

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No:W.P. No.26318/2017.

Muhammad Shahbaz Najam Vs. Federation of Pakistan etc.

JUDGMENT

Date of hearing	24.05.2023
Petitioner by	Mr. Aziz ur Rehman Sheikh, Advocate
Respondents by:	Mr. Khalid Pervaiz Warraich, Deputy Attorney General and Mr. Hamid Rafique, Advocate/Legal Advisor of respondent NADRA.

ABID AZIZ SHEIKH, J. Through this constitutional petition, the petitioner has challenged the order of removal from service dated 27.10.2016 passed by respondent No.5 and order dated 18.04.2017 passed by respondent No.3 dismissing the departmental appeal of the petitioner.

2. Relevant facts are that petitioner was employee of National Database Registration Authority (**NADRA**). He was charge sheeted on 18.03.2016 for misconduct and after inquiry and show cause notice, he was removed from service through impugned order dated 27.10.2016. The departmental appeal of the petitioner was also dismissed on 18.04.2017, hence this constitutional petition.

3. Learned counsel for the respondents at the very outset raised preliminary objection that service regulations of

NADRA being non-statutory, this constitutional petition is not maintainable. He further submits that service laws applicable to civil servants were adopted under the non-statutory service regulations, therefore, the same also have the status of non-statutory regulations.

4. Learned counsel for the petitioner on the other hand submits that petitioner was removed from service on the basis of allegation, which does not amount to misconduct but at best amount to negligence or inefficiency. On the question of maintainability, he submits that as petitioner was charge sheeted and removed under the Government Servants (Efficiency and Discipline) Rules, 1973 (**Rules of 1973**), therefore, due to statutory intervention, this constitutional petition is maintainable.

5. Arguments heard. Record perused. Before touching merits of the case, I would like to decide the question of maintainability of this constitutional petition. The NADRA has been established under the National Database and Regulatory Authority Ordinance, 2000 (**Ordinance**). Under section 44 of the Ordinance, the Federal Government may by notification in official gazette make rules for carrying out the purpose of this Ordinance, whereas under section 45 of the Ordinance, the authority may by notification in the official gazette make regulations not inconsistent with the provisions of this Ordinance or rules. Under section 45(2) of the Ordinance, the

regulations may also provide for appointment of Registration Officers, Members of staff, Experts, Consultants, Advisors, other Officers and employees, and terms and conditions of their service. In pursuance to section 45 of the Ordinance, the authority framed regulations termed as “The National Database and Registration Authority (Application for National Identity Card) Regulations, 2002” (**Regulations**). Under regulation 23 of the Regulations, the laws which are applicable to civil servants including Rules of 1973 were adopted by NADRA for applying the same to employees of NADRA. Regulation 23 for ready reference are reproduced hereunder:-

“23. Efficiency & Discipline Rules. Subject to the provisions of regulation 24, Rules made and instructions issued by the Government of Pakistan or a prescribed authority as for civil servants under Section 15 and 16 of the Civil Servants Act, 1973 as amended from time to time will be applicable insofar as practicable to the employees of the Authority.

Provided that the Government Servants (Efficiency and Discipline) Rules, 1973 shall not be applicable to the extent the same relate to efficiency or otherwise of an employee including Clause (a) of Rule 3 thereof and any efficiency related action shall be governed by the provisions of Part-II of Chapter-4 of these Regulations”.

6. The honourable Supreme Court in “Maj. (Retd.) Syed Muhammad Tanveer Abbas vs. Federation of Pakistan through Secretary Ministry of Interior and others” (2019 SCMR 984) already held that the Regulations of NADRA under section 45 of the Ordinance are non-statutory. In said case, constitutional petitions were filed before learned Sindh High Court by

various employees of NADRA against their orders of termination. The Division Bench of learned Sindh High Court dismissed the Constitutional Petitions on the ground that Regulations are framed by the Authority under Section 45 of the Ordinance, hence, they are non-statutory. The said judgment was challenged before the Hon'ble Supreme Court of Pakistan, where the appeals were dismissed and the August Supreme Court of Pakistan held that Regulations of NADRA are non-statutory in nature. Relevant observations of the Hon'ble Supreme Court of Pakistan are reproduced hereunder:-

“When the DHA case is compared with the appellants' case, there are certain obvious similarities, the first and most important being of course that both involved situations of termination from service. Apart from that, in our view, as held by this Court in relation to DHA, there can hardly be any doubt that NADRA is also a "person" within the meaning of Article 199(1)(a)(ii) read with clause (5) thereof. Equally, it is also clear that the 2002 Regulations, like the DHA service rules of 2008, were non-statutory in nature. It also cannot be in doubt that the termination clauses involved in the present appeals are in all material respects the same as Rule 8(b)(1) of the DHA service rules. This is apparent on a bare reading of the said provisions. The crucial question therefore is whether the termination clauses involved here can be treated in the same manner as Rule 8(b)(1), and the same or similar relief accorded the present appellants?”

(Emphasis supplied.)

The same view was also followed by this Court in judgment dated 22.03.2022 in **W.P. No.113414/2017** titled “**Amir Shehzad etc. vs. Federation of Pakistan etc.**” as under:-

“From plain reading of Section 44 of the Ordinance, it is manifest that Federal Government may make Rules for carrying out the purpose of Ordinance, whereas the Authority may make Regulations for carrying out the functions of the Ordinance including appointments and terms and conditions of services of the staff of the NADRA. The Authority is defined under Section 2 (b) of the Ordinance, means National Database and Registration Authority established under Section 3 of the Ordinance. It is also admitted position that in pursuance to Section 44 of the Ordinance, Federal Government framed Rules termed as “The National Database and Registration Authority (National Identity Card) Rules, 2002” (Rules), whereas in pursuance to section 45 of the Ordinance, the Authority framed regulations termed as “The National Database and Registration Authority (Application for National Identity Card), Regulations, 2002” (Regulations). On face of it, Rules being framed by the Federal Government under Section 44 of the Ordinance have the statutory force, however, Regulations being framed under Section 45 of the Ordinance by the Authority, without any approval of the Federal Government, does not have any statutory status. The terms and conditions of service of employees of NADRA including their promotion policy vide Notification dated 22.01.2004, are also framed by the Authority under Section 45 of the Ordinance (and not by Federal Government under Section 44 of the Ordinance), therefore, the same are also non-statutory.”

7. In view of above discussion, there is no doubt that the Regulations framed by NADRA under section 45 of the Ordinance are non-statutory, however, the first legal question

require determination in this case is that whether impugned orders passed under Rules of 1973 would amount to statutory intervention or Rules of 1973 being adopted by NADRA, under regulation 23 of the Regulations, will have the status of non-statutory Regulations for the purpose of maintainability of this constitutional petition. The honourable Supreme Court in “M.H. Mirza vs. Federation of Pakistan through Secretary, Cabinet Division, Government of Pakistan, Islamabad and 2 others” (1994 SCMR 1024) held that mere adoption of statutory rules of the Government or their application by reference will not automatically lend a statutory cover or content to those rules. Relevant observations of honourable apex Court are as under:-

“Sections 37, 38, 50 and 51 of the CDA Ordinance, 1960 (Ordinance XXIII of 1960) are relevant. An examination of these provisions shows that the CDA was itself to determine the terms and conditions of its employees and that the Government had nothing to say in the matter. None of its Regulations whether framed by it itself or adopted by reference had a statutory basis in law. This view is supported by the view taken in Ch. Abdul Rashid v. Capital Development Authority, Islamabad and other (PLD 1979 Lahore 803) and the Principal, Cadet College, Kohat and another v. Muhammad Shoaib Qureshi (PLD 1984 SC 170). The adoption of the rules of the Government or their application by reference will not lend a statutory cover or content to these rules, as held in Lahore Central Co Operative Bank Limited v. Saif Ullah Shah (PLD 1959 SC (Pak) 210 and finally very recently in Chairman, Pakistan Council of Scientific and Industrial Research, Islamabad and 3 others v. Dr. Mrs. Khalida Razi (Civil

Appeal No.270 of 1993. There being no statutory rules in the field, a Constitution petition was not at all competent on the subject.”

The same view was also expressed by this Court in “Kamran Ahmad vs. Water and Power Development Authority through Chairman and 3 others (2014 PLC (C.S.) 332). Learned Sindh High Court in “Muhammad Mateen Khan vs. Federation of Pakistan through Secretary, Ministry of Interior Islamabad and 3 others” (2020 PLC (C.S.) 1), specifically dealt with the proposition in hand and held that by adoption under regulation 23 to the Rules of 1973 by NADRA, the same will not attain the status of statutory enactment/regulations but are basically instructions for the internal control or management of Respondent Authority and constitutional petition is not maintainable. On same ground, the learned Sindh High Court vide consolidated judgment dated 29.08.2019 dismissed number of constitutional petitions including C.P. No.6110/2015.

8. Now the second moot question need deliberation is that when petitioner has been admittedly proceeded under statutory Rules of 1973, then why same does not amount to statutory intervention and writ is not maintainable in view of law settled in “Pakistan Defence Officers’ Housing Authority and others vs. Lt. Col. Syed Jawaid Ahmed” (2013 SCMR 1707). The august Supreme Court in aforementioned judgment held

that even person who was governed under non-statutory Rules/Regulations but if he was proceeded under any statute, then writ petition be maintainable. The relevant observations by honourable Supreme Court are as follows:-

“It was not disputed before this Court by appellants learned counsel that the respondent-employees were “persons in corporation service” within the meaning of section 2(c) of the Ordinance 2000 and except in the case of N.E.D. University, they were proceeded against under the said law. This was a ‘statutory intervention and the employees had to be dealt with under the said law. Their disciplinary matters were being regulated by something higher than statutory rules i.e. the law i.e. Ordinance, 2000. Their right of appeal (under section 10) had been held to be ultra vires of the Constitution by this Court as they did not fall within the ambit of the Civil Servants Act, 1973, [(in Mubeen us Salam’s case (PLD 2006 SC 602) and Muhammad Imrees’s case (PLD 2007 SC 681)]. They could in these circumstances invoke constitutional jurisdiction under Article 199 of the Constitution to seek enforcement of their right guaranteed under Article 4 of the Constitution which inter alia mandates that every citizen shall be dealt with in accordance with law.”

9. The august Supreme Court in Pakistan Defence Housing Authority case supra held that because under section 2(c) of Removal from Service (Special Powers) Ordinance, 2000 (Ordinance 2000), same was applicable to employees of ‘Corporation’ and persons who were proceeded against under Ordinance 2000 (except employees of N.E.D. University who were not proceeded under Ordinance 2000) were employees of Corporation, hence there was statutory intervention. However

in the present case, the petitioner was proceeded under Rules of 1973. The perusal of provisions of Rules of 1973 shows that under Rule 1(2) thereof, same are only applicable to civil servants and not to employees of Authority who are not civil servants. The petitioner being employee of NADRA is not a civil servant but an employee of an authority, therefore, Rules of 1973 on its own are not applicable to petitioner and have been made applicable only by way of adoption and reference under Regulation 23 of the non-statutory regulations. The legal position would have been totally different and constitutional petition would be maintainable due to statutory intervention, if Rules of 1973 were applicable to NADRA employees by virtue of provisions of the Rules of 1973 itself without same being adopted under Regulation 23 of the Regulations. In such eventuality, merely because Rules of 1973 were also adopted under Regulation 23 by NADRA besides being otherwise applicable to its employees, the same would amount to statutory intervention and writ petition be maintainable in view of law settled by august Supreme Court in Pakistan Defence Officers Housing Authority supra. The Rules of 1973 being only applicable to civil servants and have been applied to employees of Authority i.e. NADRA only by virtue of adoption under Regulation 23 of the non-statutory Regulations, therefore, for all intent and purpose, the Rules of

1973 cannot have superior status to non-statutory Regulations under which they were adopted.

10. The above discussion- leads to ineluctable conclusion that Regulations of NADRA are non-statutory and even though petitioner was proceeded under statutory Rules of 1973 but same being adopted under regulation 23 of the Regulations, the same will have status of non-statutory rules, hence this constitutional petition is not maintainable.

11. In view of above discussion, **this petition is dismissed** being non-maintainable.

(Abid Aziz Sheikh)
Judge

Approved for Reporting.

Judge