

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No. 4215/2016

Khurram Saleem
Versus
National Insurance Company Ltd., etc.

Petitioner by: Mr. Arshad Bashir Malik, Advocate

Respondents by: Mr. Aziz-ul-Haq Nishtar and Mr.
Shafqat Rasool, Advocates for
Respondents No. 1 to 6

Ayaz Hussain, C/o (Law) NICL

Date of Decision: 08.03.2017

MOHSIN AKHTAR KAYANI, J:- Through this Writ Petition, petitioner has assailed the final show cause notice dated 10.11.2016 issued by the respondent.

2. Brief facts of the case are that, respondent No.1 is a company running its business through Chief Executive Officer under the control of Board of Directors, the said board is appointed by Government of Pakistan, Ministry of Commerce.

3. Petitioner is employee of NICL and performing his duties as Assistant Manager since 09.02.2010.

4. Respondent No. 1 company issued letter dated 16.08.2016 to the petitioner with allegations that he tried to access and interfered in the official work and took pictures of official register on his mobile phone, the said letter was duly replied on 22.08.2016, whereafter General Manager Human Resource, respondent No.2, issued inter office memorandum dated 27.09.2016 alongwith charge sheet with following allegations:-

- (i) *It is alleged that you have tried to access the official record of R&I Section at the work station on 13th Floor of NICL Building Islamabad on 1 August 2016 at about 9:30 a.m.*
- (ii) *It is alleged that you have tried to interfere in official work of officials deployed in R&I section.*

- (iii) *It is alleged that you have forced the officials deployed in R&I Section to hand over the entry/dak register.*
- (iv) *It is alleged that you also took pictures of entry/dak register of R&I Section.*
- (v) *It is alleged that you have deliberately tried to disclose the confidential information to unauthorized persons.*

5. Respondents No.5 & 6 were appointed as Inquiry Officers, and after their inquiry, final show cause notice dated 10.11.2016 was issued by the office of respondent No.2 with the following words:-

- (i) *Whereas according to HR Manual of the National Insurance Company Ltd. (hereinafter "The Company"), you are at all times under obligations to observe and strictly adhere to the code of conduct of NICL as laid down in HR Manual of the Company.*
- (ii) *And whereas, a complaint was received against you by the management from North Zone Islamabad regarding unwarranted access to official record of R&I Section, collection of confidential information and disclosure to unauthorized persons.*
- (iii) *And whereas an inquiry committee was constituted by the competent authority of the Company to probe the charge / allegations against you. Accordingly, you were duly issued show cause notice, charge sheet and statement of allegations. Your reply whereof was found unsatisfactory as you failed to justify your position with respect to the complaint and matters related thereto with credible evidence and circumstantial support to your position. You were, therefore, then asked to appear before the inquiry committee and you were given ample opportunity to clarify / justify your position regarding charges / allegations against you.*
- (iv) *And whereas said inquiry report has been received by the management, which reveals that you have failed to clarify / justify your position in respect of serious charges/allegations against you.*
- (v) *Now therefore you are, called upon to show cause within seven (7) days from the date of receipt of this show cause notice as to why should the management not initiate disciplinary action against you for your misconduct which may lead to your dismissal from service as per rules and regulations of the Company and enforceable under the laws of land.*

The above referred show cause notice has been assailed in the instant writ petition.

6. Learned counsel for petitioner contends that impugned show cause notice issued by respondent No.2 reflected his intention of imposing major penalty of dismissal without conducting regular inquiry. He further contends that competent authority has not informed the petitioner regarding any inquiry officer or inquiry committee, nor suggested that who was the complainant, neither any information was disclosed that R&I Dispatch Register is a confidential document. Learned counsel for petitioner further contends that show cause notice was silent regarding any misconduct as defined in Chapter-VIII(2) of HR Manual and show cause notice was issued in violation of Article 10-A of the Constitution of Pakistan, 1973.

7. Conversely, respondents No.1 to 6 filed their para-wise comments and raised very serious question regarding maintainability of instant writ petition on the ground that Service Rules of NICL are non-statutory and therefore constitutional petition is not maintainable.

8. Arguments heard, record perused.

9. From the perusal of record it has been observed that petitioner is an employee of NICL who was appointed as Assistant Manager on 09.02.2010, charged with allegations that petitioner has not observed and adhered to the code of conduct of NICL as laid down in HR Manual of the Company, petitioner was also charged for unauthorized access to official record of R&I Section from where he collected certain confidential information and disclosed the same to unauthorized persons vide impugned show cause notice dated 10.11.2016.

10. Before entering into the merits of the case it is essential to discuss the question of maintainability of instant writ petition, whereby it has been observed from HR Manual of NICL, the same are non-statutory in nature, service of the petitioner is considered to be under the relationship of Master and Servant and any kind of employee having

such status has no remedy to challenge the action of NICL under constitutional jurisdiction.

11. From the perusal of record it has further been observed that allegation mentioned in show cause notice have not yet been finalized and the proceedings have not been completed so far due to filing of instant writ petition, the remedies of the petitioner are intact, question of disputed facts could not be resolved in constitutional jurisdiction.

12. The status of show cause notice can be seen under judicial review if the issuing authority is amenable to constitutional jurisdiction whereas the factual issue raised in show cause notice is no more than a set of allegations that have yet to be replied to and have yet to undergo the adjudicatory process, therefore, it is pre-mature as there is no final order, no legal right has been infringed, hence the constitutional petition is not maintainable. Reliance is placed upon **2011 PLC(CS) 914 Lahore (Zulfigar Cheema v/s Technical Education and Vocational Training Authority)** wherein it is held that:-

11. There is another aspect of the matter. Issuance of show-cause notice does not mean that the case will invariably be decided against the petitioner and there is always a possibility that the same may be decided in favour of the petitioner. Laying challenge to a show-cause-notice is, therefore, no different that filing a petition on the basis of an apprehension or a speculation. Such a petition is premature and not ripe for adjudication. "Just as a case can be brought too late; ... it can be brought too early, and not yet be ripe for adjudication ... until the controversy has become concrete and focused, it is difficult for the Court to evaluate the practical merits of the position of each party." The basic rational behind the ripeness doctrine is "to prevent the courts through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.

Similarly, this view was also given by Division Bench of Lahore High Court in **2011 PLC (CS) 1551 (Abdul Raheem Khan v/s MD PEPCO, WAPDA House Lahore)** holding therein that:-

"This Court in Muhammad Akhtar Sherani and 35 others v. The Punjab Textbook Board, Lahore and 4 others 2001 PLC (C.S.) 939 has held that a petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 would not be maintainable against mere issuance of a show cause notice since the appellant has been simply called upon to show cause as to why he should not be proceeded against. The august Supreme Court of Pakistan in Virasat Ullah v. Bashir Ahmad, Settlement Commissioner (Industries) and another (1969 SCMR 154) has also held that mere issuance of a notice by the settlement Commissioner calling upon the transferee to justify his transfer could not furnish the basis for filing a constitutional petition."

13. In view of above legal and factual aspects, instant writ petition is not maintainable as NICL HR Manual does not qualify the function test of statutory status, show cause notice is not yet finalized, no final order is in filed and even the adequate remedies are available to the petitioner, therefore, instant writ petition is not competent, hence stands dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.