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**JUDGMENT SHEET**  
**LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Writ Petition No. 10403 of 2019**

**Bashir Ali Shahzad**

**Vs.**

**The Bank of Punjab etc.**

**JUDGMENT**

<b>Date of hearing</b>	<b>24.11.2022</b>
<b>For the Petitioner:</b>	Mr. Junaid Jabbar Khan, Advocate.
<b>For the Respondents:</b>	Mian Azhar Saleem, Advocate, with Hamza Khalid Randhawa, Legal Head of The Bank of Punjab.

**Tariq Saleem Sheikh, J.** – The Petitioner joined The Bank of Punjab (the “Bank”) as a contractual employee in December 2005. After two years, he was regularized and absorbed in Officer Grade-III. In due course of time, he was promoted to Officer Grade-I and, in December 2013, posted as Manager Operations at the Bank’s DHA Branch, Lahore. He worked there until 06.03.2015 when he was transferred to the Ali View Garden Branch. On 11.08.2015, his successor Manager at the DHA Branch reported several fraudulent transactions to the management who initiated an inquiry. On 17.09.2015, the Competent Authority issued Show Cause Notice to the Petitioner for misconduct. He submitted his response which the Competent Authority found unsatisfactory and nominated the Head of FMU as the Inquiry Officer. On 29.10.2015, it gave the Petitioner Final Show Cause Notice and, on 09.12.2015, dismissed him from service. The Petitioner appealed to the Bank’s Chairman but he rejected it by his decision dated 25.11.2016. He filed W.P. No.3389/2017 thereagainst before this Court which was heard on 19.10.2018, and on his counsel’s request, the learned Single Judge remitted the matter to the Bank for re-consideration. The Petitioner failed to get relief even in the remand proceedings, and the order dated

22.11.2018 maintained his penalty of dismissal from service. By this petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), the Petitioner seeks the quashing of orders dated 25.11.2016 and 22.11.2018 (the “Impugned Orders”) and his reinstatement in service with back benefits.

***The submissions***

2. The Petitioner’s counsel, Mr. Junaid Jabbar Khan, Advocate, contends that M. Ahmad Mohyuddin Mekhary, Officer Grade-I, committed fraud with the Bank and made phony transactions for personal gains. He stole the Petitioner’s password and used his digital signature to authenticate them. Mr. Khan maintains that the Petitioner was not a party to the scam and did not derive any benefit from it. According to him, Mekhary confirmed to the authorities in his written confessional statement that the Petitioner was not associated with him. Later, he refunded the entire misappropriated amount to the Bank. Mr. Khan further contends that the Petitioner’s right to be treated in accordance with the law, guaranteed by Article 4 of the Constitution, has been violated. The Bank did not afford him adequate opportunity to defend himself. If it intended to pursue legal action against him, it should have followed the procedure prescribed by the Punjab Employees, Efficiency, Discipline & Accountability Act, 2006 (“PEEDA”). Since it has not done so, the entire proceedings against him, including the Impugned Orders, are liable to be quashed. Finally, the counsel argues that, in the circumstances of the case, the major penalty of dismissal imposed on the Petitioner is harsh and disproportionate to the charge.

3. The Respondents’ counsel, Mian Azhar Saleem, Advocate, has vehemently opposed this petition. He contends that it is not maintainable because the principle of master and servant applies to the parties’ relationship. He argues that the Petitioner’s employment was governed by the service rules contained in the Bank’s HR Manual which are non-statutory. It is well established that a person/employee cannot file a constitutional petition before the High Court to raise a service grievance if his employment is not subject to statutory rules. On merits, the counsel submits that the Bank proceeded against the Petitioner under its HR

Manual and punished him after due process. He denies the allegation that it did not provide him a fair opportunity to defend himself. He also contests the contention that the Bank was supposed to follow PEEDA while proceeding against him.

### ***Opinion***

4. The Respondents have objected to the maintainability of this petition. Therefore, I must decide this issue first.

5. An aggrieved party can invoke the High Court's jurisdiction under Article 199(1)(a) of the Constitution against a person performing, within its territorial jurisdiction, functions in connection with the affairs of the federation or a province or 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. To determine whether an organization is a "person" within the meaning of Article 199, the courts generally apply the "function test."<sup>1</sup>

6. The law is well settled that the employees of only those organizations discharging functions in connection with the affairs of the federation, a province, or a local authority can invoke the constitutional jurisdiction of the High Court in service matters whose employment is governed by statutory rules.<sup>2</sup> In other words, where the conditions of service of an employee of a statutory body are governed by regulations, instructions, or directions issued by that body for its internal use rather than statutory rules, he cannot file a writ petition to challenge a violation. In such a circumstance, the principle of master and servant applies, and an employee's remedy for wrongful termination is a claim for damages.

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<sup>1</sup> *Salahuddin and 2 others v. Frontier Sugar Mills & Distillery Ltd. and 10 others* (PLD 1975 SC 244); *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 Telephone Industries of Pakistan and others* (2015 SCMR 1257); and *Human Rights Case No.3564 of 2018 – In the matter regarding appointment of Managing Director, Pakistan Television Corporation* (2019 SCMR 1).

<sup>2</sup> In *Muhammad Mubeen-us-Salam and others v. Federation of Pakistan and others* (PLD 2006 SC 602), the Hon'ble Supreme Court of Pakistan held that the persons working in government-controlled corporations would not be deemed to have a warrant to a statutory remedy in the absence of a warrant of law, i.e. a statute that regulates his terms and conditions of service.

A constitutional petition is not competent. If, on the other hand, statutory rules govern an employee's service conditions, any action taken against him in contravention of the statute or those rules is subject to judicial review by the High Court, which may overturn it. The Respondents' objection to the maintainability of the instant petition is premised on the ground that the Bank's HR Manual, which governs the Petitioner's terms of service/employment, is non-statutory.

7. But what are the "statutory rules"? The Hon'ble Supreme Court of Pakistan explicated this concept in *Pakistan Red Crescent Society and another v. Syed Nazir Gillani* (PLD 2005 SC 806). It stated that in a corporation constituted by or under the law, the government might not reserve the power to regulate the terms of service of the employees. Instead, it may leave them to the corporation's discretion and empower it to develop rules or regulations without its intervention. In such a situation, the corporation would be the sole judge in prescribing the terms of service, and the principle of master and servant would apply. However, where a statute or statutory rules regulate the terms and conditions of employment, the corporation's authority is constrained by those provisions. It cannot invoke the principle of master and servant when an employee challenges his termination and seeks reinstatement. The determining factor in evaluating whether a corporation's rules or regulations have statutory force is not their form or name but the source under which they are framed. In *Chairman, State Life Insurance Corporation, and others v. Hamayun Irfan and others* (2010 SCMR 1495), the apex Court held that the source of statutory rules, in general, is legislative rather than executive. A rule-making authority enacts them in the exercise of statutory power with the approval of the federal or provincial government. In actuality, it is the exercise of delegated legislative power by the rule-making authority. Ordinarily, it is also necessary that certain formalities, like publication in the government gazette, should follow the making and promulgation of such rules. In *Zarai Taraqiati Bank Limited and others v. Said Rehman and others* (2013 SCMR 642), the Hon'ble Supreme Court 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.

8. A further reference may be made to ***Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others*** (2017 SCMR 2010) in which the Hon'ble Supreme Court held:

“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.’”

9. It would not be out of place to mention here that rules do not become statutory merely because a corporation has adopted any rules framed by the Government or has made them applicable by reference. Reliance is placed upon ***M.H. Mirza v. Federation of Pakistan and others*** (1994 SCMR 1024) and ***Pakistan Electric Power Company v. Syed Salahuddin and others*** (2022 SCMR 991).

10. The Bank is established under The Bank of Punjab Act, 1989 (the “BoP Act”). Section 3 of the Act states that it is a corporate body. Section 25 empowers its Board of Directors to make bye-laws for giving effect to the provisions of the Act. Originally, the Board was required to frame the bye-laws with the prior approval of the Provincial Government, but The Bank of Punjab Ordinance LVII of 2002 dispensed with that requirement.

11. Before the promulgation of Ordinance LVII of 2002, in the exercise of the aforesaid power, the Bank’s Board of Directors framed the bye-laws with the approval of the Provincial Government. However, they

did not deal with the terms and conditions of the service of the Bank's employees. Bye-law 25 empowered the Board to frame rules regarding recruitment and terms and conditions of employment of officers in consultation with the Provincial Government. The Board drew rules under that provision in consultation with the Finance Department of the Government of the Punjab, but they were never placed before the Provincial Cabinet for approval. Under Article 129 of the Constitution, the Provincial Government consists of the Chief Minister and Provincial Ministers.<sup>3</sup> In *Arshad Ahmad Khan v. Chairman, The Bank of Punjab, and others* [2000 PLC (C.S.) 1355 : 2001 PLC (C.S.) 207], a Division Bench of this Court considered the question as to whether the aforementioned service rules/bye-laws could be said to be statutory. It held that those service bye-laws were distinct from the bye-laws made under section 25 of the BoP Act – which may be described as the “general bye-laws” – and one cannot equate them. It determined that the service rules/bye-laws do not have the legal standing of statutory rules. The relevant excerpt is reproduced below:

“The distinction between these service bye-laws and the bye-laws framed under section 25 of The Bank of Punjab Act, 1989 must be kept in mind. While the general bye-laws were framed with the approval of the Government of Punjab, this approval is lacking in the case of service bye-laws. The service bye-laws are to be distinguished from the statutory bye-laws in two important respects firstly while bye-laws have been framed under section 25 of The Bank of Punjab Act, the service bye-laws have been made in exercise of the powers conferred by bye-law No.25 of the bye-laws and secondly while the bye-laws have the approval of the Provincial Government the approval of Provincial Government is lacking in the case of service bye-laws. It, therefore, necessarily follows that bye-laws of service does not have the force of statutory rules or regulations as in order to achieve that character according to section 25 of the Act itself the approval of the Provincial Government was necessary which is missing in the present case.”

The learned Division Bench based its decision on *A. George v. PIAC* (PLD 1971 Lahore 748), which had a fairly similar issue. In that case, although the Board of Directors of PIAC had the authority to lay down the terms and conditions of employment for its employees, the rules issued in that regard required prior approval from the Federal Government. The High Court held that the rules could not be considered statutory because no such approval existed. The Hon'ble Supreme Court

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<sup>3</sup> *Mustafa Impex, Karachi, and others v. Government of Pakistan and others* (PLD 2016 SC 808).

upheld this judgment in *Muhammad Yusuf Shah v. PIAC* (PLD 1981 SC 224).

12. In *Muhammad Ishaq Waheed Butt v. Chairman, The Bank of Punjab, and others* [2003 PLC (C.S.) 963], the Hon'ble Supreme Court approved the dictum laid down in *Arshad Ahmed Khan's* case, *supra*. The relevant excerpt is reproduced below:

“The conclusion as arrived at by the learned High Court revolves around the fact that the petitioner’s services were not governed by any statutory rules, and accordingly, the writ petition was dismissed as being not maintainable. The learned counsel when asked as to whether the services of petitioner were governed by any statutory rules, he attempted to build up his argument on the basis of ‘minutes of 52<sup>nd</sup> meeting of the Board of Directors’ which by no stretch of imagination can be equated to that of ‘Statutory Rules.’ There is no denying the fact that the services of petitioner were not governed by any statutory rules and the dictum as laid down in *Arshad Ahmad v. Chairman, The Bank of Punjab Lahore* [2000 PLC (C.S.) 1355], *Pakistan International Airlines Corporation v. Nasir Jamal Malik and others* (2001 SCMR 934), admittedly renders no assistance to the case of petitioner.”

13. The counsels for the parties are unable to say whether the Bank issued the HR Manual before Ordinance LVII of 2002 amended section 25 of the BoP Act or after it. However, that makes little difference. His Lordship Ijaz ul Ahsan J. (as he was then) considered the status of the Bank’s HR Manual in *Amir Shahzad Chaudhary v. Chairman, The Bank of Punjab, and others* [2015 PLC (C.S.) 423] and specifically held that these do not have statutory force. Hence, the Bank’s employees are not entitled to invoke the constitutional jurisdiction of this Court for their reinstatement in service. In the penultimate paragraph of the judgment, his Lordship wrote:

“The petitioners were employees of the Bank of Punjab and had accepted employment on the basis of service contracts and had agreed to be governed by the service regulations/HR Manual of the respondent bank. Admittedly, the HR Manual does not consist of statutory rules, nor does it meet the criteria laid down by the Hon'ble Supreme Court of Pakistan in its judgments discussed above to be termed statutory rules. It is an internal document meant to govern the terms and conditions of the employees of the respondent bank. Therefore, I am in no manner of doubt that the relationship between the petitioners and the respondent bank is governed by the principle of “Master and Servant”. Any grievance of the petitioners arising out of the alleged violation of their service contract/HR Manual is not amenable to interference by this Court in the exercise of its constitutional jurisdiction. The petitioners are, however, at liberty, if so advised, to approach a court of plenary jurisdiction for redressal of their grievance.”

14. Lately, a learned Single Judge in W.P. No. 39015 of 2016 and a Division Bench of this Court in ICA No.1645/2015 also held that the Bank's service rules are non-statutory. Hence, a constitutional petition by its employees regarding their service matters is not maintainable.

15. Mr. Khan relies on *Shafique Ahmed Khan and others v. NESCOM through Chairman, Islamabad, and others* (PLD 2016 SC 377) in response to the above judgments. He contends that the Hon'ble Supreme Court has broadened the criteria for deciding whether rules/regulations are statutory in the said case. It has held that the test is not simply whether their formulation requires the approval of the Government. Rather, the nature and area of efficacy determine their standing. The Rules dealing with internal control or management are viewed as non-statutory while those whose area of effectiveness is wider and which supplement the parent Act in matters of crucial importance are considered statutory. I am afraid this argument overlooks the fact that the National Command Authority Act, 2010 (the "NCA Act") is exclusive. This statute was enacted *inter alia* to provide total command and control over research, development, production, and use of nuclear and space technologies and other related obligations in various fields. The Prime Minister of Pakistan heads the Authority, and its members include four Ministers, the Chairman of the Joint Chiefs of Staff Committee, and the three Services Chiefs. The Hon'ble Supreme Court considered the entire scheme of the law and concluded that the Legislature, in its wisdom, envisaged a single set of Rules covering all aspects of the Authority as mentioned in sections 7, 8, 9, and 15 of the NCA Act. They extended beyond the employees and overreached many strategic areas, and there was no division or distinction between internal and external management. The apex Court further stated that the Authority comprises the Prime Minister and the highest-ranking officers of the country, who also have the rule-making power. The Rules adopted by the members of the Authority did not require anybody else's approval. Against this backdrop the Hon'ble Supreme Court held that although the Rules were not framed with the Federal Government's involvement and approval, they were statutory. It is thus evident that the BoP Act and NCA Act have separate legislative schemes and objectives. They are not comparable or

equivalent. The principle that the Hon'ble Supreme Court has enunciated in *Shafique Ahmad Khan* cannot be applied to the Rules framed under the BoP Act. Mr. Khan's contention is misconceived and is, therefore, repelled.

16. This is, however, not the end of the matter. The Punjab Assembly has enacted the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (PEEDA), to provide measures for improving employees' efficiency, discipline, and accountability in the provincial government and corporation service, and ancillary matters.<sup>4</sup> According to the Act's section 1(4), it applies to (i) employees in government service, (ii) employees in corporation service, and (iii) retired employees of government and corporation service (provided that proceedings under the Act are initiated against them during their service or within one year of their retirement. Section 2(h) defines "employee". Clause (i) thereof is relevant for our present purpose, which is reproduced below:

(h) "employee" means a person –

- (i) in the employment of a corporation, corporate body, autonomous body, authority, statutory body or any other organization or institution set up, established, owned, managed or controlled by the Government, by or under any law for the time being in force or a body or organization in which the Government has a controlling share or interest and includes the chairman and the chief executive and the holder of any other office therein; and
- (ii) in government service or who is a member of a civil service of the province or who holds a civil post in connection with the affairs of the province or any employee serving in any court or tribunal set up or established by the Government, but does not include a Judge of the High Court or any court subordinate to the High Court, or any employee of such courts.

17. Section 3 of PEEDA sets out the grounds on which proceedings may be undertaken against an employee. These include inefficiency, misconduct, and corruption. Section 20 gives an overriding effect to PEEDA over all other laws.

18. Section 7 of the BoP Act stipulates that the Government of the Punjab shall be the shareholder of the Bank and may hold up to 80% of the shares issued by it. According to the data available on the Bank's website, the Government holds 57.4728% of its shares. Since it has a

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<sup>4</sup> Preamble of the Act.

controlling stake in the Bank, it is an organization contemplated by PEEDA. The Petitioner falls within the definition of “employee” given in 2(h)(i) of the said Act.

19. In *Anwar Hussain v. Agricultural Development Bank of Pakistan and others* (PLD 1984 SC 194), a junior officer in the ADBP submitted his resignation which he wanted to withdraw afterward. Meanwhile, the ADBP accepted his resignation and notified him about it. The officer instituted a suit challenging the acceptance of his resignation. ADBP contended that the suit was not maintainable. The Hon’ble Supreme Court upheld the objection, holding that section 30 of the Agricultural Development Bank of Pakistan Ordinance, 1961, empowered the ADBP to appoint officers upon terms and conditions as may be prescribed by the Regulations framed under section 39 of the said Ordinance. Thus, it left the subject of hiring and the terms of employment of staff to the ADBP. In the circumstances, the general law of master and servant applied. The apex Court further stated that this principle would not apply if some enactment or statutory rule intervenes and limits the parties’ freedom to negotiate the terms of the contract. The relevant excerpt is reproduced below:

“[I]f the relationship is the result of a contract freely entered into by the contracting parties, then the principle of master and servant will apply. The principle, however, will not apply if some law or statutory rule intervenes and places fetters upon the freedom of the parties in the matter of the terms of the contract. It is on this principle that a civil servant for whom there are constitutional safeguards, is not governed by the principle of master and servant, for he is possessed of a legal character for the enforcement of which he can bring an action. Even where the employee is not a civil servant, but there are statutory safeguards governing his relationship with the employer and placing restrictions on the freedom of the parties to act, the general law of master and servant will not apply. In such cases, the employer would be bound to follow the procedure provided for in the statute or the statutory rules before terminating the service of the employee, and in the absence of conformity to such procedure, the termination of service would not be clothed with validity, and the employee will be entitled to an action for his reinstatement.”

The Hon’ble Supreme Court reaffirmed the above view in *Karachi Development Authority and another v. Wali Ahmed Khan and others* (1991 SCMR 2434), and *Raziuddin v. Chairman, Pakistan International Airlines Corporation, and others* (PLD 1992 SC 531).

20. In *Pakistan Defence Officers Housing Authority and others v. Lt.-Col. Syed Jawaid Ahmed* (2013 SCMR 1707), some employees of Pakistan International Airlines Corporation, House Building Corporation, N.E.D. University of Engineering and Technology, and Pakistan State Oil Company were proceeded against by their respective departments under the Removal from Service (Special Powers) Ordinance, 2000. They were awarded punishment on various charges which they challenged in the High Court through constitutional petitions. The Hon'ble Supreme Court held that although the rules/regulations of these statutory organizations were non-statutory, there was a legislative intervention by way of the Ordinance of 2000. Hence, the employees had to be dealt with under the said law, and the writ petition was competent for default.

21. In the present case, the charges against the Petitioner fall within the ambit of section 3 of PEEDA. Therefore, the Bank should have proceeded against him under that statute. I have already pointed out that it supersedes the Bank's HR Manual because of section 20. In the circumstances, in light of the Hon'ble Supreme Court's dictum in *Syed Jawaid Ahmed*, I hold that this petition is maintainable.

22. Let's now turn to the merits of the case. The Petitioner contends that the proceedings against him are void *ab inito* because they were not according to the procedure prescribed by PEEDA. I am inclined to agree with him. The following excerpt from *Syed Jawaid Ahmed* is quite instructive:

“The legislative intent in the promulgation of Ordinance 2000, *inter alia*, was that ‘persons in corporation service’ in their service matters should be dealt with in accordance with the provisions of the said law and to ensure a fair deal/trial it was *inter alia* provided in the Ordinance that unless specifically so exempted by a reasoned order, the competent authority shall hold a regular inquiry against an employee accused of misconduct and that he shall have a right of appeal (Section 10 of the Ordinance).”

23. Article 4 of the Constitution states that it is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan to enjoy the protection of the law and to be treated in accordance with the law. Chief Justice Muhammad Munir writes that Article 4 of the Constitution confers a more basic right than the fundamental rights because, unlike the fundamental rights, it cannot be

suspended.<sup>5</sup> The Respondents have violated the Petitioner's right under Article 4 by not following PEEDA.

24. In view of the above, this petition is accepted. The Impugned Orders are set aside, and the Petitioner is reinstated in service forthwith with back benefits. However, the Bank would be at liberty to proceed against him *de novo* under PEEDA.

**(Tariq Saleem Sheikh)**  
**Judge**

*Naeem*

Announced in open court on \_\_\_\_\_

Judge

Approved for reporting

Judge

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<sup>5</sup> Muhammad Munir, Commentary on the Constitution of Pakistan, 1973. Edn. 1976, p.82.