Petitioner pursuant to the Impugned Show Cause Notice / Suspension Order or the proceedings emanating therefrom. It is also not the case of the Petitioner, that the Respondent No. 3 did not have the requisite jurisdiction to issue

the Show Cause Notice / Suspension Order or that the powers being exercised under the proviso to Clause (i) read with Regulation 29 of the Railcop Employees Service Regulations, 2016 were outside the scope of the Railcop Employees Service Regulations, 2016. In the circumstances as no prejudice has been caused to the Petitioner by the issuance of the Impugned Show Cause Notice and as he does not a vested right to regularise his service and as no claim has been made in this Petition for the recovery of any salary or back benefits we are of the opinion that this Petition as prayed is therefore not maintainable within the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is misconceived and is dismissed along with all listed applications with no order as to costs.

JUDGE

Nasir P.S. JUDGE