

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1796/2019
Ms. Aysha Farooq
Versus
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.
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19.08.2020	Mr. Irfan Farooq, Advocate for petitioner. Ch. Muhammad Tahir Mehmood, AAG. Mr. Rizwan Shabbir Kayani, Advocate for respondents 3&5, Syed Riaz Hussain, Advocate for respondent No.4, Shafqat Manzoor, Assistant Manager (Law) NICL.
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Through the instant writ petition, petitioner impugns the letter dated 30.04.2019, issued by the National Insurance Company Limited ("NICL"), whereby her services were terminated.

2. The case set up by the petitioner is that she was appointed as Assistant Manager in NICL vide appointment letter dated 05.05.2006; that in the year 2009, the NICL advertised some posts of Deputy Manager, the petitioner being eligible with MBA degree applied for the said post; that NICL called her for test and interview by following due procedure and the selection committee after due deliberations, recommended eight candidates including the petitioner for appointment; that the said recommendations of the selection committee were approved by the then Chairman of NICL on 18.06.2009 and she was then appointed vide appointment letter dated 25.06.2009 and that all of sudden on 30.04.2019, she received the impugned

letter whereby her services were terminated, being assailed through the instant writ petition.

3. Learned counsel for petitioner contends that petitioner had been in regular service of respondent No.5 since 2009; that the impugned action was taken unilaterally without affording any opportunity of hearing to the petitioner and without seeking any explanation; that the impugned action not only contravenes the principles of natural justice but would also amount to abuse of power, as the petitioner who has more than ten years regular service at her credit has been thrown out by adopting a novel procedure, therefore, impugned letter is liable to be set aside.

4. On the other hand, learned counsel for the respondents contends that a petition under Article 199 of the Constitution is not maintainable against the NICL; that the impugned action was taken pursuant to findings of the Departmental Accounts Committee; that in case of the petitioner, there was blatant violation of due process; that the relationship of the petitioner with respondent No.5 is that of a Master and Servant, therefore, petition is liable to be dismissed.

5. Arguments heard, record perused.

6. The stance of the petitioner that she was not provided with any opportunity of hearing, any show cause notice and any due process, was replied by the department in terms that the very basic appointment of the

petitioner was defective as in her case, the due selection process was not followed that includes advertisement in national press, entry test, preliminary review, interview, final selection, medical examination and probation period.

7. It was also responded by the department that the impugned termination letter was issued pursuant to the decision taken in the meeting of the Departmental Accounts Committee, held on 22.04.2019, where-under Para 4.1.4.3 regarding irregular appointments of officers causing loss of Rs.4.36 Million, it was observed that during audit of respondent No.5 for the year 2013, the management appointed two officers [(a) Mr.Rehan Hamid initially appointed as Deputy Manager in April 2006 and reappointed as Manager in September 2006 (b) Ms.Ayesha Farooq/petitioner initially appointed as Assistant Manager in May 2006 and reappointed as Deputy Manager in June 2009]. Both the officers were appointed twice on contract basis under monetized salary package without justification, further, appointments were made without advertisement in violation of the rules.

8. Before dilating upon the merits of the case, the question of maintainability is to be answered at the first instance.

9. The Hon'ble Apex Court in case "Pakistan Airline Pilots Association and others V. Pakistan International Airline and another" (2019 SCMR 278) has graciously held that:-

"We may also state that where conditions of service of employees are not regulated

by a statutory provision then such employees are to be governed by the principle of "Master and Servant". As the terms and conditions of employment in PIAC are admittedly not governed by any statutory provision and the employees are amenable to the Rule of "Master and Servant", Article 199 of the Constitution of Pakistan 1973 cannot be invoked."

The condition precedent held mandatory for invoking constitutional jurisdiction of this Court in terms of Article 199 of the Constitution is that the rules governing terms and conditions of the employees should be statutory and where conditions of service of employees are not regulated by a statutory provision then such employees are to be governed by the principle of "Master and Servant" and in that eventuality, petition in terms of Article 199 of the Constitution is not maintainable.

9. This Court while deciding W.P. No. 710/2017 "Asif Mehmood V. The Executive Director NICL", in a matter relating to terms and conditions of service has held that since the HR Manual of the NICL does not have a statutory status, the writ petition is not maintainable. Same view was reiterated by this Court in W.P. No. 4215/2016 "Khurram Saleem V. NICL, etc". This Court while deciding W.P. No.219/2012 "Ch. Aurangzeb V. Ministry of Finance, etc." In W.P. No.4138/2016 "Ayub Siddique Ahmad Butt V. Federation of Pakistan, etc", wherein respondent company/ NICL was respondent No.2, it was held that as per the dictums laid down by the Supreme Court of Pakistan, rules of the said

respondent are non-statutory, thus writ petition is not competent. In a matter relating to terms and conditions of service of the respondent department while relying upon the order dated 26.05.2016 passed by the Apex Court in C.P. Nos.437 and 897 of 2010 held that the rules of the respondent department are non-statutory, therefore, the writ petition is not maintainable.

10. The Hon'ble Lahore High Court in W.P. No.34270/2016 "Muhammad Ashraf V. NICL, etc" by relying upon the judgment passed by this Court in W.P. No.219/2012 referred to above, has held as under:-

"With all respect to the dictum laid down by the Apex Court in the case reported in 2016 SCMR 2146, as the same is based on distinguishing facts, therefore, has no applicability on the facts of instant case, whereas, the judgment of Islamabad High Court dated 12.07.2016 passed in Writ Petition No.219 of 2012 is directly in relation to the facts identical to the instant case and the said judgment has been based on the conclusions earlier drawn by the Apex court. In one of the referred case i.e. Civil Petition Nos.437 and 897 of 2010, the Hon'ble Supreme Court of Pakistan vide order dated 26.05.2010 held that since the service of the employee is not governed by any statutory rule, therefore, he cannot approach High Court by invoking extraordinary constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The learned counsel for the petitioner has not been able to bring the case of the petitioner out of the parameters of said judgment."

11. In view of above, by following the dictums laid down by the Hon'ble Apex Court and followed by this Court in the judgments referred to above, it is held that the instant

writ petition is not maintainable, therefore, there left no need to dilate upon merits of the case, as it may cause prejudice to the case of either side. Consequently, the instant writ petition is dismissed being not maintainable. The petitioner may avail remedy, available to her under the law.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran