

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-1639 of 2019

*(Tariq Kaleem v Institute of Chartered Accounts of Pakistan & others)*

CP. No. D-5587 of 2019

*(Tariq Kaleem v Institute of Chartered Accounts of Pakistan & others)*

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Date

Order with signature of Judge

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Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul Karim Memon

**Date of hearing and Order: 13.01.2025**

Syed Ashfaq Hussain Rizvi advocate for the petitioner in both the petitions.

Mr. Ali Zuberi advocate for the respondents/Institute in both petitions.

Ms. Wajiha Mehdi, Additional Attorney General.

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**ORDER**

**Adnan-ul\_Karim Memon, J:** The petitioner Tariq Khan prayed that this Court declare his termination from service letter dated 09/04/2019 as void and unlawful, violating service rules of the Institute of Chartered Accounts of Pakistan (ICAP) without due process and violating principles of natural justice. He also seeks a declaration that he still holds the post of Executive Director and is entitled to all service benefits, including back benefits, and seeks direction to the respondent/ICAP to allow him to rejoin his position. He insists on calling the minutes book of the Institute of Chartered Accounts of Pakistan agenda regarding the restructuring of the Education & Training Department, including expert advice on the redundancy of the Executive Director post. He prayed that his termination from service vide letter dated 09.04.2019 is illegal as in violation of the previous petition filed by the petitioner on the subject issue.

2. Petitioner claims to be highly qualified with an MBA and Banking Diploma and was appointed Executive Director at ICAP in 2017. In 2019, the ICAP President, with potential conflicts of interest, verbally requested the petitioner's resignation without reason or notice. The petitioner filed a Constitutional Petition to prevent his dismissal, but ICAP removed him from his position two hours after receiving court notices in petition No. 1639 of 2019, which may constitute contempt of court. ICAP later claimed redundancy of the subject post but has taken no action to enforce this, acknowledging, that which continued his employment and entitlement to the service benefits.

3. Learned counsel for the petitioner briefed us on the subject issue and submitted that ICAP, established by the Federal Government in 1961, regulates the accounting profession in Pakistan. He added that the petitioner applied for the Executive Director (Education & Training) position advertised by ICAP on October 9th, 2016. He submitted his

application online on October 22nd and was interviewed on November 19th, 2016. The petitioner was shortlisted for a second interview and subsequently selected for the position. He received a job offer letter on January 19, 2017, and formally accepted the appointment. He joined ICAP as Executive Director (Education & Training) on March 24, 2017. He argued that the petitioner has a distinguished academic and professional background. He has served in various leadership roles, including at prominent institutions like the University of Karachi, Hamdard University, and the Institute of Cost and Management Accountants of Pakistan. He has also been actively involved in professional bodies, such as the Federation of Pakistan Chambers of Commerce and Industry and the Management Association of Pakistan. He possesses extensive teaching and training experience and has contributed to curriculum development and academic governance at various universities. He argued that the petitioner completed the probation period on June 24, 2017, and his services were confirmed as Executive Director (Education and Training). He consistently performed his duties satisfactorily and was never served with any disciplinary action. On February 6, 2019, without any reason or prior notice and regular inquiry, ICAP President Jafar Husain, who had a potential conflict of interest due to his business ties with a competitor, verbally requested the petitioner's resignation. This action violated the petitioner's contract, service rules, and fundamental rights. The petitioner seeks this Court's intervention to protect his service rights. The petitioner, fearing termination due to his age and financial burdens, filed a Constitutional Petition No. D-1639/2019 before this court seeking an order to prevent his dismissal. Notices were served on the respondents on April 9, 2019. However, despite receiving these notices, the respondents unlawfully removed the petitioner from his position just two hours later, demonstrating disrespect for both the petitioner and this court. This act constitutes contempt of court, as it undermines the court's authority. He emphasized that the respondent/Institute, in comments to the petition, claimed the petitioner's position was redundant/abolished. However, they acknowledge that no action had been taken to enforce this decision, meaning the petitioner remained an employee of the institute and was/is entitled to all benefits. The learned counsel for the petitioner argues that his termination was unlawful and motivated by personal interests, not legitimate business reasons. He pointed to inconsistencies in the respondents' actions and evidence of bad faith; that they failed to provide Council decision memos or meeting agendas; and that allegedly briefed Council members on their own pre-decided decisions. He emphasized that the petitioner received an "unsatisfactory" performance rating (D grade),

employment citing negligence and inefficiency (Rule 2.02(b)(3)). This termination was unlawful as no regular inquiry officer was appointed to determine the inefficiency of the petitioner even though the petitioner was not allowed to defend himself. He prayed for allowing the petitions.

4. The learned counsel for the respondent/Institute argued that the petitioner concealed the fact that his position was abolished and he filed the petition with malicious intent and misrepresented the situation to this court. He submitted that the petitioner is not entitled to any relief on the ground that the institute has no statutory rules of service, therefore the employees of the ICAP could not ask for enforcement of non-statutory rules through this petition under Article 199 of the Constitution, more particularly, in terms of the ratio of the judgments passed by the Supreme Court in the cases of *Pakistan Defence Officers Housing Authority v Mrs. Itrat Sajja Khan and others* **2017 SCMR 2010**, *Pakistan Airline Pilots Association and others v Pakistan International Airline and another* **2019 SCMR 278**, *Pakistan Electric Power Company v Syed Salahuddin and others* **2022 SCMR 991** and *Sui Southern Gas Company Limited and others v Saeed Ahmed Khoso and another* **2022 SCMR 1256**. He argued that the relationship between the employees and respondent-institute was/is of master and servant. Learned counsel further argued that the relationship between master and servant is the existence of a right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is required to do but also in the manner in which he shall carry out the assignment. He lastly prayed that the petition may be dismissed with exemplary costs due to his dishonesty.

5. We have heard the learned counsel for the parties and perused the material available on record and the case law cited at the bar.

6. First and foremost the question of maintainability is to be determined.

7. Statutory and non-statutory rules of service are both sets of regulations that govern the terms and conditions of employment for individuals working in various organizations, but they differ in their origin and legal force. These rules are derived from specific Acts of Parliament or other legislative enactments. They have the force of law and are binding on both employers and employees. These rules are formulated by employers or organizations themselves, often based on internal policies, collective bargaining agreements, or industry standards. While not legally binding in the same way as statutory rules, they can still have significant legal implications. Courts may consider them when resolving disputes, especially if they are reasonable and consistently applied.

8. Elaborating further, non-statutory rules are made by the organization itself for the smooth running of its affairs. The distinction between statutory and nonstatutory rules is vital because where the organization itself prescribes the terms and conditions of service of its employees, the principle of master and servant applies, for the reason that if the terms and conditions of an employee are not governed by statutory rules but by regulations, instructions, or directions issued for its internal use, any violation thereof would not normally be enforced through a constitutional petition; and if there is wrongful dismissal, the employee may file a suit for damages.

9. The Supreme Court has held in its various pronouncements that a statutory regulation means regulations that are legislative (as opposed to executive) made by a rule-making authority in the exercise of statutory power with the approval of the central government or provincial government. Precisely it is the exercise of the delegated legislative power by the rule-making authority. Ordinarily, it is necessary also that making and promulgation of a rule should be attended by certain formalities e.g. publication in the government gazette as law laid down by the Supreme Court in various pronouncements. The Supreme Court further held that the statutory rules have the following three characteristics:(i) Rules or Regulations are framed by a statutory or public body; (ii) They are framed under the authority or powers conferred in the statute; (iii) They have statutory Governmental approval or statutory sanction.

10. A reference is made to the case of Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010) in which the Supreme Court held that:

*“The test to gauge as to whether the service rules are statutory or not was laid down by this Court as far back as in the year 1984 in the case of the Principal Cadet College, Kohat and another v. Mohammad Shoab Qureshi (PLD 1984 SC 170) by holding 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), this 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. ”*

11. Having said so, in principle, an aggrieved party can invoke the

connection with the affairs of the federation, or a province or a local authority. Article 199(5) elucidates that “person” includes any body politic or body corporate, any authority under the control of the Federal Government or a Provincial Government, and any court or tribunal, other than the Supreme Court, a High Court, or a court or tribunal established under a law relating to the armed forces of Pakistan. In Salahuddin and others v. Frontier Sugar Mills & Distillery Ltd. and others (PLD 1975 SC 244), the Supreme Court of Pakistan observed as under:

*“The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of the sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Government; and whether the bulk of the funds is provided by the State. 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.”*

12. The above view was reaffirmed by the Supreme Court in the cases of Aitchison College, Lahore through Principal v. Muhammad Zubair and another (PLD 2002 SC 326); Federal Government Employees Housing Foundation and another v. Muhammad Akram Alizai (PLD 2002 SC 1079); Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676); Abdul Wahab and others v. HBL and others (2013 SCMR 1383); Pakistan Defence Officers’ Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707); Pir Imran Sajid and others v. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257); Muhammad Zaman and others v. Government of Pakistan and others (2017 SCMR 571); Human Rights Case No.3564 of 2018 – In the matter regarding the appointment of Managing Director, Pakistan Television Corporation (2019 SCMR 1) and Pakistan Electric Power Company v Syed Salahuddin and others 2022 SCMR 991.

13. While the Institute of Chartered Accountants of Pakistan (ICAP) does not have explicitly named "statutory rules of service," it operates under a framework of regulations: Chartered Accountants Ordinance, 1961. This is the primary legislation governing ICAP's existence and functions. ICAP Bye-Laws. These bylaws provide the internal rules and procedures for ICAP's operations, including membership, examinations, and disciplinary matters. ICAP has internal policies and procedures that govern employment matters, including recruitment, performance management, and employee conduct. The ICAP Staff Service Rules, 2011 were framed by the respondent/Institute, these rules may not have the

operates within a clear legal and regulatory framework of the respondent/Institute.

14. In view of what has been discussed above, without touching the merits of the case, the preliminary objection regarding the maintainability of the petition is sustained and the petition is held to be not maintainable in terms of Article 199 of the Constitution for the reason that non-statutory rules of service cannot be enforced through writ of mandamus in terms of ratio of the judgment passed by the Supreme Court in the case of Pakistan Electric Power Company supra.

15. In the light of the above facts and circumstances of the case, the instant Petitions are thus dismissed along with the pending application(s).

JUDGE

JUDGE