

Form No: HCJD/C-121.  
JUDGEMENT SHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.  
JUDICIAL DEPARTMENT.

W.P.No.4167/2012

Muhammad Mubaraz

**Vs**

Secretary, Cabinet Division etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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12.05.2015

Mr. Naseer Anjum Awan, Advocate for the petitioner.  
 Ch. Fayyaz Akbar, Advocate for the respondent No.1.  
 Syed Hasnain Ibrahim Kazmi, DAG.  
 Safdar Ali Safdar, Admin Officer.

**Aamer Farooq, J.** The petitioner is aggrieved of order dated 11.03.2005, whereby he was dismissed from service by respondent No.2.

2. The petitioner joined respondent No.2 in the year 1976, however, was absent from duty due to his family commitments and as a result thereof was dismissed from service vide impugned order dated 11.03.2005 passed by respondent No.2 under Printing Corporation of Pakistan (PCP) Employees Service Rules, 1977 read with rule 15(2) of West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 and Presidential Special Power Ordinance, 2000. The petitioner assailed the referred order before Federal Service Tribunal (FST) vide Appeal No.2078(R)(CE)/2005 which was held to be incompetent and liable to be abated vide order dated 13.11.2012 in light of the decision of the Apex Court reported as '*PLD 2006 SC 602*', therefore, the aforementioned

termination order has been assailed in the present Constitutional petition.

3. The learned counsel for the petitioner *inter alia* submitted that in light of the judgement passed by the Hon'ble Supreme Court of Pakistan reported as '2013 SCMR 1707', where there is violation of law, the Constitutional petition is maintainable; in the present case, the impugned order has been passed under Removal from Service (Special Power) Ordinance, 2000, however, section 5 of the referred Ordinance has not been adhered to inasmuch as no inquiry was conducted. The learned counsel further contended that the petitioner was availing remedy before the Federal Service Tribunal (FST) and the proceedings before it were abated due to the aforementioned judgement of the Hon'ble Supreme Court of Pakistan, therefore, the instant Petition is not barred by laches.

4. The learned counsel for respondent No.2 *inter alia* submitted that the instant Constitutional petition is not maintainable as the Printing Corporation of Pakistan (Pvt.) Limited Employees Service Rules 1977 are non-statutory. It was further contended that the instant Constitutional petition is also not maintainable as respondent No.2 is a Private Limited Company and does not fall in the definition of a person carrying on the affairs of the Federation; the petitioner was issued show cause notice at his address and also the same was published in the newspaper i.e. 'Daily Nawa-i-Waqt' on 20.02.2005 but the petitioner did not respond to the same,

therefore, respondent No.2 was left with no option but to pass an order in accordance with the rules and law. The learned counsel placed reliance on sections 3(1)(a) as well as 5(4) of Removal from Service (Special Power) Ordinance, 2000, to substantiate his contention that the respondent No.2 acted in accordance with law. In support of his contentions, the learned counsel placed reliance on case titled as "*Syed Nazir Gillani Vs Pakistan Red Crescent Society*" (2014 SCMR 982), "*Muhammad Nawaz Vs Civil Aviation Authority*" (2011 SCMR 523), "*Dawood Cotton Mills Ltd. Vs Guftar Shah*" (PLD 1981 SC 225) & "*Zeba Mumtaz Vs First Women Bank Ltd.*" (PLD 1999 SC 1106).

5. The rules governing service of the petitioner are non-statutory as the same have been framed by the Board of Directors of respondent No.2 which is a Company incorporated under the Companies Ordinance, 1984, therefore, the relationship between respondent No.1 and the petitioner is that of master and servant as has been held by the Hon'ble Supreme Court of Pakistan in numerous judgments. In this behalf, the case law cited by respondent No.2 is instructive. In case titled "*Syed Nazir Gillani Vs Pakistan Red Crescent Society*" (2014 SCMR 982) *supra*, it was observed by the Apex Court that it is well settled that the rules framed by Pakistan Red Crescent Society are non-statutory and on that account, the Writ petition was not maintainable. In the referred judgment, reliance was also placed on another case relied by the petitioner i.e. "*Pakistan Defence Officers Housing Authority Vs Lt.*

*Col.Syed Javed Ahmad” (2013 SCMR 1707)*, wherein it was held that 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 generally be enforced through Writ jurisdiction and would be governed by the principle of master and servant.

6. Similarly, in *PLD 1999 SC 1106 supra*, the Hon’ble Apex Court observed that in the absence of any Statutory Rules, relationship between the employer and employee of a corporation is that of master and servant.

7. On the basis of above judgments, the question that needs determination is whether there is violation of any law on the part of respondent No.2 in passing the impugned order. Respondent No.2 terminated the petitioner under *inter alia* section 3(1)(a) and 5(4) of the Ordinance *ibid*. In this behalf, section 3(1)(a) empowers the employer to terminate the services of an employee where the employee has habitually remained absent from service. Under section 5, the inquiry is to be conducted before proceedings to pass the termination order, however, by virtue of section 5 (4) *ibid*, the referred rule is not absolute and the Competent Authority can dispense with inquiry, if it deems proper in the circumstances on the basis of evidence available. In the present case, the petitioner was charge sheeted and show cause notice was also issued to him and its publication was also made in the newspaper but the petitioner did not respond to the same and in such circumstances, respondent No.2 was left with

no option but to pass the termination order. Therefore, there is no violation of law on part of respondent No.2.

8. In view of foregoing discussion, the present Writ Petition is incompetent and is hereby dismissed.

**(AAMER FAROOQ)**  
**JUDGE**

\*M.Amir\*