

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P. No.65865/2019.

Abida Sughra Farooqi.

Versus Province of Punjab through its Secretary Labour & Human Resource Department, Lahore & others.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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25.10.2023. Mr. M. Shehzad Hanif, Advocate for petitioner.
Mr. Waqar Saeed Khan, Assistant A.G.
Ch. Tariq Javed, Advocate / Legal Advisor respondent (PWWF).
Mr. Imran Khan, A-D/Legal (PWWF), Lahore.

Departmental inquiry is pending against the petitioner under statutory regime provided under the provisions of Punjab Employees Efficiency, Discipline And Accountability Act 2006 - PEEDA Act.

This petition is directed against order of 02.09.2019, whereby order of *de novo* inquiry was repeated – earlier the order of *de novo* inquiry was passed on 29.10.2015, whereafter inquiry was conducted and inquiry report submitted on 17.05.2019.

2. Legal question raised is whether order of *de novo* inquiry could be passed in wake of *de novo* inquiry previously ordered – allegations are same. [Whether powers under sub-section (6) of

section 13 of PEEDA Act could be exercised twice.]

3. Learned counsel submits that section 13(6) of PEEDA Act does not provide for passing of order of *de novo* repeatedly, and since law does not provide such option, therefore order dated 23.09.2019 is illegal and void. Reference is made to following decisions in cases of "MUHAMMAD ATAULLAH VS. ISLAMIC REPUBLIC OF PAKISTAN and 2 others." (1999 SCMR 2321) and another unreported judgment of learned Peshawar High Court, Peshawar passed in W.P. No. 1376-P/2014 titled "HASANAAT GUL ETC.V S. CHIEF MINISTER KPK and others".

4. Conversely, learned counsel appearing for the respondents defended order of *de novo* inquiry. Adds that inquiry is currently pending, and no progress could be made in wake of restraining order by this court on 04.11.2019.

5. Submissions heard. Record perused.

6. Question raised calls for interpretation of scope and ambit of section 13(6) of PEEDA Act, which is reproduced hereunder, for reference,

Section 13 Order to be passed by the competent authority on receipt of report from the inquiry Officer or inquiry committee (1)

Section 13 (2)

Section 13 (3)

Section 13 (4)

Section 13 (5)

13(6). *Whether the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of this Act or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry.”*

7. Textual reading of referred provision of law places no such restriction on the competent authority regarding re-ordering of *de novo* inquiry, once *de novo* inquiry was ordered, previously. Interpretation proposed by counsel for the petitioner is fallacious. Such interpretation, if attributed to provision of law under reference, would in fact suggests curtailing / limiting the authority / power of the competent authority to examine the inquiry report, presented in the wake of order of *de novo* inquiry, earlier made. Additionally, such interpretation, as proposed by the counsel, if accepted would implies that inquiry report, submitted post *de novo* inquiry order, would attain finality, *ipso facto*. Incidentally no final order was passed qua the innocence or guilt of the petitioner in the context of relevant facts, nor any finality could be attributed to inquiry report, unless any order

is passed by competent authority. Since no order, in terms of sub-section (5) of section 13 of PEEDA Act, was passed, therefore option to invoke jurisdiction under sub-section (6) of section 13, *ibid.* was available and rightly invoked – in wake of reasoning extended.

The only limitation sub-section (6) of section 13 of PEEDA Act provides is the condition of recording reasons and passing of such directions, as competent authority considers appropriate. Yes, competent authority cannot order *de novo* inquiry, once order in writing has been passed under sub-section (5) of section 13 of PEEDA Act – in such situation it would become *functus officio*. The judgments referred are distinguishable on facts. I lay my hands on a decision of this court in the case of "MUHAMMAD TARIQ SAEED and 2 others. Vs. GOVERNMENT OF THE PUNJAB through Secretary Forest, Wildlife and Fisheries Department and 2 others." (**2011 PLC (C.S) 884**), wherein, while exercising constitutional jurisdiction, order of *de novo* inquiry was declared of no legal effect, in the context of peculiar and distinguishing facts. Relevant portion of the decision is reproduced hereunder for ease of reference,

“11. Neither of the two inquiries could prove the allegations of misconduct against the petitioners whereafter the competent authority exonerated them by means of its order dated 10-6-2010, which was passed under section 13(5) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006. A conjoint reading of sections 13(5) and 13(6) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006, shows that that upon receipt of the inquiry report, three options or courses are open to the competent authority. It can either exonerate the accused or punish them or order a de novo inquiry. If it is satisfied that the inquiry proceedings have not been conducted lawfully or on merits. A competent authority cannot exercise more than one option and cannot order for de novo inquiry once it has exercised the option of exonerating the accused official. Since the petitioners were duly exonerated by the competent authority under section 13(5) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006, no fresh inquiry or de novo inquiry was called for or could be held under S.13(6) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006.”

[Emphasis supplied.]

8. No order of exoneration of petitioner was passed in terms of sub-section (5) of PEEDA Act, based on inquiry report, and instead competent authority, vide order dated 02.09.2019, opted to invoke jurisdiction under sub-section (6) of section 13 of PEEDA Act. In the case at hand, on both occasions the inquiry report was found deficient in material details – and while ordering *de novo* inquiry for second time competent authority observed that directions issued while passing order of *de novo* inquiry earlier were not followed. No element of *mala fide* is found, overtly or covertly. No interference warranted in absence of any illegality committed.

9. Constitutional petition is devoid of merits and same is, therefore, dismissed. Observations hereinabove recorded are solely for the purposes of deciding the question of law raised, calling for interpretation of sub-section (6) of section 13 of PEEDA Act, 2006 in the context of order of *de novo* inquiry. No order as to costs.

**(ASIM HAFEEZ)
JUDGE**

Approved for reporting.

JUDGE.

Imtiaz Nasir