

IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-1015 of 2014
(L.T. CDR (R) Dr. Muhammad Nawaz v Federation of Pakistan & others)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 10.04.2025

Petitioner present in person.
Ms. Wajiha Mehdi, Additional Attorney General.

ORDER

Adnan-ul-Karim Memon, J: The petitioner (*L.T. CDR (R) Dr. Muhammad Nawaz*) requests this court to:

1. ***Declare that the petitioner is entitled to allotment of a staff plot like other ex. services employees and the remaining outstanding dues.***
2. ***Direct the respondent for allotment of staff plot to he petitioner and the remaining back benefit/dues as per service rules and policy approved by the Executive Board of DHA.***

2. A retired Navy Lt. Commander and former Principal (BPS-18) at a DHA Model School has petitioned DHA for a staff plot and outstanding dues. Despite resigning in 2010, the petitioner submits that he is entitled to these benefits based on DHA's policies for ex-armed forces personnel and service rules. He claims his 2006 termination was illegal, a 2009 court order mandated an inquiry (which cleared him), yet he was not reinstated properly and was pressured to resign in exchange for the sought benefits, which were never fully provided.

3. DHA refutes the petitioner's claims, raising legal objections including disputed facts, his resignation and acceptance of dues, the non-statutory nature of service rules, filing delay, and that plot allotment is not a right. While admitting his appointment and confirmation, DHA counsel argues the petitioner's teaching role and their policies disqualify him from a staff plot (reserved for non-teaching staff or retirees aged 60), and his resignation negates any entitlement. They deny pressuring his resignation, asserting he chose to resign and accepted full payment without protest. DHA counsel contends that the petitioner's past service and alleged promises do not override their policies, which he does not meet, thus no discrimination occurred. DHA counsel also counters that as teaching staff, he does not qualify for a staff plot under their rules and that his resignation and acceptance of dues negate his current claims. The petitioner, who is present in person, has refuted the stance of the respondent DHA and submitted that DHA's service rules and policies for former armed forces members guarantee him a staff plot after a qualifying period (3 or 5 years). He further alleges discrimination, noting that other ex-service personnel

have received plot allotments. Consequently, he argues that the denial of the plot and remaining financial dues is unlawful and infringes upon his constitutional rights. He submits that entitlement under ex-armed forces personnel policies, despite forcibly resigning in 2010, citing an allegedly illegal 2006 termination, a subsequent court-ordered inquiry that cleared him, and he was pressured to resign in exchange for these benefits, which he claims were not fully delivered. DHA denies his eligibility as teaching staff and states his resignation and acceptance of dues negate his claims.

4. Ms. Wajiha Mehdi, the Assistant Attorney General, argued that this petition contains disputed questions of fact, which need reordering of evidence for proper dispensation of justice, which cannot be done under constitutional jurisdiction. She has contended that the petitioner resigned from his service and all his service benefits were paid, and the same were accepted by the petitioner without any protest; the petitioner is not entitled to the same. Therefore, she requested the dismissal of the petition.

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

6. The questions involved in the matter are whether the petitioner's contract of service discloses the entitlement of the plot, and whether the Service Rules for the Employees of Pakistan Defense Officers Housing Authority 2008 could be enforced through a Constitutional Petition.

7. Admittedly, the respondent authority is a statutory body established under the Pakistan Defence Officer Housing Authority Ordinance, 1980, and the rules framed thereunder are non-statutory rules of service only dealing with instructions for internal control and management of DHA, which are treated as non-statutory rules of service.

8. The primary submissions of the petitioner is that the staff plot is a contractual entitlement. However, this raises the question of whether a Constitutional Petition is the appropriate legal avenue for an employee of a statutory corporation with non-statutory service rules to enforce the terms of those rules. Established service law dictates that if a statutory body's employee service conditions aren't governed by statute-based rules but by internal rules or instructions, their violation is generally not enforceable through constitutional jurisdiction and falls under the principle of master and servant. Here, the petitioner seeks enforcement of the DHA Service Rules 2008, which this Court cannot typically enforce via a Constitutional Petition. This position is supported by the Supreme Court of Pakistan's ruling in *Pakistan Defense Officers Housing Authority vs. Mrs. Itrat Sajjad Khan and others* (2017 SCMR 2010).

9. Regarding the subject plot, the competent authority within the respondent DHA has the exclusive right to allot it according to their policy to serving and retired DHA officers meeting the required service criteria. This court, under Article 199 of the Constitution, lacks the jurisdiction to consider this matter. However, if the petitioner believes his claim is valid under the Service Rules 2008, he is entitled to seek resolution from the appropriate court of plenary jurisdiction, as issues requiring evidence cannot be addressed through a writ of mandamus.

10. This petition is found to be not maintainable under Article 199 of the Constitution, which is accordingly dismissed with pending application(s) if any.

JUDGE

Head of Const. Benches