

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**W.P. No.1360/2015**

Rohail Ishtiaq

*versus*

Benazir Income Support Programme (BISP) & 3 others.

Petitioner: In-person.

Respondents by: Ch. Shafiq-ur-Rehman, Advocate.

Date of Decision: 11.11.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this writ petition, the petitioner has called in question his termination order dated 22.07.2014 as well as order dated 16.04.2015, whereby his appeal against the said termination order has been dismissed.

2. Brief facts referred in the instant writ petition are that on 15.01.2011, the petitioner was appointed as Assistant Director (Social Welfare SPS-17) in Benazir Income Support Programme (*hereinafter referred to as "BISP"*) on contract basis and later on vide Office Order dated 24.05.2013 his services were regularized. As per petitioner stance, he had allegedly been harassed and victimized for being a Christian by one Syed Muhammad Azhar Ali Shah/Director Field Operations BISP, Divisional Office, Rawalpindi, against whom he submitted a complaint on 20.11.2013. However, on 06.12.2013, a show cause notice was issued to petitioner, to which the petitioner replied in February, 2014, whereafter petitioner was asked vide letter dated 17.07.2014 for his personal hearing before Secretary BISP on 18.07.2014. Ultimately, the petitioner was terminated vide letter dated 22.07.2014, while petitioner's appeal thereof was also dismissed on 16.04.2015. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that the inaction on the part of respondents on petitioner's complaint dated 20.11.2013 speaks volumes of the malafide against the petitioner; that the petitioner was terminated vide impugned

termination letter without observing due process of law. Even otherwise, the entire proceedings are the result of vindictiveness; that petitioner's appeal against the termination letter was dismissed without following the due process of law vide impugned order dated 16.04.2015, which is liable to be set-aside and direction to respondents may be issued to reinstate the petitioner in service.

4. Conversely, learned counsel for respondents by opposing the instant writ petition contended that this Court has no jurisdiction to adjudicate upon the instant petition while exercising powers under Article 199 of the Constitution; that the relationship between the petitioner and respondents is purely contractual in nature and superior Courts cannot adjudicate upon such contractual disputes in writ jurisdiction; that the petitioner had been dealt under the Benazir Income Support Programme Employees' Service Regulations, 2012 (*hereinafter referred to as "Regulations of 2012"*), which are non-statutory in nature and thus render the instant petition being not maintainable, even otherwise, petitioner's services have been terminated consequent to due process of law and none of his fundamental rights stood infringed, therefore, the instant writ petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner was appointed as Assistant Director (Social Welfare SPS-17) in BISP on contract basis, whose services were later on regularized vide office order dated 24.05.2013 and he was terminated vide letter dated 22.07.2014. Feeling aggrieved thereof, the petitioner preferred an appeal against his termination, which was dismissed on 16.04.2015, whereafter the petitioner challenged his termination through this constitutional petition.

7. Perusal of record further reveals that the petitioner was charged with misconduct by the respondent department, regarding which an inquiry was also conducted. Personal record of petitioner reveals that he had been given six (06) warnings/explanations from respective BISP Regional D.G. Punjab, Regional

Director, Rawalpindi and BISP Headquarters, whereby strict disciplinary action was recommended. The primary allegation against the petitioner is that he was habitual absentee, latecomer, failing to keep adequate supervision of subordinate staff, poor office management, and communicating directly with foreign embassies and donor agencies. A show cause notice dated 06.12.2013 was served upon the petitioner on his residential address available in office record, which had been replied by the petitioner on 18.02.2014 i.e. after the elapse of more than two months. His poor performance and unauthorized absence has been highlighted by respondent authorities, a special report along with site photograph of Divisional Director Gujranwala regarding absence of the petitioner from the office has also been highlighted, which resulted into initiation of an inquiry, but he had not participated in the inquiry proceedings in the office of Regional Director, BISP, Punjab. The petitioner was also given personal hearing on 17.07.2014, whereafter a major penalty of dismissal from service was imposed on the petitioner vide notification dated 22.07.2014 under Rule 8 of the Regulations of 2012.

8. The petitioner, pursuant to his termination from service, preferred an appeal in terms of Clause 8.5 of the Regulations of 2012, however he has failed to comply with the limitation period, which is 30 days from the date of communication of a decision, while the petitioner filed his appeal on 28.10.2014, which is apparently beyond the period of limitation and as such, the appeal was time barred.

9. The above referred factual aspect clearly demonstrates that respondent department has followed the procedure and mechanism provided in the Regulations of 2012 and as such, no illegality has been observed in the said procedure.

10. The other important aspect of this case is regarding maintainability of the instant writ petition, as the BISP was established under BISP Act, 2010 and its

employees are being governed under Section 18 of the said Act subject to the Regulations of 2012, which are non-statutory in nature and as such, where employees' conditions of services are not regulated by statutory provisions, then such employees were to be governed by the principle of master and servant and writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 in such case would not be maintainable. Reliance is placed upon 2018 PLC (CS) 1224 Islamabad (Manzoor ahmad vs. Federation of Pakistan).

The Division Bench of the Islamabad High Court after scanning complete history of law on subject matter has also taken this view in case reported as 2018 PLC (CS) 73 (Chairperson, National Commission for Human Development vs. Abdul Jabbar Memon), wherein the following principles have been highlighted.

- (i) *A constitutional petition under Article 199 of the Constitution would be competent if the rules/regulations governing the terms and conditions of the employees are statutory or the act or proceedings are in violation of the relevant regulations/ rules.*
- (ii) *Rules/regulations governing the terms and conditions of service would have non statutory status if the legislative intent of the relevant statute is to create a relationship between the employer and its employees based on entering into a contract freely i.e. when no fetters have been placed on the rule making authority in the context of determining the terms and conditions of the employees. If the power is fettered then such service regulations would not be treated as having been issued for the internal use of the employer nor a relationship in such a case will be a result of a contract freely entered by the contracting parties.*
- (iii) *Approval of the Government, formal or implicit, in the relevant statute, is a crucial factor for determination of the status of service rules/regulations. In the absence of such an approval the relevant regulations/rules would be non statutory having been issued for the internal use of the employer.*
- (iv) *If it is obvious from the scheme of the relevant statute that the legislative intent is to empower a rule/regulation making authority to frame rules/regulations which are not restricted for the internal use of employer only but are broader than and complimentary to the parent statute, as is the case of regulations made under the Act of 2010, then such rules or regulations will be statutory.*

11. Similarly, the Hon'ble Supreme Court of Pakistan in recent judgment reported as 2018 SCMR 278 (Pakistan Airline Pilots Association vs. Pakistan International Airline) has held that:

*"6. 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. Reliance is placed on PIA Corporation v. Syed Suleman Alam Rizvi (1996 SCMR 1185), Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676) and Abdul Wahab and others v. HBL and others (2013 SCMR 1383). In view of what has been discussed above, we find no legal justification to interfere in the impugned judgment. This appeal is, therefore, dismissed."*

12. Keeping in view the above background, the petitioner has not merely failed to justify any of his ground against the impugned termination order on factual side, but also failed to point out any illegality in the process of inquiry and proceedings initiated by the department prior to termination of petitioner. Moreover, the relationship of petitioner with BISP is based upon the principle of master and servant and as such, the petitioner cannot invoke constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

13. The crux of above referred discussion is that the instant writ petition is not competent and, therefore, the same is hereby DISMISSED.

**MOHSIN AKHTAR KAYANI)  
JUDGE**

Khalid Z.