

Form No: HCJD/C-121
ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

ICA No. 08/2020

Liaquat Ali Khan

Vs.

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	26/07.2022	Appellant in person. Mr. Saeed Afzal, Advocate for respondent No. 2 & 3. Mr. Tahir Mehmood, AAG. Mr. Majid Khan, Assistant Director (Legal) M/o NHSRC, Islamabad.

Through the instant Intra Court Appeal, the appellant Liaquat Ali Khan, assails the judgment dated 02.12.2019 passed by the learned Judge-in-Chambers, whereby writ petition No. 16/2010 was dismissed as not maintainable. Through the said petition, the appellant had assailed the letter dated 09.05.2010 issued by the National Trust for Population Welfare (NATPOW), whereby his contractual service was terminated pursuant to the NATPOW Employees Service Rules, 1997. The grounds on which the said writ petition was dismissed were (i) that the petitioner services with NATPOW were contractual in nature, (ii) that NATPOW Employee Service Rules, 1997 did not have statutory status.

2. We are sanguine that the appellant was indeed a contractual employee and that NATPOW Employees Service Rules, 1997 are not statutory. Ordinarily a writ petition filled by a contractual employee against an organization that does not have statutory service rules is not maintainable and the remedy of such

employee against the termination of his service would be a suit for damages. However, having gone through the impugned termination letter dated 19.05.2010, we are of the view that the said letter has stigmatized the appellant and jeopardized his future employment prospects. It is well settled that even a contractual employee of an organization which does not have statutory rules, will have the right to invoke the constitutional jurisdiction of this Court, where his termination from service is with a stigma and the termination has been done without conducting a regular inquiry. In this regard reference may be made to the following case law:-

- (i) In the case of *The Secretary, Government of Punjab v. Riaz-ul-Haq* (1997 SCMR 1552), it has been held as follows:-

"7. Without going into the controversy, as to whether the respondent's claim that he was a permanent employee, we may observe that there is a marked distinction between simpliciter termination of services in accordance with the terms of appointment and the termination of services on the ground of misconduct. There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular enquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct."

- (ii) In the case of *Aleem Jaffar, Ex-Line Superintendent, WAPDA v. WAPDA* (1998 SCMR 1445), it has been held that even in the case of a temporary employee whose service is liable to be terminated on thirty days notice or pay in lieu thereof on either side, his services cannot be terminated on the basis of misconduct without holding a proper inquiry. Furthermore, it was held that if the termination order conveys a message of any stigma, the employee cannot be ousted from service without resorting to the procedure of Efficiency and Discipline Rules.

- (iii) In the case of Muhammad Amjad v. WAPDA (1998 PSC 337), the Hon'ble Supreme Court held that even a contract employee cannot be terminated without the recourse of regular inquiry if his termination is on account of some misconduct.
- (iv) In the case of Rai Zaid Ahmad Kharal v. Water and Power Development Authority (2008 PLC (C.S.) 1005), it has been held as follows:-

"4. There is no cavil from the proposition that a contract employee cannot claim to be retained in service for indefinite period over and above the contract time but simultaneously it is well-settled law laid down by the apex Court that if the termination order is of a simplicitor termination then of course the aggrieved person cannot agitate against simple termination but if the termination order attaches stigma as in the present case then the employee should not have been condemned unheard."

- (v) In the case of Dr. Muhammad Ibrahim v. Secretary Health (2009 PLC (C.S.) 741), it has been held by the Hon'ble Lahore High Court as follows:-

"By now it is well-settled proposition of law that if services of any employee are dispensed with on account of any misconduct or other allegations and if he denies the same in that eventually a regular inquiry is a must. This principle equally applies to all employees whether ad hoc, contract, contractual or permanent. No distinction can be drawn between them, for the simple reason that every employee has a right to defend himself, to get the stigma removed."

- (vi) In the case of Lt. Col. (Retd.) Sultan Zeb Khan v. Board of Governors, Fazle Haq College, Mardan (2015 PLC (C.S.) 1385), the Division Bench of the Hon'ble Peshawar High Court has held as follows:-

"We may observe that there is a marked distinction between the simplicitor termination of service in accordance with terms and conditions of appointment and the termination of service on the ground of misconduct. No doubt if a person is employee on contract basis and the terms of employment provides the manner of termination of

his service, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a contract employee, would be entitled to a fair opportunity to clear his position. It means that in case of stigmatize termination there must be a regular inquiry in terms of Efficiency and Disciplinary Rules."

Law to the said effect has also been laid down in the cases of Muhammad Riaz v. Medical Superintendent, Service Hospital, Lahore (2016 PLC (C.S.) 296), Faisal Sultan v. E.D.O. (Education) (2011 (C.S.) 419) and Rana Asif Nadeem v. Executive Officer, Education, District Nankana (2008 PLC (C.S.) 715).

3. In view of above, we are inclined not to interfere with the termination of the appellant's service, which appears to be in conformity with his employment contract. However, portion of the letter dated 19.05.2010, which stigmatizes the appellant is expunged. The appeal is therefore, partly allowed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

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