IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MANZOOR AHMAD MALIK

Civil Appeal No.1519 of 2013
Against order dated 20.6.2013 of Lahore High Court, Lahore, passed in Writ Petition No.11584 of 2013.

Haroon-ur-Rashid **Appellant(s)**

VERSUS

Lahore Development Authority, etc. **Respondent(s)**

For the Appellant(s) : Mr. Mehboob Azhar Sheikh, ASC

For the Respondent(s) : Mr. Khurram Raza Ch, ASC
Rana Umar Saeed Dy. Dir (SFP)

Date of Hearing : 26.02.2016

JUDGMENT

Mushir Alam, J-. This appeal by leave of the Court is directed against order dated 20.6.2013 of Lahore High Court, Lahore, whereby Writ Petition No.11584 of 2013 filed by the appellant challenging the order of his compulsory retirement was dismissed.

2. Facts, in brief, are that the appellant holding the charge of Deputy Director (Revenue), a Grade-18 post in Lahore Development Authority *(LDA)* was suspended from service and issued a show cause notice dated 02.7.2012 under Section 7(b) read with Section 5(1) (a) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 *(PEEDA, 2006)* for having committed irregularities detailed therein. Show cause notice was contested and after hearing, major penalty of compulsory retirement from service was inflected on the appellant by the Director General/Competent Authority of the *LDA* vide order dated

3.8.2012. Departmental appeal was dismissed by the Chairman, LDA on 23.4.2013, which was challenged through Writ Petition No.11584 of 2013. The learned High Court dismissed the petition inter alia holding that:-

> "Learned counsel for the petitioner has admitted before this Court that there are no statutory rules of service and on the basis of malafide on the part of respondents he has filed this constitutional petition. I am afraid when there are no statutory rules of service and rule of master and servant is applicable, therefore, in the light of case law referred by learned counsel for the respondents i.e. Lahore Development Authority and others Versus Abdul Shafiq and others" (1992 PLC 1214) as well as an unreported judgment of this Court passed in Writ Petition No.11926 of 2011 titled "Masood Ahmad Qazi Vs. L.D.A etc" decided on 18.1.2012, this writ petition is not maintainable. Even if it is presumed that there was some malice or malafide on the part of respondents, simply saying so is nothing until and unless it is proved through cogent evidence. The petitioner, if so advised, can file a suit for damages, if he has wrongly been dismissed from the service. In this view of the matter, this petition being not maintainable stands dismissed."

3. Mr. Mehboob Azhar Sheikh, learned ASC appearing for the appellant contends that the appellant was not proceeded under the Lahore Development Authority Service Regulations, 1978 *(LDA Regulations, 1978)* which admittedly are non statutory. He was proceeded under the *PEEDA*, which is a statutory enactment and any violation thereof or action taken there under is amenable to writ jurisdiction and in support of his contention he has placed reliance on the case of *Muhammad Amin vs. Government of Punjab* ***(2015 SCMR 706)*** wherein it has been held that employees of statutory authority who fall within the ambit of employee covered under section 2(h) (i) of the PEEDA, 2006 and are not civil servants, for redressal of their grievances arising out of disciplinary proceedings under PEEDA, 2006 may invoke jurisdiction of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Mr. Khurram Raza Chaudhry, learned ASC for the respondents-LDA has defended the impugned order. He

contends that though the LDA is created under the Lahore Development Authority Act, 1975 *(LDA Act, 1975)* but services of employees of the LDA are governed under the LDA Regulations, 1978 framed under Section 45 of LDA Act, 1975 which are non-statutory as held in the cases reported as Muhammad Saeed Ahmed Khan and 2 others vs. Secretary to Government of the Punjab, Housing and Physical Planning Department and 3 others **(PLD 1983 Lahore 206)** and Javaid Iqbal vs. Azad Government of the State of Jammu and Kashmir and 2 others **(1992 PLC 1214)**. According to learned counsel, this Court, in a number of cases, including the ones reported as Zeba Mumtaz v. First Women Bank Ltd **(PLD 1999 Supreme Court 1106)**; PIA Corporation v. Suleman Alam Rizvi **(2015 SCMR 1545);** Abdul Wahab v. HBL **(2013 SCMR 1383);** Pakistan Defence Officers' Housing Authority v. Jawaid Ahmed **(2013 SCMR 1707)**; Nazir Gillani v. Pakistan Red Crescent Society **(2014 SCMR 982);** and Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others **(PLD 2010 Supreme Court 676),** has consistently held that relationship between a statutory corporation or authority and its employees is that of a 'master and servant' and no writ would be maintainable against the disciplinary proceedings taken under non-statutory rules of service. He also contends that since after the case reported as Muhammad Mubeen-us-Salam v. Federation of Pakistan **(PLD 2006 Supreme Court 172),** employees of the LDA, not being Civil servant, cannot invoke jurisdiction of Service Tribunal either, only remedy if any lies by way of suit before the civil court. According to learned counsel, no interference in the rightful exercise of jurisdiction by the High Court in declining to interfere in the departmental matter is called for.

5. Heard the arguments and perused the record. There is no cavil to the factual matrix of the case that the LDA created under the LDA Act, 1975 is a statutory authority and disciplinary matters and proceedings against its employees,

admittedly were governed under the LDA Regulations, 1978 framed under Section 45 of the LDA Act, 1975. However, pursuant to the promulgation of Punjab Removal from Service (Special Powers) Ordinance, 2000 (RSO, 2000), enacted on 18.09.2000, the employees both in the service of Government of Punjab and or in service of statutory corporation/authority/body for the purpose of disciplinary matters and proceedings were brought within the regime of RSO, 2000 which was succeeded by Punjab Employees Efficiency, Discipline Act, 2006 (PEEDA, 2006), promulgated on 17th October, 2006. Section 2(h) of PEEDA, 2006 recognizes two sets of employees; one in the government service or those who are members of a civil service of the Province or who hold civil post in connection with affairs of the Province and another set of persons in the employment of 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 of Punjab has a controlling share or interest and also includes the Chairman and the Chief Executive and the holder of any other office therein. Thus it could be seen that irrespective whether a person is in the Government service or a member of a civil service (per section 2(h)(ii) of PEEDA) or is in employment of corporation or corporate or statutory body (per *section 2(h)(i) of PEEDA)* could be proceeded departmentally in disciplinary matter under the uniform statutory disciplinary dispensation. Any proceedings taken, penalty imposed in terms of PEEDA, 2006 could be agitated before the departmental hierarchy by way of appeal, review and or revision before the competent authority detailed therein.

6. We have come across case of Muhammad Masood v. Market Committee **(2014 PLC (CS) 1080)**, where an employee of Market Committee, invoked the writ jurisdiction

of the High Court against the action taken under the PEEDA, 2006. Constitution Petition and so also the review Petition were dismissed holding that the Petitioner was a Civil Servant; his remedy lies under Section 19 of the PEEDA, 2006 before the Punjab Service Tribunal.

7. It may be observed that pursuant to dicta laid down in the case of *Muhammad Mubeen-us-Salam (PLD 2006 SC 602)* an employee of an authority or statutory corporation cannot be conferred a status of a civil servant or in service of the Province or a post in connection with the affairs of the Province under Article 240, thus not amenable to the jurisdiction of Services Tribunal constituted under Article 212(1)(a) of the Constitution of Islamic Republic of Pakistan, 1973. In this view of the matter, in the case of Muhammad Dawood v. Federation of Pakistan **(2007 PLS (CS) 1046)**, a larger (three members) Bench of Sindh High Court, declared Section 10 of the of the RSO, 2000 conferring appellate jurisdiction on the Service Tribunal, in respect of matter arising out of disciplinary proceedings under RSO, 2000 as ultra vires of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Remedy of appeal against the final order passes under Section 16 or Section 17 of PEEDA, 2006 has been extended to "any employee" aggrieved" or "affected employee" before the Punjab Service Tribunal; extending the analogy of Muhammad Dawood case (2007 PLC (CS) 1046), provisions of Section 19 of PEEDA, 2006 (which is contemporaneous to Section 10 of RSO, 2000) would be ultra vires. It is settled position in law that while interpreting the law or any provision of any statute all efforts are made by the Court to save the statute by applying various tools of interpretation one of the rule of harmonious construction being rule of reading down and rule of severance. Rule of reading down, a statutory provision means that a statutory provision is generally read and or toned or narrowed down, applying restrictive meaning in its application. Rule of severance means to trim down or

slice away invalid portion which is otherwise generally considered to be part of statute or provision, purpose is to save as much as to bring the statute or provision within the ambit of constitution and law as declared by the superior Courts and to protect it from being declared ultra-vires or unconstitutional as a whole. If such trimming or slicing away is possible then the Court declare such part to be beyond the legislative competence and leave the reminder valid and operative. In the case of Delhi Transport Corporation v. D.T.C Mazdoor Congress **(AIR 1991 SC 101=1990 SCR Supl. (1) 142)**, Indian Supreme Court cited with approval the meaning and scope of the word 'reading down' and 'Severance' dealt with on page 7, para B in Australian Federal Constitutional Law by Colin Haward, which reads as follows:

> "The High court presumes the validity of legislation to the extent that it will not of its own motion raise questions of constitutionality. Legislation is treated as valid unless the parties to litigation challenge it on constitutional grounds. The techniques of construction known as reading down and severance are corollaries of this presumption. Reading down puts into operation the principle that so far as it is reasonably possible to do so, legislation should be construed as being within power. It has the practical effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the court will construe it in a more limited sense as keep it within power"

And Further:

> "It does not necessarily follow that because a statute cannot be read down, it is wholly invalid. The presumption of validity leads naturally to the view that where a statute cannot be held wholly valid it should be held valid at least to the extent that it is reasonably possible or practicable to do so. Where reading down is not available the court next decides where there is a case for severing the invalid parts of the statute from the parts which, standing alone, are valid. If this can be done the court declares only the invalid parts of the statute from the parts which, standing alone, are valid to be beyond power and leaves the remainder operative"

8. In the case of Province of Sindh through Chief Secretary v. M.Q.M. through Deputy Convener **(PLD**

2014 SC 531), it was held by this Court that at the time of "*reading down"* of a statute two principles had to be kept in view; first that the object of "*reading down*" was primarily to save the statute and in doing so the paramount question would be whether in the event of reading down; could the statute remain functional; second would the legislature have enacted the law if that issue had been brought to its notice which was being agitated before the Court. In this view of the matter, Courts have a duty to construe and apply laws to specific fact situations. Sometimes they have to construe a particular law as meaning nothing and sometimes they have to construe the law as meaning something different from the letter of the law passed by the Parliament. The offending provision or part of it is read down to the extent it is necessary to give it legal effect, or will be severed if it cannot be read down, and the remaining part and provisions of the statute will remain in tact. Section 19 of the PEEDA, 2006 as it reads, encompasses remedy before the Punjab Service Tribunal to both the employees of statutory corporation/ body/authority covered under Section 2(h)(i) and so also to the civil servants falling under section 2(h)(ii) *ibid*. As discussed above, it is only the civil servants by virtue of Article 240 read with Section 260 of the Constitution, who are amenable to the jurisdiction of Services Tribunal constituted under Article 212(1)(a) of the Constitution of Pakistan, 1973. This is what was held by this Court in Mubeen us Salam Case (PLD 2006 SC 602) *supra* while interpreting deeming provision of section "2-A" of the Service Tribunal Act, 1973, whereby employees of governmental controlled corporation etc. were treated as civil servants and given access to the Service Tribunal for the redressal of their grievance arising out of disciplinary proceedings. Section 2-A *ibid* was declared ultra-vires and it was further held that the Service Tribunal is established in pursuance of Article 212 of the Constitution and has been conferred exclusive jurisdiction only in respect of disputes relating to terms and conditions of civil

servant under the Civil Servants Act, 1973 and such jurisdiction could not be extended to any other category. In this view of the matter, harmonious construction dictated by rule of reading down and rule of severance provisions of Section 19 of PEEDA, 2006 was examined which reads as follows;

> "19. **Appeal before Punjab Service Tribunal.-** (1) Notwithstanding anything contained in any other law for the time being in force, any employee aggrieved by any final order passed under Section 16 or 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Punjab Service Tribunal established under the Punjab Service Tribunals Act, 1974 (Punjab Act, IX of 1974).
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> (2) If a decision on a departmental appeal or review petition, as the case may be, filed under section 16 is not received within a period of sixty days of filing thereof, the affected employee may file an appeal in the Punjab Service Tribunal within a period of thirty days of the expiry of the aforesaid period, whereafter, the authority with whom the departmental appeal or review is pending, shall not take any further action. ***(underlined to add emphasis)"***

9. In view of the discussion made above, instead of interpreting and or giving literal meaning to the term *"employee aggrieved"* as used in *subsection (1)* and the *"affected employee"* as used in *sub section (2) of Section 19 of PEEDA,* such terms are to be harmoniously interpreted to save the provision from casualty of striking it down. Such terms are to be *read down* and given *restrictive* and *toned down* meaning and employing '*rule of severance*' to be understood as those employees falling under the category of employee within the contemplation of *section 2 (h)(ii)* of *PEEDA* only; thus while construing phrases *"employee aggrieved" and "affected employee"* respectively used in Section 19 of PEEDA, 2006 as reproduced above, category of employees of statutory corporation etc. per *section 2(h)(i) ibid,* are to be severed and sliced away for the purposes of extending remedy before the Service Tribunal, it is only than provisions of *Section 19 ibid* could be saved from being struck down as *ultra vires* of the Constitution and law as declared by this Court and

noted above. Thus the remedy of appeal before the Punjab Service Tribunal against any order passed under Sections 16 & 17 of the PEEDA, 2006 could only be invoked and availed by the *employees* falling within the ambit of *Section 2(h)(ii)* of *section 19 ibid;* before the Punjab Service Tribunal and not by employees of statutory corporation etc. falling under section 2(h)(i) of PEEDA, 2006.

10. It may be observed that employees of a statutory corporation etc. were deprived of their right of appeal before the Service Tribunal *(extended under Section 2-A of Service Tribunals Act, 1973 since declared ultra vires)* pursuant to judgment rendered in the case of Muhammad Mubeen-us-Salam vs. Federation of Pakistan **(PLD 2006 Supreme Court 602)** and in case of Muhammad Idrees vs. Agricultural Development Bank of Pakistan and others **(PLD 2007 Supreme Court 681)** this Court found a way out for the employees of statutory Corporation/ Authorities/ bodies etc. who were proceeded under the Removal from Service (Special Powers) Ordinance, 2000 to invoke jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

11. Plethora of the cases relied upon by learned counsel for the respondent all emanates in respect of the employees of statutory corporations and or authority governed under the non statutory rules who invoked the jurisdiction either of the Service Tribunal under section 10 of the repealed RSO, 2000 or under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 invariably in all the cases this Court also considered whether the relationship between the employer and employee is governed under any statutory rules or not, for the purposes of determining forum for the redressal of grievance. There appeared some anomaly in some of the cases noted above as the implication of statutory intervention in disciplinary matter under RSO, 2000 was neither raised nor examined by this court, which anomaly was attended to in the

subsequent case reported as of *Pakistan International Airline Corporation and others vs. Tanweer-ur-Rehman and others* (PLD 2010 Supreme Court 676) in para 19 at page 689 thereof it was held by this Court as under:-

> "However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction."

12. In a recent pronouncement of this Court in the case of Pakistan Defence Housing Authority vs. Javed Ahmed **(2013 SCMR 1707)** anomaly prevailing as to availability of remedy to the employees of statutory corporation/authority/body was authoritatively resolved and clarified by a larger bench of five Members of this Court, wherein employees of Defence Officers Housing Authorities, PIA, Pakistan Steel Mills, N.E.D, University of Engineering and Technology, Pakistan State Oil and SME Bank were heard together and in all the cases cited by the learned counsel for the respondents-*LDA,* were also considered in paragraph 57 thereof at page 1746 and para 60 at page 1748, which read as under:-

> "57. The right of appeal is a substantive right. The respondents were deprived of the said right not by an legislative amendment but by a judicial opinion and that too on the analogy of the law laid down in Mubeen us Islam's case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC 681). In both these cases, the effect of the Ordinance 2000 and that it was a statutory intervention was not a moot point. It is well established that an appeal is continuation of trial. Would it be a fair trial if an accused is shorn off his right of appeal? Would the deprivation of right of appeal not amount to judicial sanctification of all the orders passed by the

> departmental authorities awarding various penalties to the employees and would it not be violative of the fundamental right to a "fair trial and due process" as ordained in Article 10A of the Constitution? Could the respondent-employees not invoke Article 199 of the Constitution to seek due compliance of the Ordinance 2000 for ensuring fair trial and due process? If the constitutional scheme and the purpose of law are kept in view, the answer to all these queries has to be in the affirmative and the constitutional petitions filed by the respondents seeking enforcement of their said right would be maintainable.
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> 60. 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 Idrees'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. The judgment of this Court in Civil Aviation Authority (2009 SCMR 956) supra is more in consonance with the law laid down by this Court and the principles deduced there from as given in para 50 above."

13. Thus, it could be seen that anomaly as to availability of forum for the aggrieved or affected employees of statutory corporation/authority/body against whom disciplinary proceedings are initiated and or any penalty is inflicted under statutory dispensation has been removed. In the case where the employees of statutory corporation/authority/body are proceeded under the statutory rules or any statutory dispensation like RSO, 2000 or PEEDA, 2006 etc action of the competent authority could be challenged under Article 199 of the Constitution of Pakistan of Islamic Republic of Pakistan, 1973.

14. Above rule was retreated with reference to action taken against an employee of a statutory authority falling within the category of employee falling under Section 2 (h)(i) of PEEDA, 2006 in the case of *Muhammad Amin and another vs. Government of Punjab and others (2015 SCMR 706= PLC (CS) 1082)),* wherein employee of Market Committee Sialkot, having no statutory rules, challenged action taken under PEEDA, 2006 in writ jurisdiction, was denied relief on the premise that he being Civil Servant, his remedy does not lie under Article 199 of the Constitution, this Court set aside the judgment and in paragraph 7 at page 709 it was observed as follow:-

> "Section 19 of the Act of 2006 which has been made applicable by virtue of Section 2(h)(i) of the Act of 2006 read with Section 35 of the Ordinance, regulates the services of the petitioners. Section 19 of the Act of 2006 which appear to have been amended subsequently clearly draws a line between the Civil Servants and the employees defined under section 2(h)(i) of the Act of 2006. The Civil Servants who are proceeded against under the provisions of the Act of 2006 have to approach the Punjab Services Tribunal against a final order passed by the Departmental Authorities. The other employees who are covered under Section 2(h)(i) of the Act of 2006, if aggri4eved by a final order passed by the Departmental Authorities under Section 16 or 17 of the Act of 2006 can seek redressal of their grievances before the High Court."

15. In view of the foregoing discussion, the judgment rendered in the case of Muhammad Masood v. Market Committee **(2014 PLC (CS) 1080)**, does not lay down the correct law and so also impugned judgment is not sustainable. It is abundantly clear that the respondent is an employee of Lahore Development Authority, a statutory authority created under Section 4 of Lahore Development Authority Act, 1975, proceeded under PEEDA, 2006, which is a statutory intervention in disciplinary matter, therefore, irrespective of the fact that the rules framed under Section 45 of the Lahore Development Authority Act, 1975 are non statutory yet the respondents were not proceeded under the Rules,1978 but under the PEEDA, 2006 which is a statutory enactment and

even a level up of the statutory rules. Therefore, High Court has jurisdiction to examine the proprietary of the impugned action taken against the respondents under the PEEDA, 2006.

16. Accordingly, the impugned order is set aside and the appeal is allowed. Writ Petition No.11584 of 2013 is remanded to the learned Lahore High Court for decision on merits as expeditiously as possible.

Judge

Judge

Announced by me in open Court
on _____ at Islamabad.

Judge

Approved for Reporting
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