

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

**JUDICIAL DEPARTMENT**

**W.P. No. 2657 of 2015**

***FARRUKH NADEEM, ETC.***

***Versus***

***OIL AND GAS REGULATORY AUTHORITY, ETC.***

<b><u>Date of hearing:</u></b>	<b><i>02.05.2017.</i></b>
<b><u>Petitioners by:</u></b>	<b><i>Mr. Abdul Rehman Siddiqui, Advocate.</i></b>
<b><u>Respondents by:-</u></b>	<b><i>Mr. Yaser Aman Khan, Advocate.</i></b>
	<b><i>Mr. Rizwan ul Haq, E.D Litigation OGRA.</i></b>

**Athar Minallah, J:-** The petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, assailing order, dated 31-07-2015, passed by the Oil and Gas Regulatory Authority (hereinafter referred to as the "***Authority***").

2. The facts, in brief, are that the petitioners are officers of the Executive Cadre of the Authority. Earlier they had filed Writ Petition No. 4488 of 2013 titled "Farrukh Nadeem, etc vs. OGRA, etc". The said petition was disposed of by this Court vide order, dated 23-01-2015. Pursuant to the said order, the Authority after affording an opportunity of hearing to the petitioners, has passed the impugned order, dated 31-07-2015. The instant petition was placed before the Division Bench to consider the status of the regulations which governs the terms and conditions of the

employees of the Authority i.e. whether the status thereof is statutory or non-statutory.

3. The learned counsel for the petitioners has contended that; the Oil and Gas Regulatory Authority Service Regulations, 2005 (hereinafter referred to as the "**Regulations of 2005**") are statutory and, therefore, the petition is maintainable; it has been held by the august Supreme Court in the case titled "Pakistan Defence Officers' Housing Authority and others vs. Lt. Col. Syed Jawaid Ahmed" **2013 SCMR 1707**, that regulations or rules would be statutory if they have been made/framed in the manner provided under the relevant statute; in the instant case the Regulations of 2005 have been made under Section 42 of the Oil and Gas Regulatory Authority Ordinance, 2002 (hereinafter referred to as the "**Ordinance of 2002**"); Section 42 does not require approval of the Federal Government for framing of the rules; the Regulations of 2005 are, therefore, statutory; even if the Regulations of 2005 are declared otherwise even then the petition would be maintainable since the grievance of the petitioners relate to violation of the Regulations of 2005; reliance has been placed on "Muhammad Rafi and another vs. FOP and others" **2016 SCMR 2146**; all the petitioners hold educational degrees of Master in Business Administration and they are engaged in performing professional duties in their respective departments; they all qualify for the grant of Professional Allowance; refusal on part of the Authority to grant Professional Allowance in case of the petitioners is illegal; other similarly placed officers in the Executive Cadre are being paid Professional Allowance while the same is being refused to the petitioners; the Authority vide the impugned order has

misinterpreted the provisions, particularly the definition of Professional Allowance.

4. The learned counsel appearing on behalf of the respondent Authority has argued that; the petitioners are not entitled to the payment of Professional Allowance; the petitioners are not performing any technical or professional duties; the impugned order has been passed by the Authority in the light of the Regulations of 2005; the Regulations of 2005 are non-statutory and the august Supreme Court has passed various judgments in this regard; the Regulations of 2005 were not approved by the Federal Government and, therefore, they have the status of being non-statutory; Professional Allowance is given to such employees in the Executive Cadre who possess a professional degree and are engaged in professional duties in the relevant departments; the petitioners are not performing professional duties and, therefore, they are not entitled to payment of Professional Allowance.

5. The learned counsels have been heard and the record perused with their able assistance.

6. The controversy raised through the instant petition stems from interpretation of the expression 'Professional Allowance' and its explanation given in Appendix-B of the Regulations of 2005. The petitioners assert that they are entitled to payment of Professional Allowance and that the same is being denied by the Authority in violation of the Regulations of 2005. The petitioner's assertion that they possess educational qualification mentioned in the explanation given in Appendix-B in relation to Professional Allowance is not denied by the respondent Authority. However, it is

the case of the respondent Authority that when Appendix-A and B are read together then it becomes obvious that officers of Executive Cadre in the service group described as 'General' are not entitled to payment of Professional Allowance. We are, therefore, required to answer two questions i.e. the status of the Regulations of 2005 and whether or not the expression "Professional Allowance" and its explanation have been correctly interpreted by the Authority vide the impugned order.

7. The expressions statutory or non-statutory in the context of Regulations of 2005 have not been defined under the Ordinance of 2002. However, these expressions have been considered in a chain of authorities rendered by the august Supreme Court. It would, therefore, be apt to examine the precedent law and then the provisions of the Ordinance of 2002 so as to determine the status of the Regulations of 2005. The precedent law in the context of service regulations/rules being statutory or non-statutory is discussed as follows:-

**Lt. Col. Shujauddin Ahmad versus Oil & Gas Development Corporation (1971 SCMR 566).**

It was held that employees of a statutory corporation do not acquire the status of Government servants nor guarantees given by the Constitution are attracted in their case. It was further held that contracts of service of such employees are governed by the law of master and servant and such contractual terms cannot be specifically enforced.

**R.T.H. Janjua versus National Shipping Corporation (PLD 1974 S.C. 146).**

It was a case relating to an employee of the National Shipping Corporation, established under the National Shipping Corporation Ordinance, 1963. The apex Court considered whether or not a grievance of an employee of a statutory authority would be competent and in this regard formulated a test which essentially was based on making a distinction between the nature of duties performed by such an employee i.e whether they were duties of a public nature or whether the functions and duties were secretarial or commercial.

**Muhammad Yusuf Shah versus Pakistan International Airlines Corporation (PLD 1981 S.C. 224).**

It was held in the context of an employee of Pakistan International Airlines that mere instructions issued by a statutory entity for guidance of its officers for their internal use were directory and not immutable.

**The Principal, Cadet College, Kohat and another versus Muhammad Shoaib Qureshi (PLD 1984 S.C. 170).**

The matter related to a member of the teaching staff of the Cadet College Kohat and the august Supreme Court held as follows;-

*"It is, therefore, evident that where the conditions of service of an employee of a statutory body are governed by statutory*

*rules, any action prejudicial taken against him in derogation or in violation of the said rules can be set aside by a writ petition. However, where his terms and conditions are not governed by statutory rules but only by regulations, instructions or directions, which the institution or body, in which he is employed, has issued for its internal use, any violation thereof will not, normally, be enforced through a writ petition”.*

**Anwar Hussain versus Agricultural Development Bank of Pakistan and others (PLD 1984 S.C. 194).**

The august Supreme Court, while examining the statute establishing the Agricultural Development Bank of Pakistan, has succulently discussed the test regarding the existence of the relationship of master and servant and has held as follows;-

*“It follows that if 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 re-instatement”.*

*“Where a corporation is set up by a statute but the Government does not reserve to itself the power to regulate the conditions of service of the employees under the corporation and the statute itself also does not prescribe any condition but leaves the matter entirely in the discretion of the corporation who is given the power to frame rules and regulations in that regard so that the employee is left with no protection under the statute itself, then the corporation must be held to be the sole arbiter in the matter of prescribing the terms and conditions of its employees and competent to*

*deal with them in accordance with the terms and conditions so prescribed by it. In such situation the employee cannot claim to be a person possessed of any legal character within the meaning of section 42 of the Specific Relief Act and in case of his wrongful dismissal from or termination of service, the principle of master and servant will fully apply and he can only claim damages but not reinstatement to his post”.*

After examining the relevant provisions of the Agricultural Development Bank of Pakistan Ordinance, 1961, particularly sections 30 and 39 *ibid*, it was concluded that the rule of master and servant was attracted because the Bank had complete control over its employees, their appointments, dismissals and their terms and conditions of service and that such control was not fettered by any statutory provision.

**Sindh Road Transport Corporation through its Chairman versus Muhammad Ali G. Khokhar (1990 SCMR 1404).**

It was held that in the absence of statutory rules, an employee could not invoke the constitutional jurisdiction. The Sindh Road Transport Corporation Service Rules, 1971, were declared to be non-statutory in character because approval of the Government was not required for their framing under the relevant statute. The earlier judgments rendered by the august Supreme Court in the cases *The Principal, Cadet College, Kohat* and another (*supra*) and *Anwar Hussain* (*supra*) and the law laid down therein was



reaffirmed. The test for determination of whether or not the rules were statutory in nature was to pose the question whether the Government had reserved to itself the power to regulate the conditions of service of the employees under the Corporation.

**Karachi Development Authority and another versus Wali Ahmed Khan and others (1991 SCMR 2434).**

The august Supreme Court, in the context of rules or regulations being statutory or non-statutory, has observed and held as follows;-

*"The position so far as the Constitutional remedy under Article 199 of the Constitution is identical. However, in cases where the post held by the employee of a statutory Corporation, is a public office, as defined hereinabove, then relief in the nature of quo warranto to remove a person who is unlawfully holding the post can be granted in Constitutional jurisdiction. The other exception to the aforesaid general rule is that if the freedom of contract is placed under statutory fetters, by reserving controlling power with the Government in the matter of framing of rules or regulations touching the terms and conditions of service of the employees of such a statutory body, in such a case the pleasure of the master is taken over by the statutory provisions and the case would stand outside*

*the master and servant rule, so that Constitutional jurisdiction would be amenable to any violation of the statutory rules or regulations”.*

**Raziuddin versus Chariman, Pakistan International Airlines Corporation and 02 others (PLD 1992 S.C. 531).**

The august Supreme Court declared the service regulations framed by the Board of Directors of the Pakistan International Airlines Corporation under section 30 of the Pakistan International Airlines Corporation Act, 1956, as non-statutory because they had not been framed with the previous sanction of the Central Government nor gazetted or laid before the National Assembly in terms of section 31 *ibid*. It was held, therefore, that in the absence of statutory rules and regulations governing the terms and conditions of service relief could not be sought on the ground of breach of statutory provisions.

**University of the Punjab, Lahore and 02 others versus Ch. Sardar Ali (1992 SCMR 1093).**

The august Supreme Court observed that the law enunciated in the case of R.T.H. Janjua versus National Shipping Corporation (PLD 1974 S.C. 146) was no more relevant after the rendering of the later judgments in the cases of The Principal, Cadet College, Kohat and another (*supra*) and Anwar Hussain (*supra*). The law laid down in the last two judgments was, therefore, reaffirmed by the august Supreme Court and it is

obvious that the earlier test of making a distinction on the basis of the nature of duties performed, prescribed in the case of R.T.H Janjua, was overruled.

**Pakistan Red Crescent Society and another versus Syed Nazir Gillani (PLD 2005 S.C. 806).**

The august Supreme Court reaffirmed and reiterated the law expounded in the earlier judgments rendered in the cases of "Chairman WAPDA and 02 others versus Jamil Ahmed" [1993 SCMR 346] and "Muhammad Yusuf Shah versus Pakistan International Airlines Corporation" [PLD 1981 S.C. 224]. The relevant portion is as follows;-

*"It is well settled by now that where the Government while setting up a Corporation does not reserve to itself the power to regulate the terms of service of the Corporation's employees under the relevant statute and does not prescribe any condition, but leaves it to the discretion of the Corporation by empowering it to frame rules or regulations in respect thereof without the Government's intervention, then the Corporation will be the sole arbiter in the matter of prescribing the terms and conditions of its employees and will be competent to deal with them in accordance with the terms and conditions prescribed by it. In such a case neither a suit nor a writ petition for the relief of reinstatement will be*

*competent and the remedy of an employee, for wrongful dismissal from or of termination of service will be a suit for damages as the principle of master and servant will be applicable. However, where the terms and conditions of service of an employee of a statutory Corporation is regulated by a statute or statutory rules, any action prejudicial taken against him in derogation or in violation of the statute and / or the statutory rules will give him a cause of action to file a suit or a writ petition for the relief of reinstatement, as the power of the Corporation will be fettered with the statutory provisions and the principle of master and servant will not be applicable. For the purpose of deciding the factum, whether the rules or the regulations of a Corporation have the statutory force, the determining factor will not be their form or name, but the source under which they have been framed”.*

It is noted that the review petition filed against the judgment rendered in “Pakistan Red Crescent Society and another versus Syed Nazir Gillani” supra, has recently been dismissed by the august Supreme Court in the case reported as “Syed Nazir Gillani versus Pakistan Red Crescent Society and another” [2014 PLC (C.S) 961]. As a corollary the principles and law enunciated in relation to the test in the context of whether the Government,

while establishing a statutory entity, had reserved for itself the control of the making the regulations or rules, stood affirmed.

**Asad Bashir versus Chairman Board of Intermediate and Secondary Education, Lahore and 02 others" (2006 PLC (C.S) 110).**

The august Supreme Court reiterated the earlier law in relation to determination of service regulations as statutory or non-statutory. It was held that formal approval of the Government was a condition precedent for treating regulations or rules as statutory and in absence thereof they would be merely internal instructions or domestic rules having no regulatory status.

**Chairman, State Life Insurance Corporation and others versus Hamayun Irfan and 02 others (2010 SCMR 1495).**

After examining the precedent law the august Supreme Court observed and held as follows;-

*"Generally speaking, a statutory regulation means regulations which are legislative (as opposed to executive) made by a rule making authority in exercise of statutory power with the approval of the central government or provincial government. Precisely it is the exercise of the delegated legislative power by the rule making authority. Ordinarily it is necessary also that making and promulgation of a rule should be attended by*

*certain formalities e.g. publication in government gazette as law laid down by this Court in various pronouncements”.*

**Pakistan International Airline Corporation and others versus Tanweer ur Rehman and others (PLD 2010 S.C. 676).**

The august Supreme Court reiterated and reaffirmed its earlier law regarding determination of rules as statutory or non-statutory within the ambit of the principle of master and servant. The judgment rendered in the case titled Pakistan Red Crescent Society and another (supra) conspicuously stood out as having been unambiguously affirmed.

**Pakistan Defence Officers’ Housing Authority and others versus Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707).**

The judgment was rendered by a Bench consisting of five Hon’ble Judges of the august Supreme Court and after elaborately examining the earlier judgments the principles were summarized as follows;-

*"(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 by 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 violation 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 (27<sup>th</sup> 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. Clause (ii) of paragraph 50, reproduced above, was initially interpreted as having over ruled the earlier law expounded

in the case of Pakistan Red Crescent Society and another (supra). However, the dismissal of the review in the case titled "Syed Nazir Gillani versus Pakistan Red Crescent Society and another" [2014 PLC (C.S) 961] put to rest any doubt regarding the earlier judgment rendered in the case of Pakistan Red Crescent Society and another (supra). The review against the judgment rendered in the case of "Pakistan Red Crescent Society and another versus Syed Nazir Gillani" was dismissed expressly on the basis of clause (ii) of paragraph 50 of Pakistan Defence Officer's Housing Authority and others (supra). The dismissal of the review against the judgment of Pakistan Red Crescent Society and another (supra), yet again reaffirmed the test relating to determination of the status of rules or regulations being statutory or non-statutory i.e. the approval of the Federal Government being a condition precedent.

**Shafique Ahmed Khan and others versus NESCOM through Chairman, Islamabad and others (PLD 2016 SC 377).**

The question before the august Supreme Court was the status of service rules/regulations framed under section 15 of the National Command Act 2010 (hereinafter referred to as the "**Act of 2010**"). The august Supreme Court declared the rules as statutory despite the fact that they had not been formally approved by the Federal Government. The august Supreme Court examined the precedent law in great detail. However, it is significant to note that the earlier law laid down in the cases of Pakistan Red Crescent Society and another (supra), The Principal, Cadet College, Kohat and another (supra) and Anwar Hussain versus Agricultural Development Bank of Pakistan and others (supra) were in fact



affirmed and by no stretch of the imagination over ruled. However, in the context of the scheme of the Act of 2010 they were found distinguishable. The august Supreme Court, while recording its reasons, inter alia, has explicitly observed that the highest officials of the Federal Government were already on the Board which had framed the rules. These observations have been made in response to the contention that rules or regulations which are not approved by the Government cannot be treated as statutory. It is obvious from the said observations that the august Supreme Court for the first time has acknowledged that if the authority vested with making the service rules or regulations is controlled by the Government then approval of the latter would be implicit. Moreover, after extensively discussing the provisions of the Act of 2010, the august Supreme Court came to the conclusion that the scope and area of efficacy of the rules framed under the Act of 2010 not only stretches beyond the employees of the Authority but has an over arching effect over many other organizations. In forming this conclusion the august Supreme Court examined the scheme of the Act of 2010, particularly sections 7, 9 and 15 *ibid*. It is important to note that the National Command Authority, established under the Act of 2010, is empowered to make rules or regulations for the employees of other independent and autonomous entities declared as 'Strategic Organizations' under section 8 *ibid*. The service regulations framed under section 15 are, therefore, not restricted to employees of the Authority but have an overarching reach by governing the terms and conditions of employees of other independent organizations as well. Such rules or regulations obviously could not be termed as having been issued

merely for the internal use of the National Command Authority. In a nutshell the august Supreme Court, by referring to the composition of the Board, recognized or acknowledged that depending on the scheme of a statute approval of the Government could also be implicit. Moreover, the Act of 2010, after being examined in detail, was found to have scope or efficacy stretching beyond the employees of the authority. The Authority is established under section 3 of the Act of 2010 and the composition thereof is provided under sub-section (4). The Chairman of the Authority is the Prime Minister of Pakistan, as provided under sub-section (3), while its other Members include four Federal Cabinet Ministers besides three other Members. The reasoning of the august Supreme Court was in consonance with the principles and law enunciated in the earlier judgments of the Principal Cadet College Kohat, Anwar Hussain, Sindh Road Transport Corporation, Riazuddin and Pakistan Red Crescent Society, supra. The august Supreme Court, rather than revisiting the said judgments, has reaffirmed the law laid down therein, relating to the significance of the approval of the Government for determining the status of the service rules or regulations being statutory or non statutory.

**Muhammad Zaman and others versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others (2017 SCMR 571).**

The august Supreme Court reaffirmed and followed the test laid down in the case of Shafique Ahmed Khan and others (supra) and has observed and held as follows;-

*"According to the judgment delivered in Civil Appeal No. 654/2010 etc. the test of whether rules / regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules / regulations. It has to be seen whether the rules / regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory".*

**Muhammad Rafi and another versus FOP and others (2016 SCMR 2146).**

The august Supreme Court has held as follows;-

*"We, therefore, are of the considered view that issue in hand is fully covered by para-50 of the judgment referred to hereinabove, which provides that an aggrieved person can invoke the constitutional jurisdiction of the High Court against a public authority if he satisfies that the act of the authority is violative of the service Regulations even if they are non-statutory".*

9. The above principles, therefore, may be summarized as follows;-

- (i) A constitutional petition under Article 199 of the Constitution would be competent if the rules/regulations governing the terms and conditions of the employees are statutory or the act or proceedings are in violation of the relevant regulations/rules.
- (ii) Rules/regulations governing the terms and conditions of service would have non statutory status if the legislative intent of the relevant statute is to create a relationship between the employer and its employees based on entering into a contract freely i.e. when no fetters have been placed on the rule making authority in the context of determining the terms and conditions of the employees. If the power is fettered then such service regulations would not be treated as having been issued for the internal use of the employer nor a relationship in such a case will be a result of a contract freely entered by the contracting parties.
- (iii) Approval of the Government, formal or implicit, in the relevant statute, is a crucial factor for determination of the status of service rules/regulations. In the absence of such an approval the relevant regulations/rules would be

non statutory having been issued for the internal use of the employer.

(iv) If it is obvious from the scheme of the relevant statute that the legislative intent is to empower a rule/regulation making authority to frame rules/regulations which are not restricted for the internal use of employer only but are broader than and complimentary to the parent statute, as is the case of regulations made under the Act of 2010, then such rules or regulations will be statutory.

10. Next, we shall examine the scheme of the Ordinance of 2002. The Ordinance of 2002 was promulgated and notified in the official gazette on 28-03-2002. The object and purpose of enacting the Ordinance of 2002 has been explained in its preamble as fostering, increasing private investment and ownership in the midstream and downstream petroleum industry, protecting the public interest while respecting individual rights and provide effective and efficient regulations and for matters connected therewith. The Authority has been defined as meaning the Oil and Gas Regulatory Authority established under section 3. The expression "regulations" has been defined in section 2 (xxxiii) as meaning regulations made under the Ordinance of 2002. The composition of the Authority has been provided in subsection (3) of Section 3 i.e. the Chairman and three additional Members. The powers and functions of the Authority have been described in Section 6 of the Ordinance of 2002. Section 14 empowers the Authority to employ officers, members of its staff, experts,

consultants, advisers and other employees on such terms and conditions as it may deem fit. Subsection (2) of Section 14 provides that the Authority shall prescribe by regulations the procedure for appointment, promotion, termination and other terms and conditions of employment of persons employed by the Authority. Section 21 describes the powers of the Federal Government in the context of issuance of policy guidelines. Section 41 empowers the Authority to make rules with the approval of the Federal Government. Section 42 is in respect of the power to make regulations and it provides that the Authority is exclusively empowered to make regulations by notification in the official gazette. Pursuant to the powers conferred under section 42 of the Ordinance of 2002, the Authority without the approval of the Federal Government has made the Regulations of 2005.

11. When the Ordinance of 2002 is read as a whole it becomes obvious that to the extent of appointment of the employees of the Authority and determination of their terms and conditions of service, the Federal Government has not reserved to itself any role or power. The Authority is exclusively empowered to make the regulations in respect of the terms and conditions of the employees. Moreover, the regulations made by the Authority under section 42 read with section 14 of the Ordinance of 2002 definitely extends only to the employees of the Authority. The Regulations of 2005 do not have an overarching reach, as is the case of the Regulations, which were considered by the august Supreme Court in the case of "Shafique Ahmed Khan and others vs. NESCOM through Chairman, Islamabad and others" supra. The legislative

intent of the Ordinance of 2002 unambiguously creates a relationship between the Authority and its employees based on entering into a contract freely i.e. there being no fetters placed on the rule making authority in relation to determination of the terms and conditions. Approval of the government is not required. The composition of the Authority is free from control of the Federal Government. The power to make rules under section 42 vests in the Authority without seeking approval from the government. The Regulations of 2005 have, therefore, been made by the Authority without formal or implicit approval of the government. We, therefore, hold that the status of the Regulations of 2005 is non-statutory.

12. The grievance of the petitioners is in respect of the refusal on part of the Authority to pay Professional Allowance. The petitioners are, therefore, essentially asserting that the act of the Authority is violative of the Regulations of 2005. Despite having declared the Regulations of 2005 as non-statutory, the petition is yet maintainable on the touchstone of the law laid down by the august Supreme Court in the case of "Muhammad Rafi and another vs. FOP and others", supra. We shall now advert to the grievance raised through this petition.

13. The controversy stems from the interpretation of the expression Professional Allowance and its explanation given in Appendix-B. The various allowances are enumerated in Appendix-B of the Regulations of 2005. Professional Allowance i.e. 40% basic pay is included as one of the allowances. The explanation regarding Professional Allowance mentioned in Appendix-B as follows:-

*"Permissible only in case of Engineers, Scientists, Chartered Accountants, MBAs, ACMAs, MCSs, Lawyers, Economists etc., engaged to perform professional duties in the Executive Cadre in the relevant field."*

14. It is obvious from the above, that in order to claim entitlement for payment of Professional Allowance two conditions have to be met. Firstly, possessing one of the qualifications mentioned in the explanation and secondly, that such a person is engaged to perform professional duties in the Executive Cadre in the relevant field. The person must, therefore, be in the Executive Cadre i.e. in grade E-6 to E-1 and that he or she ought to be engaged in performing professional duties in the relevant field. The expressions "performing professional duties" and "relevant field" have not been defined either in the Ordinance of 2002 nor in the Regulations of 2005. Likewise, the language is vague and gives rise to absurdity. The Authority vide the impugned order has interpreted the explanation given in Appendix-B in the light of Appendix-A. Appendix-A describes the Service Groups with nomenclature of posts. The minimum criteria required for appointment in the respective Service Groups has also been prescribed. Appendix-B gives the description of the pay scales and allowances made applicable from 1<sup>st</sup> December 2004. We have not been able to pursue ourselves that there is a nexus between Appendix-A and B. We have also not been able to understand as to how the Authority has established a link between Appendix-A and B



while interpreting the explanation of the expression Professional Allowance. The reasoning of the Authority in the impugned order is based on reading into the provisions of the Regulations of 2005 something not provided therein. The Authority has interpreted the expression "professional duties" in the relevant field which has the effect of excluding the service group titled "General". Reading the Regulations of 2005 as a whole also does not support the conclusions reached by the Authority that a person transferred from one service group to the other would not be entitled to payment of Professional Allowance. The expression Professional Allowance and the explanation reproduced above are independent and distinct provisions having no nexus with Appendix-A on the basis of the language thereof. The language of the explanation appears to have given rise to an absurd and anomalous situation. An employee in the Executive Cadre transferred or appointed in the Service Group titled "Technical" or "Finance" has been held as not entitled despite performing the same duties as others.

15. As already noted the expression "professional duties" has not been defined either in the Ordinance of 2002 nor the Regulations of 2005. The Black's Law Dictionary Ninth Edition defines 'profession' as a vocation requiring advance education and training while 'professional' as a person who belongs to a learned profession or whose occupation requires a high level of training and proficiency. Likewise, the Advanced Law Lexicon 2009 Edition defines a 'profession' as an activity carried on by an individual by his personal skill, intelligence, while 'professional' has been defined as pertaining to, or connected with a profession. 'Professional duty'

has been defined as a duty pertaining to or connected with one's profession. The Concise Oxford English Dictionary Twelfth Edition defines 'profession' as a paid occupation, especially one involving training and a formal qualification and 'professional' as relating to or belonging to a profession, worthy of a professional person, skilful or competent; engaged in an activity as a paid occupation rather than as an amateur.

16. The dictionary meanings of the expression 'professional' is wide enough to include the duties performed by the persons recruited and performing duties in the service group titled "General". We have failed to understand as to how a person engaged in performing duties in the departments of Human Resources, Public Relation, Administration or Secretariat can be declared as not being engaged in performing professional duties. In the instant case, all the petitioners hold MBA degrees and, therefore, they fulfill the first condition. The Professional Allowance has been denied to them for the sole reason that despite holding a MBA qualification, they have been appointed and are performing duties in the respective departments of the service group titled "General". A plain reading of the explanation reproduced above, clearly shows that any person who possesses the qualifications mentioned therein and is engaged in performing duties in any one of the departments of the service group including "General" would be entitled to payment of Professional Allowance. Nevertheless, the impugned order has been passed by the Authority. The latter is also vested with the exclusive power and jurisdiction to make regulations under section 42 of the Ordinance of 2002. The Regulations of 2005 have been framed by the Authority and,

therefore, the latter is also the sole judge to make a determination in relation to the intent thereof. The Authority has interpreted and declared its intention vide impugned order, dated 31-07-2015. According to the interpretation of the Authority, the expression "engaged in professional duties in the relevant field" has a specific meaning. We can obviously not ignore the said interpretation since the framer of the Regulations of 2005 has declared as to what was intended in the context of Professional Allowance.

17. As already noted above, the language of the explanation of "Professional Allowance" is vague and does not support the interpretation of the Authority declared in the impugned order, dated 31-07-2015. However, it would be just and proper to dispose of the instant petition in the following terms;

(a) If the language of the explanation of the expression "Professional Allowance" in Appendix-B of the Regulations of 2005 is not in consonance with the intent of the Authority i.e. the entity vested with unfettered and exclusive power and jurisdiction to frame regulations under section 42 of the Ordinance of 2002, then the latter shall be at liberty to amend the same so as to bring it in line with the intended object and purpose.

(b) In the event that the explanation of the expression "Professional Allowance" is not amended by the Authority till 30-08-2017 then the petitioners shall be entitled and paid the "Professional Allowance" with effect from 01-09-2017. In such an eventuality it would be presumed that the Authority treats the petitioners entitled despite

having interpreted the provisions of the Regulations of  
2005 vide order, dated 31-07-2015.

18. We, therefore, allow this petition in the above terms.

(Mohsin Akhtar Kayani)  
Judge

(Athar Minallah)  
Judge

Announced in the open Court on 22-06-17

Judge

Judge

Asif Mughal/\*

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