

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 858 of 2019

Dr. Nasir Mahmood Cheema

Vs

Pakistan Agricultural Research Council, etc

PETITIONER BY: M/s Muhammad Umair Baloch & Mirza Waqas
Qayyum, Advocates.
Respondents By: Mr. Ali Nawaz Kharal, Advocate.
DATE OF HEARING: 02-04-2019.

ATHAR MINALLAH, CJ.- The petitioner through the instant petition is seeking implementation of order passed by the Federal Minister, Ministry of National Food Security & Research while acting as an appellate Authority.

2. The facts, in brief, are that the petitioner was appointed against the post of Scientific Officer BPS-17 on 12-04-1993. His last promotion was against the post of Principal Scientific Officer in BPS-19. In 2017 an inquiry was conducted, which led to initiating disciplinary proceedings against the petitioner. The disciplinary proceedings culminated in imposition of major penalty i.e. compulsory retirement from service vide order, dated 04-07-2017. It is the case of the petitioner that he preferred departmental appeal before the President of the Board of Governors. The President of the Board of Governors is the Minister Incharge of the concerned Ministry. The Minister for National Food Security & Research, constituted a fact finding Committee and after considering its report, accepted the appeal filed

by the petitioner. The acceptance of the appeal was communicated to the petitioner vide letter, dated 05-01-2018. The Federal Minister issued several directions to the respondents to implement the earlier order, whereby appeal of the petitioner was allowed. The said directions were communicated to the respondents as well as the petitioner vide letters, dated 31.05.2018 and 12-07-2018 respectively.

3. The learned counsel for the petitioner has been heard at length. He has argued that refusal to implement the order passed by the appellate authority is malafide and without lawful authority and jurisdiction. The Minister in his capacity as the President of Pakistan Agricultural Research Council (hereinafter referred to as the "**Council**") was competent to decide the appeal and, therefore, there is no reason for refusing to reinstate the petitioner.

4. The learned counsel for the respondent Council on the other hand has argued that the Federal Minister was not competent to decide the appeal; the terms and conditions of service of the employees of the Council are not governed under statutory Rules/Regulations; it has been decided to place the matter before the Board of Governors for decision.

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

6. The petitioner was working as an officer in BPS-19. The designated Authority vide notification, dated 02-02-2012 was the Chairman of the Council. The President of the Council i.e. the Federal Minister of the concerned Ministry being the next higher authority was, therefore, vested with jurisdiction to entertain and decide ^{the} appeal. The appeal of the petitioner was, therefore, competent before the

President of the Council in the light of the provisions of the Civil Servants (Appeal) Rules, 1977, which have been adopted by the Council. There is, therefore, no force in the argument raised by the learned counsel for the respondent Council that the President was not empowered to decide the appeal. Nonetheless, the grievance of the petitioner pertains to his terms and conditions of service. The learned counsel for the respondent Council has rightly placed reliance on the judgments rendered by the august Supreme Court wherein it has been explicitly held that the status of service regulations governing the terms and conditions of service of employees of the Council are non statutory. In this regard reference may be made to order, dated 11.09.2018, passed in C.P.No.2825 of 2017, titled "Rashid Mehmood vs. Federation of Pakistan through Secretary Ministry of National Food Security & Research, Islamabad & others", order, dated 21-11-2012, passed in C.P.No.958 of 2012, titled "Taj Mehmood Shaheen and another vs. Pakistan Agricultural Research Council", and judgment, dated 16.03.2010, in C.P.Nos.584 of 2008, titled 'Riaz Ahmad vs. Pakistan Agricultural Research Council, Islamabad and others'.

7. In the light of the aforementioned judgments rendered by the august Supreme Court, the relationship of the petitioner with that of the Council is in the nature of 'master and servant'. The instant petition is, therefore, not competent. However, the learned counsel for the respondent Council has stated that the Chairman has decided to place the matter relating to the petition before the Board of Governors. The Council has been established under Section 3 of the Pakistan Agricultural Research Council Ordinance, 1981 (hereinafter referred to as the "**Ordinance of 1981**"). Section 6 ibid describes the composition of the Council, which, inter alia, includes the President.

The overall control, direction and superintendence of the affairs of the Council vests in the Board of Governors. The Board of Governors is, therefore, an appropriate forum to decide the question regarding implementation of the order passed by the appellate Authority.

8. The instant petition is, therefore, disposed of in the light of the above observations.

CHIEF JUSTICE

*Asif Mughal**

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