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# Judgment Sheet
# IN THE LAHORE HIGH COURT AT LAHORE.
JUDICIAL DEPARTMENT

## W.P. No. 73296 of 2019

Hafiz Salman Ahmed

**Versus**

Board of Intermediate and Secondary Education Sahiwal etc.

## JUDGEMENT

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| Date of Hearing: | 20.03.2025 |
| Petitioner by: | M/s. Arshad Malik Awan & Mohsin Hanif, Advocates |
| Respondents by: | M/s. Mehboob Azhar Sheikh & Ch. Abdul Ghaffar, Advocates |

***KHALID ISHAQ, J.*** Through this constitutional petition, the petitioner has called into question order bearing No. 1288/Admn dated 27.11.2019 (**Impugned Order**) whereby the Chairman, Board of Intermediate and Secondary Education, Sahiwal (**BISE**) has proceeded to terminate the contract appointment of the petitioner by imposing major penalty of removal from service as prescribed by section 4(1)(b)(v) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (**PEEDA**).

**2.** The facts of the case are that the petitioner was appointed as Estate Officer, BISE on contract basis on 25.02.2015 in terms of the then applicable policy i.e. Contract Policy No. *DS(O&M)503/2004/Contract (MF)* dated 29.12.2004 (**Contract Policy, 2004**). After serving about 4 years, the petitioner, amongst other similarly placed colleagues, initiated request for regularization of his services, which request was not entertained by BISE. Being aggrieved, the petitioner and 8 others filed a Constitutional Petition bearing W.P. No. 8147 of 2019 at Multan Bench which was later transferred to Lahore and assigned W.P. No. 9993 of 2020 Lahore titled *'Hafiz Salman Ahmad etc. v. B.I.S.E. Sahiwal etc.'* (**"First Petition"**) wherein the following

interim relief was granted:

***"CM No.2 of 2019.***

*4. Subject to notice, no adverse action shall be taken against the petitioners, meanwhile."*

It is pertinent to point out that though First Petition was filed before Multan Bench of this Court, however, subsequent to the filing of captioned petition, First Petition was ordered to be heard with this Petition, thus the same was clubbed with this Petition and is being decided also through a separate order today.

**3.** Since the Petitioner was removed from service by the dint of Impugned Order during the pendency of First Petition, therefore, feeling aggrieved of the Impugned Order, the Petitioner was constrained to file this petition, which was taken up for hearing on 09.12.2019 and following interim relief was granted:

***"CM No.2 of 2019.***

*4. Subject to notice for the aforesaid date, the order impugned shall not be implemented and the respondents are directed to allow the petitioner to perform his duties, meanwhile."*

**4.** Through this petition, it is asserted that the Petitioner was abducted from his home on the wee hours of 01.07.2019; a First Information Report bearing No. 473/2019 dated 23.08.2019 under section 365 PPC (**FIR**) was lodged at Police Station Gulshan Iqbal, Lahore at the instance of mother of the petitioner against his illegal and unlawful abduction. It is further averred that the case of petitioner was also treated as that of an 'Enforced Disappearance' and as such the same was taken up by the Commission of Enquiry on Enforced Disappearances (the "**Commission"**); an order of the Commission is annexed with the petition, which reflects that certain directions were issued by the Commission for the recovery of the petitioner, including but not limited to, registration of FIR, an enquiry by the Intelligence Bureau and formation of a Joint Investigation Team (JIT) to trace out the whereabouts of the petitioner. Since the petitioner was taken into custody, allegedly abducted, therefore, he was unable to attend his duty on daily basis from the

date of his abduction i.e. 01.07.2019. In such eventuality, disciplinary proceedings were initiated by BISE against the petitioner by invoking the provisions contained in PEEDA as the same was made applicable to the Contract Appointees under Clause 8 of the Contract Policy, 2004. A show cause notice bearing No. 1141/Admn dated 17.08.2019 (**SCN**) was issued to the Petitioner alleging petitioner's willful absence from duty w.e.f. 01.07.2019 while simultaneously resorting to sections 5(1)(a) read with 7(b) of PEEDA whereby requirement of regular inquiry was dispensed with.

**5.** The petitioner being freed from alleged wrongful confinement, sometime during first week of October 2019, joined his duty on 08.10.2019. SCN was served upon the Petitioner on 10.10.2019; he filed reply to SCN, denied allegation of willful absence, reiterated the facts of his enforced disappearance/abduction on 01.07.2019 and subsequent release on 08.10.2019. Though, the petitioner was afforded personal hearing on the basis of his averments of reply to SCN but without regular inquiry and without affording an opportunity to the petitioner to prove his innocence from the charge of wilful absence by way of producing evidence in this respect, Impugned Order was passed against the petitioner and he was removed from contractual appointment by imposing major penalty of removal from service under section 4(1)(b)(v) of PEEDA. It is also of note that all other eight (8) petitioners of First Petition were regularized in service by BISE, which treatment was not extended to the Petitioner, on the basis of him having been removed from contractual appointment by virtue of Impugned Order. Hence this Petition.

**6.** Learned counsel for the petitioner while arguing the maintainability aspect of the petition in hand submits that since the Impugned Order is patently illegal and unlawful, it has been passed in absolute negation of the settled principles of administration of justice, the major penalty of removal from service having been handed to petitioner without a lawful inquiry and proper opportunity of hearing, which inquiry could not have been dispensed with and was mandatory in the facts and circumstances of this case, therefore, per learned counsel, the Impugned Order is not sustainable. Adds that since the petitioner was already before this Court and an interim relief was granted

in the First Petition, which is still pending, therefore, instead of filing a departmental appeal, the petitioner approached this Court by filing the captioned constitutional petition, which was entertained, thus the petitioner cannot be ousted for non-filing of the departmental appeal in terms of section 16 of the PEEDA; finally submits that the remedy of filing appeal before the Punjab Service Tribunal was also not available to the petitioner in terms of the bar contained in section 19 of the PEEDA, therefore, the petition in hand is maintainable as no other adequate and efficacious remedy was available against the imposition of major penalty of removal from service. Placed reliance on cases reported as *Muhammad Amin and another v. Government of Punjab and others* (**2015 SCMR 706**), *Mst. Sardar Begum v. Lahore Improvement Trust, Lahore and 3 others* (**PLD 1972 Lahore 458**), *Riaz Mehmood Sheikh v. Shamsher Alam Khan and another* (**2009 CLC 862**), *Khushi Muhammad through L.Rs. and others v. Mst. Fazal Bibi and others* (**PLD 2016 SC 872**) & *Faqir Muhammad v. Khursheed Bibi and others* (**2024 SCMR 107**).

**7.** Learned counsels for the respondent BISE has relied upon the comments filed in response to this petition, vehemently supported the Impugned Order and prayed for dismissal of the instant petition.

**8.** Arguments heard. Record perused.

**9.** Question of jurisdiction, being germane to all proceedings, has to be decided ahead of all other questions, therefore, the issue of maintainability of this petition is decided at the outset. The first and foremost challenge to the maintainability of this petition may be premised on non-filing of departmental appeal by the petitioner as the said remedy in terms of section 16 of PEEDA was available but the same was not availed by the Petitioner and instead he directly approached this Court by invoking its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan (the **"Constitution"**). For determining as to whether non-filing of departmental appeal in terms of section 16 of the PEEDA before filing the petition in hand is fatal qua maintainability of this petition, this Court has considered the facts and record of this case as well as the process leading towards the issuance of

the Impugned Order. It is well-settled by now that the rule regarding invoking constitutional jurisdiction in terms of Article 199 of the Constitution, only after exhausting all other remedies, is one of convenience and discretion by which the Court regulates its proceedings and is not a rule of law affecting the jurisdiction of this Court. A constitutional petition is competent if an order is passed by a Court or Authority by exceeding its jurisdiction or exercising its jurisdiction in an arbitrary, illegal or unjust manner, even if the remedy of appeal/revision against such order is available, depending upon the facts and circumstances of each case[1]. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any inquiry. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy[2]. In the instant case the respondents have purportedly proceeded against the petitioner by invoking the provisions contained in a statute i.e. PEEDA, therefore, it was incumbent upon the respondents to adhere to safeguards supplied in the same statute, however, as will be explicated in the later part of this judgment, the mandatory provisions of the same statute have been violated by the respondents and major penalty of removal from service has been handed to the petitioner without even a proper inquiry, therefore, throwing the petitioner at the mercy of same authorities or non-suiting the petitioner at this juncture for not availing the departmental appeal is neither just nor appropriate in the case in hand. In this respect, this Court is guided by the law laid down by Supreme Court of Pakistan in ***Dr. Akhtar Hassan Khan's case***[3], the relevant extract wherefrom is reproduced below with great advantage:

> *"49. In Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324), the Court took a similar view and in Wukala Mahaz Barai Tahafaz Dastoor v. Federation of Pakistan (PLD 1998 SC 1263), the Court came to a similar conclusion. In such cases, even the existence of an alternate remedy has not*

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[1] *Gatron (Industries) Limited v. Government of Pakistan and others* (**1999 SCMR 1072**)
[2] "*Salahuddin and 2 others v. Frontier Sugar Mills & Distillery Ltd. etc.*" **(PLD 1975 SC 244)**; "*Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib & others*" (**2011 SCMR 1813**); *The Executive Director (P&GS) State Life, Principal Office Karachi and others v. Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone, Peshawar* **(2025 SCMR 249)**
[3] *Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others* (**2012 SCMR 455**)

*prevented the Court from exercising its power of judicial review if the said alternate remedy is neither efficacious nor expeditious. In Watan Party through President v. Federation of Pakistan (PLD 2006 SC 697), the Court repelled this argument by holding that:*

> *"**But at the same time, we have also to keep in mind another very important principle of law enunciated by this Court in the case of Syed Ali Abbas v. Vishan Singh (PLD 1967 SC 294) i.e. petitioner cannot be refused relief and penalized for not throwing himself again (by way of revision or review) on mercy of authorities who are responsible for such excesses**. This principle has to be read along with the principle laid down in the case of Anjuman-e-Ahmadiya, Sargodha ibid wherein it has been held that if an adequate remedy provided by law is less convenient, beneficial and effective in case of a legal right to performance of a legal duty, the jurisdiction of the High Court can be invoked. Similarly, this principle has been reiterated in the Murree Brewery's case ibid wherein it has been held that if a statutory functionary acts mala fide or in a partial, unjust and oppressive manner the High Court in exercise of its writ jurisdiction has power to grant relief to the aggrieved party.*
>
> *Thus, we are of the opinion that under the circumstances of the case, **it would not be in the interest of justice to push the petitioners back to the authority who had already exercised the jurisdiction and is insisting that the action so taken by it is not only in accordance with law as it suffers from no legal discrepancy or infirmity but is also transparent**. ....."""*
>
> ***[Emphasis Supplied]***

**10.** While elucidating the scope and contours of Article 199 of the Constitution, in the case of ***Brig. Muhammad Bashir***[4], the Supreme Court of Pakistan has held:

> *"It is well settled by now that "Article 199 casts an obligation on the High Court to act in aid of law, protect the rights or the citizens within the framework of the Constitution against the infringement of law and Constitution by the executive authorities, strike a rational compromise and a fair balance between the rights of the citizens and the actions of the State functionaries, claimed to be in the larger interest of Society. This power is*

[4] *Brig. Muhammad Bashir v. Abdul Karim and others* (**PLD 2004 Supreme Court 271**)

> *conferred on the High Court under the Constitution and is to be exercised subject to Constitutional limitations. The Article is intended to enable the High Court to control executive action so as to bring it in conformity with the law. Whenever the executive acts in violation of the law, an appropriate order can be granted which will relieve the citizen of the effects of illegal action. It is an omnibus Article under which relief can be granted to the citizens of the country against infringement of any provision of law or of the Constitution.* ***If the citizens of this country are deprived of the guarantee given to them under the Constitution, illegally or, not in accordance with law, then Article 199 can always be invoked for redress****……*
> *It is to be noted that "paramount consideration in exercise of Constitutional jurisdiction is to foster justice and right a wrong". (Rehmatullah v. Hameeda Begum 1986 SCMR 1561, Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236). There is no cavil with the proposition that "so long as statutory bodies and executive authorities act without fraud and bona fide within the powers conferred on them by the Statute, the judiciary cannot interfere with them.* ***There is ample power vested in the High Court to issue directions to an executive authority when such an authority is not exercising its power bona fide for the purpose contemplated by the law or is influenced by extraneous and irrelevant considerations.*** *Where a statutory functionary acts mala fide or in a partial, unjust and oppressive manner, the High Court in the exercise of its writ jurisdiction has ample power to grant relief to the aggrieved party". (East and West Steamship Co. v. Pakistan PLD 1958 SC (Pak.) 41).* ***In our considered view, technicalities cannot prevent High Court from exercising its Constitutional jurisdiction and affording relief which otherwise respondent is found entitled to receive****."*
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> ***[Emphasis Supplied]***

In *Al-Hamza Ship Breaking Co.*[5] the Supreme Court of Pakistan has held as follows:

> *"While it is clear that, generally speaking, the High Court in the exercise of its constitutional jurisdiction does not decide questions of disputed facts, this does not mean that decisions which are manifestly arbitrary, based on no evidence, or contrary to the record and not justified by law will be upheld…."*

[5] *Al-Hamza Ship Breaking Co. and 14 others v. Government of Pakistan through Secretary Revenue Division, Ministry of Finance, Islamabad and others* (**2015 SCMR 595**)

**11.** Needless to add that in terms of section 19, read with section 2(h)(i) of PEEDA, the petitioner had no remedy of appeal before the Service Tribunal, therefore, this petition under Article 199 of the Constitution is maintainable in terms of law settled by Supreme Court of Pakistan in ***Bashir Ahmad and others*** [6] whereby it is held that in case an employee is proceeded against under a statute or under any statutory rules and such statute or statutory rules are violated, his remedy lies before the High Court by filing constitutional petition under Article 199 of the Constitution and not any other remedy. The petitioner was proceeded against on the basis of the provisions contained in PEEDA and in the opinion of this Court, the provisions of PEEDA are violated by the respondents for denying an opportunity of fair hearing through a regular inquiry, therefore, the case of *Bashir Ahmad supra* is squarely applicable to the case in hand and thus, this petition under Article 199 of the Constitution is maintainable.

**12.** As regards the merits of the case, it is an admitted position that the petitioner was appointed in terms of the Contract Policy, 2004. Apart from settled principles of administration of justice, which require that rights of an employee cannot be infringed while treating him as a subject of an authoritarian regime, clause 4, Para-XVII sub-clause (ii) of the Contract Policy, 2004 supplies safeguards against unreasonable and arbitrary terminations of the contract employees, the same is reproduced as under:

> *"4. ……*
>
> ***XVII) TERMINATION OF CONTRACT APPOINTMENT***
>
> *(i) ……..*
>
> *(ii) Since the Government has shifted from regular mode of appointment to the contract mode in general, there is a need to ensure that sufficient safeguards are provided against arbitrary termination of contract employees and such employees are given a reasonable security with respect to the terms and conditions of their contract service. Appointing Authorities should, therefore, ensure that contract appointments are generally not terminated before the expiry of the term of contract, unless it is clearly*

[6] *Bashir Ahmad and others v. The Director General, Lahore Development Authority, Lahore and others* (**2020 SCMR 471**)

> *determined that performance of a contract employee is unsatisfactory or he is guilty of inefficiency, misconduct or corruption."*

**13.** It is an admitted position that the major penalty of removal from service in terms of section 4(1)(b)(v) of PEEDA has been awarded to the Petitioner while dispensing regular inquiry. This Court is mindful of the latest enunciation of law by the Supreme Court of Pakistan, whereby it is settled that in cases of willful absence from duty, the process of regular inquiry may be dispensed with[7], however each case has its own merits and the facts of the case in hand are such that mere allegation of willful absence from duty could not have been proved without holding a proper inquiry as it is the case of the petitioner that he was unlawfully abducted and remained a victim of enforced disappearance. These assertions of the Petitioner are not only supported by sufficient material appended with this petition but it is also evident from the Impugned Order that the respondents somehow believed the confinement of the petitioner but for strange circuitous reasons, the same has been used as a basis to cast negative aspersions on the conduct of not only the petitioner but also his family. Relevant part of the Impugned Order is reproduced below:

> *"**And whereas**, the written defence as well as additional written defence supported by an F.I.R. and circular letter dated 05.07.2019 of the Secretary (ColoED) Commission of Enforced Disappearances, Director of Civil Defence, Islamabad submitted by the aforesaid accused were taken to consideration at length by the undersigned and **found that suspicious bank account operated by his brother sometime ago, is itself a confessing statement and consequential kidnapping by the agency is momentous and perceptive. Therefore, involvement of the accused and his brother in some type of crooked / subversive activities is beyond doubt**.*
>
> **[Emphasis Supplied]**

**14.** The above findings being outrageous, arbitrary and fanciful, cannot sustain any test of due process of law, these findings reflect that although the SCN was premised on the allegations of wilful absence but while passing the

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[7] *National Bank of Pakistan and another v. Zahoor Ahmed Mengal* (**2021 SCMR 144**); *Secretary Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Noor-ul-Amin* (**2021 SCMR 959**); *Secretary to Government of the Punjab, School Education Department, Lahore and others v. Syed Zakir Ali* (**2022 SCMR 951**); *Chairman Pakistan Ordnance Factories, POF Board, Wah Cantt. v. Akhtar Tanveer and others* (**2025 SCMR 374**)

Impugned Order, the competent authority has traveled beyond the allegations of SCN and based its findings on the purported conduct of the petitioner and his brother/family, which conduct had no relevance to the case set up in SCN against the petitioner and could not have been made basis for issuance of the Impugned Order. It is well settled by now that an authority while adjudicating a case on the basis of show cause notice, has to confine itself within the allegations of show cause notice and rendering any findings or forming basis of the final order on elements beyond the allegations/charges of show cause notice, is not sustainable under the law.[8]

**15.** The significance of issuance of a proper show cause notice and confining the order to the extent of the allegations leveled therein has authoritatively been settled by the Supreme Court of Pakistan. In this regard, I am guided by a recent judgment of the Supreme Court in ***Sanaullah Sani***[9]**,** wherein, while speaking for the bench Justice *Shahid Waheed,* has enunciated the law in the following terms**:**

> *"A conjoint reading of the various provisions of the PEEDA suggests that a show cause notice is not an accusation made or information given in abstract but an accusation made against an employee in respect of an act committed or omitted, cognizable thereunder. As such, the law intends that a show cause notice must conform to at least seven essential elements, and these include:*
>
> *(a) it should be in writing and should be worded appropriately;*
>
> *(b) it should clearly state the nature of the charge(s), date, and place of the commission or omission of acts, along with apportionment of responsibility;*
>
> *(c) it should clearly quote the clause of the PEEDA under which the delinquent is liable to be punished;*
>
> *(d) it should also indicate the proposed penalty in case the charge is proved;*
>
> *(e) it should specify the time and date within which the employee should submit his explanation in writing. It is also preferable*

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[8] "*Faisal Ali v. District Police Officer, Gujrat and another"* (**2025 SCMR 92**)
[9] *"Sanaullah Sani v. Secretary Education Schools etc.*" (**2024 SCMR 80**)

*to add in the show cause notice that if no written explanation is received from the accused within the prescribed date, the enquiry will be conducted ex-parte;*

*(f) it should be issued under the signature of the competent authority and*

*(g) it should contain the time, date and place of the inquiry and the name of the inquiry officer.*

*7. It must be mentioned here that strict compliance of the above conditions is vital so that the principle of natural justice is not violated. It is thus emphasised that the charges made in the show cause notice should not be vague. All the acts of commission or omission constituting the charge, and also forming the ground for proceeding against the employee, should be clearly specified because otherwise, it will be difficult for an employee, even by projecting his imagination, to discover all the facts and circumstances that may be in the contemplation of the competent authority to be established against him, and thus, it will not only frustrate the requirement of giving him a reasonable opportunity to put up a defence but also amount to a violation of his fundamental right to a fair trial."*

**16.** Having examined the SCN, the proceedings undertaken in pursuance thereof and the Impugned Order, this Court has considered the pivotal question as to whether in the peculiar circumstances of the case, the regular inquiry may have been dispensed with or not. The requirement of regular inquiry and parameters of its dispensation are well settled in our jurisprudence. There is an overwhelming consensus that in case of awarding major penalty, a proper inquiry is to be conducted in accordance with law wherein full opportunity of defence is to be provided[10]. The foremost aspiration of conducting departmental inquiry is to find out whether a *prima facie* case of misconduct is made out against the delinquent officer for proceeding further. The guilt or innocence of a person can only be thrashed out from the outcome of inquiry and at the same time it is also required to be seen as to whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the

[10] "*Rashid Mehmood v. Additional Inspector General of Police and 2 others"* (**2002 SCMR 57**); "*Pakistan International Airlines Corporation v. Shaista Naheed"* (**2004 SCMR 316**); "*Inspector General of Police and 2 others v. Shafqat Mehmood*" (**2003 SCMR 207**)

Constitution[11]. It is further settled by respectable authority that a distinction also needs to be drawn between a regular inquiry and preliminary/fact finding inquiry. A regular inquiry is triggered after issuing show cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow an even-handed and fair opportunity to the accused to place his defence and if any witness is examined against him, then a fair opportunity should also be afforded to cross-examine the witness. The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and the delinquent civil servant should be provided a fair opportunity of being heard[12]. Supreme Court has further settled that the primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence is founded on the end result of the inquiry[13]. In the case of ***Ghulam Muhammad Khan***[14] Supreme Court has held:

> *"The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact could not be recorded without examining the witnesses in support of the charge or charges, the regular inquiry cannot be dispensed with."*

In ***Senior Superintendent of Police***[15] case, Supreme Court of Pakistan had stipulated that only in exceptional cases an inquiry can be dispensed with:

> *"8. There is no hard and fast rule that in each and every case after issuing show cause notice the regular inquiry should be conducted but if the department wants to dispense with the regular inquiry there must be some compelling and justiciable reasons assigned in writing."*

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[11]; "*Usman Ghani v. The Chief Post Master, GPO Karachi and others"* **(2022 SCMR 745)**
[12] *"Raja Muhammad Shahid v. The Inspector General of Police and others*" **(2023 SCMR 1135**
[13] *"Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others Vs. Zahid Malik"* **(2023 SCMR 603)**
[14] "*Ghulam Muhammad Khan v. Prime Minister of Pakistan and others"* (**1996 SCMR 802**)
[15] "*Senior Superintendent of Police (Operations) and others v. Shahid Nazir"* (**2022 SCMR 327**)

In ***Nawab Khan's case***[16], a five-member Bench of Supreme Court of Pakistan has settled the law in the following terms:

> *"... if findings of fact are recorded without recording any evidence, the same will be based on surmises and conjectures, which will have no evidentiary value as to warrant imposition of any punishment..."*

**17.** By Juxtaposing the settled law with facts and circumstances of the case in hand, the contents of SCN, proceedings undertaken in pursuance thereof and the Impugned Order, the only ineluctable conclusion emerges that neither the SCN and the proceedings in furtherance thereof are tenable in law nor the Impugned Order is sustainable on any of tests of due process in terms of Articles 4 and 10A of the Constitution. The Supreme Court of Pakistan while dilating upon Article 4 of the Constitution in the case of ***Farheen Rashid***[17] has held:

> *"10. It is the inalienable right of every citizen to be treated in accordance with law as envisaged by Article 4 of the Constitution. It is the duty and obligation of the public functionaries to act within the four corners of the mandate of the Constitution and Law."*
>
> *'The word law used in the Constitution has been interpreted to include all such principles as having the binding force on account of moral, customary or other sociological reasons. Late Hamood-ur-Rehman, J., defined the word law while interpreting Article 4 of the Constitution and the dictum laid down in Begum Agha Abdul Karim Shorish Kashmiri's case PLD 1969 SC 14 as under:*
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> *"Law is here not confined to statute law alone but is used in its generic sense as connoting all that is treated as law in this country including even the judicial principles laid down from time to time by the superior Courts."*

**18.** Even otherwise the imposition of major penalty of removal from service neither commensurate with the alleged guilt of the petitioner nor it is in accordance with the provisions contained in second proviso to clause (f) of section 7 of PEEDA. It is well settled that the punishment should

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[16] "*Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others"* (**PLD 1994 Supreme Court 222**)
[17] *Government of Pakistan v Farheen Rashid* (**2011 SCMR 1**)

commensurate with the element of guilt[18] otherwise the law dealing with the subject will lose its efficacy. It is also well settled that for safe administration of justice, the Authority vested with discretion to award punishment to an employee shall ensure that such punishment should commensurate with the magnitude of guilt.

**19.** In a matter brought before this Court under Article 199 of the Constitution, such as the one in hand, whereby the infringement of a fundamental right or lack of due process of law in terms of Articles 4 and 10A of the Constitution has been complained of, it is impossible for this Court to hold that public authorities have acted within the limits of their authority and have acted lawfully, unless the decisions impugned contains reasons. As was held by the US. Supreme Court: "*the orderly functioning of the process of review requires that the grounds upon which administrative agency acted be clearly disclosed and adequately sustained....*"[19]

**20.** Article 4 of the Constitution is the bedrock of the rule of law and an antithesis to the rule of men in our country, it is a restraint on the executive and judicial organs of the State to abide by the rule of law. Article 4 ordains that it is inalienable right of every citizen wherever he may be and any person whenever he is in Pakistan to have and enjoy the protection of law and to be treated in accordance with law. In the case in hand, the petitioner has not been treated in accordance with law. Undisputed facts of this case clearly brings home that the actions of the respondent and the Impugned Order cannot withstand any test of due process, the Impugned Order has been issued without providing an opportunity of hearing, it does not reflect any of the basic thresholds which are required to be followed by the public functionaries, who are empowered and entrusted with the authority to decide the matters pertaining to the rights of individuals in a fair, transparent and lawful manner through well-reasoned orders. It is well settled by now that all judicial, quasi-

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[18] *National Bank of Pakistan through President, Karachi v. Roz-ud-Din and another* (**2025 SCMR 160**), *Divisional Superintendent, Postal Services, D.G. Khan v. Nadeem Raza and another* (**2023 SCMR 803**), *The Postmaster General Sindh Province, Karachi and others v. Syed Farhan* (**2022 SCMR 1154**), *Director General, Directorate General of Training and Research (Inland Revenue), Lahore and another v. Ijaz Younas* (**2021 SCMR 710**), *Secretary to Government of the Punjab Food Department, Lahore and another v. Javed Iqbal and others* (**2006 SCMR 1120**)

[19] "*Securities and Exchange Commission v. Chenery*" **(318 US 80)**

judicial, and administrative authorities must exercise power in a reasonable manner and also must ensure justice as per the spirit of law and instruments regarding exercise of discretion. Obligation to act fairly on the part of administrative authority has been evolved to ensure the rule of law and to prevent failure of justice. Object of good governance cannot be achieved by exercising discretionary powers unreasonably, arbitrarily and without following due process of law such as issuance of a show cause notice of allegations, an inquiry and an opportunity of hearing and thereafter the decision of the matter through speaking and reasoned orders. The objective of protection of fundamental rights of the citizens and due and fair administration of executive actions and justice can be achieved by following rules of justness, fairness and openness in consonance with the command of the Constitution, which principles have not been adhered to or complied with while issuing the Impugned Order. Consequently, this petition is allowed and the Impugned Order (*order bearing No. 1288/Admn dated 27.11.2019*) is set aside with the result that the case of the Petitioner (who is still working in BISE) shall be deemed to be pending before the BISE, which shall be decided afresh while taking into consideration the prevalent circumstances at that point in time as well as the law discussed and observations made herein above.

**(Khalid Ishaq)**
**Judge**

**APPROVED FOR REPORTING.**

**(Khalid Ishaq)**
**Judge**

Announced & dictated on 20.03.2025
Signed on 09.04.2025
*Awais/*