

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : ICA NO.144-2016

Oil & Gas Development Company Limited (OGDCL) etc.

Vs.

Major (R) Matloob Ahmed Baig

Appellants by : Mr. Nasim Sikandar, Advocate
Respondent by : Mr. Muhammad Waqas, Advocate
Date of hearing : 07.02.2017

AAMER FAROOQ I. This appeal is directed against judgment dated 18.03.2016 passed in W.P. No.3266/2015.

2. The facts, in brief, are that the respondent was appointed as Senior Security Officer in Oil & Gas Development Company Ltd. (OGDCL) in 2006. On 30.09.2013, the appellant No.1 issued a charge sheet along with statement of allegations to the respondent by stating that respondent, at the time of seeking employment, provided a copy of 'No Objection Certificate' dated 24.09.2007 allegedly issued by General Headquarters, however, when the said document was sent for confirmation, it was intimated on 02.09.2013 that no such NOC had been issued. Respondent refuted the charges. An inquiry committee was appointed, which in its report, observed that the respondent lost the services of Pakistan Army because of premature compulsory retirement due to fault of officer. The competent authority issued show cause notice dated 27.12.2013 to the respondent. The allegation mentioned in the referred notice was deliberate concealment of the nature of retirement from Pakistan Army; the show cause notice was

duly replied, however, major penalty of compulsory retirement from service was imposed on the respondent vide Office Memorandum dated 27.01.2014. The respondent filed a departmental appeal on 28.01.2014, which was rejected vide order dated 17.03.201; subsequently on 10.04.2014, a letter was issued claiming recovery of an amount of Rs.16,09,001/-. The respondent filed a petition under Article 199 of the Constitution (W.P. No.526-2014), which was disposed of vide order dated 12.06.2015 by setting aside order in appeal dated 17.03.2014 and directing OGDCL to afford an opportunity of hearing to the respondent and to pass speaking order in accordance with law. The appellants, vide order dated 05.10.2015, dismissed the appeal filed by the respondent. The respondent challenged the same through a petition under Article 199 of the Constitution (W.P. No.3266-2015), which was allowed vide the impugned judgment.

3. Learned counsel for the appellants *inter alia* contended that rules of service of appellant Company are not statutory therefore a petition under Article 199 of the Constitution was not maintainable. In this behalf, reliance was placed on a decision of this Court in case titled 'Muhammad Azhar Khattak etc. Vs. Oil & Gas Development Co. Ltd. (OGDCL) (W.P. No.1407-2015) & 'PIA Corporation Vs. Syed Suleman Alam Rizvi and Others' (2015 SCMR 1545). It was further contended that even otherwise, respondent was appointed on contract and on this score too, the petition was not maintainable.

4. Learned counsel for the respondent *iner alia* contended that allegations leveled in the charge sheet are different from the ones mentioned in the show cause notice issued by the appellants. It was

further alleged that NOC furnished by the respondent from GHQ was fake / forged, whereas in the show cause notice, it has been alleged that the respondent concealed from the appellants that he was in the service of Pakistan Army at the time of making application for employment before appellant No.1. With respect to maintainability of petition, learned counsel for the respondent placed reliance on a case titled 'Muhammad Rafi and Another Vs. Federation of Pakistan and others' (2016 SCMR 2146).

5. Admittedly, the rules of service of appellant No.1 are non-statutory in nature. In this regard, this Court in a judgment dated 30.06.2016 titled 'Muhammad Azhar Khattak etc. Vs. Oil & Gas Development Co. Ltd. (OGDCL) (W.P. No.1407-2015) elaborated the position and observed as follows:-

“10. Section 5 of the Re-Organization Ordinance, therefore, unambiguously, protects only such employees who had been appointed previously by the Corporation and were later transferred to the Company pursuant to the conversion w.e.f. from the date of incorporation. The employees not covered under section 5 of the Re-Organization Ordinance, therefore, cannot be treated as protected under the Service Regulations 1994 for the purposes of determining the maintainability of a constitutional petition. As already noted above, the terms and conditions of the employees appointed after the date of incorporation or effective date of conversion under the Re-Organization Ordinance will be governed under the Service Regulations, 2002 and the same are admittedly non-statutory. In the instant petitions, all the petitioners were appointed after the effective date i.e. the date on which the Corporation was converted into a Company incorporated under the Ordinance. The relationship of the petitioners and the respondent Company is, therefore, in the nature of 'Master and Servant' since they are not governed under statutory regulations or rules”

In view of above judgment, all those employees who are not covered or protected under section 5 of Agricultural Development Bank of Pakistan (Re-Organization and Conversion) Ordinance, 2002 do not

have a protection of statutory regulations. The respondent was appointed in 2006 i.e. after the conversion of Corporation into Company hence relationship between appellant No.1 and the respondent is of Master and Servant.

6. Learned counsel for the appellants though argued that respondent was appointed on contract and the same is also borne out from perusal of appointment letter of respondent dated 22.11.2005 yet the fact remains that the appellants on receipt of letter from GHQ, proceeded against the respondent by invoking disciplinary proceedings instead of terminating the contract of respondent. In this behalf, it is a matter of record that charge sheet and statement of allegations were issued on the ground that NOC provided by the respondent is fake however, show cause notice was issued on the ground that respondent concealed from appellant No.1 that he was still in service of Pakistan Army. It is an established law that, a show cause notice issued after the inquiry proceedings, should contain the same allegations as were in the charge sheet.

7. The appellants have questioned the maintainability of petition under Article 199 of the Constitution on the ground that rules of service of appellant No.1 are non-statutory and as observed above, such is the position. Learned counsel for the respondent, while defending the maintainability of the petition, has placed reliance on a case reported as 'Muhammad Rafi and Another Vs. Federation of Pakistan and others' (2016 SCMR 2146). The August Apex Court, in the referred judgment, observed that an 'aggrieved person' can invoke the constitutional jurisdiction of the High Court against the public

authority, if he satisfies that the act of the authority is in violation of the service regulations even if, they are non-statutory. This aspect was also discussed in detail by the Hon'ble Supreme Court of Pakistan in a case reported as "Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707). The August Apex Court, after discussing the law on the subject, laid down the following principles: -

"50. The principles of law which can be deduced from the foregoing survey of the precedent case-law can be summarized as under:-

- i) Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.*
- ii) Where conditions of service of employees of a statutory body are not regulated Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'*
- iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.*
- iv) Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.*
- v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution"*

8. Out of principles laid down by the Hon'ble Supreme Court of Pakistan in the above mentioned judgment, the principle mentioned at Sr. No.4 is attracted in the facts of circumstances of the case even if the

rules of service of appellant No.1 are non-statutory. It is evident that the procedure adopted by the appellants in awarding major penalty to the respondent is in violation of law, therefore, in the light of referred principle, a petition under Article 199 of the Constitution is maintainable against a statutory authority.

9. In view of above position of law as well as facts and circumstances, though rules of service of appellants are non-statutory yet the show cause notice issued was not on the basis of statement of allegations and the charge sheet, therefore, the same is in violation of law and procedural requirements, hence petition under Article 199 of the Constitution was maintainable and had rightly been accepted by the learned Judge-in-Chambers.

10. For the reasons stated above, instant appeal is without merit and is accordingly dismissed.

(CHIEF JUSTICE)

(AAMER FAROOQ)
JUDGE

Announced in Open Court on _____

JUDGE

JUDGE