

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1278 of 2018

Shahid Siddique

VS

National Book Foundation through its Managing Director, Islamabad
and another

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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**26.06.2019. Mr. Muhammad Asif Gujjar, Advocate for
the Petitioner.
Mr. Rehan Seerat and Ch. Kamil Hayat,
Advocates for the respondents.
Raja Khalid Mehmood Khan, learned
Deputy Attorney-General.**

The petitioner, in the instant
petition, has made the following prayer:-

*“In view of the above-mentioned
facts and circumstances, it is respectfully
prayed that instant writ petition may kindly
be allowed with costs to respondents by
declaring the impugned acts especially
transfer order 24.02.2015 and stoppage of
ceiling allowance as coram-non-judice,
void ab initio, illegal, unlawful and based
on mala fide, ill exercise of power and in
consequence thereof, the impugned
transfer order may kindly be set aside by
directing the respondents to transfer the
petitioner back to Islamabad by paying
ceiling allowance past as well as future in
the interest of justice.*

*It is further prayed that the past
salaries for the additional duties assigned
to petitioner may also be given to petitioner
and the respondents may kindly be*

permanently restrained from victimizing the petitioner in future.

It is also prayed that the petitioner should also be considered for promotion from the date when the junior to petitioner was promoted by the respondents from BPS-14 to BPS-15 without considering the petitioner.

Any other relief, which this Hon'ble Court deems fit and proper, may kindly be awarded in the interest of justice."

2. The facts, in brief, are that the petitioner is an employee of National Book Foundation. He is aggrieved of his transfer from Islamabad to Lahore and seeks payment of the allowances. He also seeks direction to the respondents to promote him.

3. Learned counsel for the petitioner, *inter-alia*, contends that part of the relief has been granted to the petitioner inasmuch as all his dues in the form of allowances have been paid. However, it was submitted that order for transfer may kindly be set-aside as the same is without lawful authority and with malafide. It was further submitted that a direction may be made for promoting the petitioner.

4. Learned counsel for the respondents objected to the maintainability of the instant petition in light of the fact that the rules of service of respondent No.1 are

non-statutory. In this behalf, it was contended that though respondent No.1 is a statutory body and its rules have been framed under Section 8 of National Book Foundation Act, 1972. However, it was further submitted that in light of the recent pronouncement reported as "*Muhammad Zaman and others Vs. Government of Pakistan through Secretary, Finance Division, Islamabad and others*" **(2017 SCMR 571)**, the rules are non-statutory. It was further submitted that the promotion shall be accorded to the petitioner as and when the DPC is held and the transfer order does not suffer from any infirmity.

5. In rebuttal, learned counsel for the petitioner submitted that in reply to the petition, respondent No.1 has admitted that it is a statutory body having statutory rules.

6. Arguments advanced by learned counsel for the parties have been heard and documents placed on record examined with their able assistance.

7. Even though respondent No.1 has conceded the position that National Book Foundation is a statutory body having statutory rules of service, the learned counsel has contradicted the position in his

arguments. Admittedly, National Book Foundation is the creation of National Book Foundation Act, 1972 and the rules of service dealing with the relationship between the employer and employees are the National Book Foundation Service Rules, 1973. The referred rules were framed under Section 8 of the National Book Foundation Act, 1972. Under the referred provision, it is provided that the Foundation may make rules for carrying out the purposes of this Act. The Hon'ble Supreme Court of Pakistan in case reported as "*Muhammad Zaman and others Vs. Government of Pakistan through Secretary, Finance Division, Islamabad and others*" **(2017 SCMR 571)** laid down the criteria for determining, whether the rules of service of any statutory organization are statutory or otherwise. The august Apex Court observed as follows:-

We are of the opinion that the above view applies to and is correct vis- -vis the Regulations in the instant matter as well. Furthermore, as matters stand (since the omission by Act II of 1994), and as mentioned above, the regulation-making power lies solely in the hands of the Board with no intervention or approval of the Federal Government, and this reflects the intention of the Legislature. In this context, as highlighted above, even the structure of the Board as provided for in the Act renders it autonomous, with the Members, save for the Secretary, Finance Division, Government of Pakistan, being private individuals, independent from the Federal Government. In fact, where the legislature wanted the intervention of the Federal Government, it has specifically provided for the same, and in this regard the

proviso to section 54(1) of the Act is relevant which states that "the terms and conditions of service of Governor and Deputy Governor shall be determined by the Federal Government", clearly suggesting that the Legislature's intention was to exclusively clothe SBP with the power to frame regulations to carry out the objects and purpose of the Act. Furthermore, section 46B(2) of the Act [inserted by the State Bank of Pakistan (Amendment) Act, 1997 (Act No.XIII of 1997)], provides that "the Bank, the members of the Board or the staff of the Bank, shall not take instructions from any other person or entity, including the government or quasi-government entities. The autonomy of the Bank shall be respected at all times and no person or entity shall seek to influence the members of the Board and Monetary Policy Committee or the staff of the Bank in the performances of their functions or interfere in the activities of the Bank." It may be added that to give maximum autonomy to SBP, section 52(1) of the Act which empowered the Federal Government to supersede the Board and entrust the general superintendence and direction of the affairs of SBP to such agency as it (Federal Government) may determine was omitted by the State Bank of Pakistan (Amendment) Act, 2012 (Act No.IX of 2012 dated 13.3.2012). All the above aspects point towards the growing autonomy of SBP.

7. According to the judgment delivered in Civil Appeal No.654/2010 etc. titled Shafique Ahmed Khan, etc. v. NESCOM through its Chairman, Islamabad, 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. In the case before us, the Regulations were made pursuant to section 54(1) of the Act and section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [while saving the generality of the power under section 54(1) of the Act]. Out of all the matters listed in section 54(2) of the Act, clause (j) is the most relevant which pertains to the "recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of

superannuation, beneficial and other funds, with or without bank's contribution, for the officers and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift". A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition.

8. Since it has been held above that the Regulations are non-statutory, therefore we do not find it necessary to dilate upon the point of laches."

8. On the touchstone of the above pronouncement of the august Apex Court, since the rules of service relate to the internal functioning of respondent No.1, hence, are non-statutory. The consequence of the fact that the rules are non-statutory is that the petition under Article 199 of the Constitution is not maintainable.

9. Even otherwise, the transfer and posting is not to be interfered with unless is tainted with *malafide* or is without lawful authority. Though, learned counsel for the petitioner contended that the transfer is tainted with *malafide*, however, there is nothing on record to the effect. Learned counsel for respondent No.1 conceded the position that as and when the DPC shall be

constituted, the petitioner shall be considered for promotion.

10. In view of the above, the instant petition is without merit and is accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua

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