

[Islamabad High Court]

Before HCJ. Athar Minallah and J. Mohsin Akhtar Kayani

The CHAIRPERSON, NATIONAL COMMISSION FOR HUMAN DEVELOPMENT

and others

Versus

ABDUL JABBAR MEMON and others

I.C.A. No.78 of 2017, decided on 13th June, 2017.

JUDGMENT

ATHAR MINALLAH, J.--- This Intra Court Appeal is directed against judgment, dated 17.02.2017, passed by the learned Single Judge in Chambers in W.P. No. 4595 of 2016.

2. The facts, in brief, are that the National Commission for Human Development (hereinafter referred to as the "Commission") was established under section 3 of the National Commission for Human Development Ordinance, 2002 (hereinafter referred to as the "Ordinance of 2002"). The respondents Nos.1 to 7 are employees of the Commission. They had invoked the jurisdiction of this Court under Article 199 of the Constitution, assailing the order, dated 21.11.2016, whereby five other officials named therein were given additional charge of the respective posts. The said five officials were not arrayed as respondents in the constitutional petition. Moreover, the respondents Nos.1 to 7 were not given a charge of any post nor had been transferred or posted through the Notification, dated 21.11.2016, which they had challenged. Their grievance was to the extent that the giving of additional charge had indirectly affected and prejudiced their rights in the context of seniority and future prospects of promotion. Moreover, it was also their case that the impugned notification was a violation of the judgment rendered by the august Supreme Court, in C.P. No. 89 of 2011. The respondents Nos.1, 3, 6 and 7 have been appointed on contract basis while the respondent No.2 is no more in service of the Commission since his contract had expired on 06.12.2016. The learned Single Judge in Chambers vide the impugned judgment, dated 17.02.2017, allowed the petition and the impugned letter, dated 21.11.2016, was accordingly set aside. Hence the instant Intra Court Appeal.

3. The learned counsel appearing on behalf of the Commission has contended that; it is settled law that no person can claim to be aggrieved on account of postings and transfers made by the competent authority; the terms and conditions of service of the employees of the Commission are not governed by statutory regulations or rules; no appeal is provided against the impugned order; posting and transfer is a matter which is within the exclusive domain of the competent authority; the respondents were not even aggrieved since through the impugned order, five employees had been given additional charge of respective posts; there is no bar on giving an additional charge to an employee till such time as another suitable officer or employee is posted on a permanent basis; the postings and transfers did not affect the seniority nor the promotions of the respondents; the Sindh High Court, in a judgment rendered in C.P. No.D-662 of 2006, has declared the regulations of the Commission as non-statutory; the impugned letter was issued by the Managing Director wherein the decision of the competent authority was communicated. Reliance has been placed on the case "Pakistan Defence Officer's Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed" [2013 SCMR 1707], in support of his contention that service regulations of the Commission governing the terms and conditions of its employees are non-statutory. The learned counsel has further placed reliance on the cases of "Ch. Muhammad Ilyas Gujjar v. Chief Election Commissioner of Pakistan and others" [PLD 2011 SC 961], "The Lahore Central Co-operative Bank Ltd. v. Pir Saif Ullah Shah" [PLD 1959 SC Pak, 210], "The Chairman, East Pakistan Industrial Development Corporation, DACCA, and others v. Rustom Ali, and others" [PLD 1966 SC 848], "Shahid Khalil v. Pakistan International Airlines Corporation, Karachi" [1971 SCMR 568], "A. George v. Pakistan International Airlines

Corporation" [PLD 1971 Lahore 748], "Anwar Hussain v. Agricultural Development Bank of Pakistan and others" [PLD 1984 SC 194], "Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaaid Ahmed" [2013 SCMR 1707], "Muhammad Rafi v. FOP through Secretary and 2 others" [2016 PLC (C.S.) 328] and "Riaz Gul and 5 others v. FOP through Secretary, M/O Water and Power, GOP, Islamabad and 36 others" [2016 PLC (C.S.) 350].

4. The learned counsel appearing on behalf of the respondents Nos.1 to 7 has vehemently argued that; the instant Intra Court Appeal is not maintainable since a right of appeal is provided under the Employees Service Rules, 2006 (hereinafter referred to as the "Rules of 2006"); reference has been made to Rule 29.02 (1) (b); the Rules of 2006 are statutory in nature; the constitutional petition was maintainable because the grievance of the appellants related to violations of the Rules of 2006, particularly Rule 14 thereof; reliance has been placed on the cases "Muhammad Rafi and another v. FOP and others" [2016 SCMR 2146] and "Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaaid Ahmed" [2013 SCMR 1707]: the judgment rendered by the august Supreme Court in the case titled "Shafique Ahmed Khan and others v. NESCOM through Chairman, Islamabad and others" [PLD 2016 SC 377], has overruled the law enunciated in the case titled "Pakistan Red Crescent Society and another v. Syed Nazir Gillani" [PLD 2005 SC 806]: the respondents were aggrieved because the impugned order had affected their vested rights: the Rules of 2006 have been framed in the manner and by the authority provided and prescribed under the Ordinance of 2002 and as such they are 'statutory':

5. The learned counsel for the parties have been heard and the record perused with their able assistance.

6. The respondents Nos.1 to 7 had invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, challenging the Notification dated 21.11.2016. The said notification was issued by the Director General pursuant to approval granted by the competent authority, whereby 'additional charge' of various departments was given to five officials named therein. The respondents Nos.1 to 7 were not amongst the officers named in the Notification dated 21.11.2016. Also, the giving of the additional charge to the five officers named in the notification did not affect the seniority or promotion prospects of the respondents Nos.1 to 7. A plain reading of the memo of the petition filed by the respondents Nos.1 to 7 under Article 199 of the Constitution shows that the assertions made therein were based on mere apprehensions and that they felt that the impugned notification had or could adversely affect and prejudice their rights. However, no material was placed on record to show that the giving of the additional charge of various posts to the officers named in the Notification, dated 21.11.2016, had in any manner affected the rights of the respondents Nos.1 to 7, so as to bring them within the fold of the expression 'aggrieved' for the purposes of Article 199 of the Constitution. The learned counsel have argued at length regarding the status of the Rules of 2006 i.e. whether or not they are statutory in nature.

7. The learned counsel for the respondents Nos.1 to 7 has vehemently argued that after the judgment rendered by the august Supreme Court in the case of Shafique Ahmed Khan and others (supra), the earlier law enunciated in the case of Pakistan Red Crescent Society and another (supra) has been over ruled and thus the law expounded therein no more holds the field. It is the case of the learned counsel for the respondents Nos.1 to 7 that approval of service regulations or rules by the Federal Government is no more a condition precedent for determining their status as statutory. It is the case of the respondents Nos.1 to 7, that in case the relevant statute does not make the approval of service regulations or rules subject to approval by the Federal Government, then such regulations or rules would have statutory status despite not having been approved by the latter. In a nutshell, the gist of the argument advanced on their behalf is that the approval of the Federal Government is no more a valid test for the determination of the status of service regulations as "statutory" or "non statutory", since the earlier law laid down in the case of Pakistan Red Crescent Society supra has been overruled. The questions for our consideration are whether the law enunciated in the case of Pakistan Red Crescent Society supra has been over ruled by the later judgment rendered in the case of Shafique Ahmed Khan and others v.

NESCOM through Chairman, Islamabad and others supra and, if so, then what is the test now for the determination of the status of service rules or regulations as 'statutory' or 'non statutory'. In order to answer these questions it would be beneficial to survey the precedent law and the provisions of the Ordinance of 2002 to determine the status of the Rules of 2006.

8. The Ordinance of 2002 was promulgated and notified in the official gazette on 19.07.2002. The Commission has been established under section 3 for carrying out the purposes of the statute and its functions are set out in section 7. The composition of the Commission has been described in subsections (3) and (4). The 'President' is the Patron-in-Chief of the Commission and the said expression is defined under section 2(g) as meaning the President of the Islamic Republic of Pakistan. The composition of the Commission includes the Chairman, who is appointed by the President and five Members, one of whom is a representative of the Ministry of Finance. The Members are appointed by the President on the recommendations made by the Chairman. The proviso expressly mandates that provincial representation and gender equality will be ensured amongst the Members. It is obvious from the composition of the Commission that except for a representative of the Ministry of Finance, others are non official Members and do not represent the Federal Government. This is affirmed by the eligibility criteria prescribed for the appointment of a Member under subsection (1) of section 5. The eligibility criteria for appointment as a Member includes being a professional of known integrity and having experience in the social sector. The prescribed criteria for the appointment of a person as the Chairman is being an eminent professional of known integrity, reputation, competence and having expertise in the social sector. It is further noted that subsection (2) of section 3 declares the Commission to be a body corporate having perpetual succession and a common seal with powers to enter into agreements, contracts, to acquire and hold property and sue and to be sued in its name. Section 9 provides for the composition of the Advisory Council. Section 12 describes the powers of the Commission in the context of remuneration of its officers and staff and provides that the latter, by regulations, determine the terms and conditions of officers and staff including salaries, allowances and other benefits commensurate with the economic condition of the country and compatible with other such organizations, including the private sector. Subsection (2) of section 12 provides that the regulations referred to in subsection (1) shall include the procedure for inquiries and disciplinary action to be taken against any employee of the Commission. Section 16 empowers the Commission to delegate all or any of its powers and functions to the Chairman or such other officer of the Commission, as it may deem appropriate. Section 17 provides for the powers and mechanism regarding audit and accounts. The annual reports are required to be submitted to the President in each calendar year. Sections 19 and 20 empower the Commission to make Rules and Regulations respectively.

9. A cumulative reading of the provisions of the Ordinance of 2002 unambiguously shows that the legislature had intended to establish the Commission as an independent and autonomous body without reserving or keeping any role or power in respect of the Federal Government. The composition of the Commission, except for the inclusion of a representative of the Ministry of Finance, does not envisage control of the Federal Government. The Chairman and the five members are appointed by the President of Pakistan in his capacity as Patron-in-Chief of the Commission without making it subject to approval of the Federal Government. The determination of the terms and conditions of service relating to the officers and staff of the Commission also exclusively vests in the Commission. The Rules of 2006, whereby the terms and conditions of service of the officers and staff are governed, have been framed without the approval of the Federal Government. It is also noted that the Rules of 2006 exclusively govern the terms and conditions of service of the employees of the Commission and do not extend to the employees of any other organization. Whether or not the service regulations i.e. the Rules of 2006, governing the terms and conditions of the officers and staff of the Commission, are statutory in nature shall be answered after examining the precedent law.

10. The expressions 'statutory' or 'non-statutory' in the context of the regulations/rules governing the terms and conditions of service of the employees of the Commission have not been defined under the Ordinance of 2002 nor has a test in this regard been prescribed *ibid*. However, there is a long chain of authoritative pronouncements of the august Supreme Court

which has laid down the test for determining the status of service regulations or rules and the same is discussed as follows:-

Lt. Col. Shujauddin Ahmad v. Oil and Gas Development Corporation (1971 SCMR 566),

It was held that employees of a statutory corporation do not acquire the status of Government servants nor guarantees given by the Constitution are attracted in their case. It was further held that contracts of service of such employees are governed by the law of master and servant and such contractual terms cannot be specifically enforced.

RTH Janjua v. National Shipping Corporation (PLD 1974 SC 146).

It was a case relating to an employee of the National Shipping Corporation, established under the National Shipping Corporation Ordinance, 1963. The apex Court considered whether or not a grievance of an employee of a statutory authority would be competent and in this regard formulated a test which essentially was based on making a distinction between the nature of duties performed by such an employee i.e. whether they were duties of a public nature or whether the functions and duties were secretarial or commercial.

Muhammad Yusuf Shah v. Pakistan International Airlines Corporation (PLD 1981 SC 224),

It was held in the context of an employee of Pakistan International Airlines that mere instructions issued by a statutory entity for guidance of its officers for their internal use were directory and not immutable.

The Principal, Cadet College, Kohat and another v. Muhammad Shoaib Qureshi (PLD 1984 SC 170).

The matter related to a member of the teaching staff of the Cadet College Kohat and the august Supreme Court held as follows:-

"It is, therefore, evident that where the conditions of service of an employee of a statutory body are governed by statutory rules, any action prejudicial taken against him in derogation or in violation of the said rules can be set aside by a writ petition. However, where his terms and conditions are not governed by statutory rules but only by regulations, instructions or directions, which the institution or body, in which he is employed, has issued for its internal use, any violation thereof will not, normally, be enforced through a writ petition".

Anwar Hussain v. Agricultural Development Bank of Pakistan and others (PLD 1984 SC 194),

The august Supreme Court, while examining the statute establishing the Agricultural Development Bank of Pakistan, has succulently discussed the test regarding the existence of the relationship of master and servant and has held as follows:-

"It follows that if the relationship is the result of a contract freely entered into by the contracting parties then the principle of master and servant will apply. The principle, however, will not apply if some law or statutory rule intervenes and places fetters upon the freedom of the parties in the matter of the terms of the contract. It is on this principle that a civil servant for whom there are constitutional safeguards, is not governed by the principle of master and servant, for he is possessed of a legal character for the enforcement of which he can bring an action. Even where the employee is not a civil servant but there are statutory safeguards governing his relationship with the employer and placing restrictions on the freedom of the parties to act, the general law of master and servant will not apply. In such cases the employer would be bound to follow the procedure provided for in the statute or the statutory rules before terminating the service

of the employee and in the absence of conformity to such procedure, the termination of service would not be clothed with validity and the employee will be entitled to an action for his re-instatement".

"Where a corporation is set up by a statute but the Government does not reserve to itself the power to regulate the conditions of service of the employees under the corporation and the statute itself also does not prescribe any condition but leaves the matter entirely in the discretion of the corporation who is given the power to frame rules and regulations in that regard so that the employee is left with no protection under the statute itself, then the corporation must be held to be the sole arbiter in the matter of prescribing the terms and conditions of its employees and competent to deal with them in accordance with the terms and conditions so prescribed by it. In such situation the employee cannot claim to be a person possessed of any legal character within the meaning of section 42 of the Specific Relief Act and in case of his wrongful dismissal from or termination of service, the principle of master and servant will fully apply and he can only claim damages but not reinstatement to his post".

After examining the relevant provisions of the Agricultural Development Bank of Pakistan Ordinance, 1961, particularly sections 30 and 39 *ibid*, it was concluded that the rule of master and servant was attracted because the Bank had complete control over its employees, their appointments, dismissals and their terms and conditions of service and that such control was not fettered by any statutory provision.

Sindh Road Transport Corporation through its Chairman v. Muhammad Ali G. Khokhar (1990 SCMR 1404).

It was held that in the absence of statutory rules, an employee could not invoke the constitutional jurisdiction. The Sindh Road Transport Corporation Service Rules, 1971, were declared to be non-statutory in character because approval of the Government was not required for their framing under the relevant statute. The earlier judgments rendered by the august Supreme Court in the cases *The Principal, Cadet College, Kohat* and another (*supra*) and *Anwar Hussain* (*supra*) and the law laid down therein was reaffirmed. The test for determination of whether or not the rules were statutory in nature was to pose the question whether the Government had reserved to itself the power to regulate the conditions of service of the employees under the Corporation.

Karachi Development Authority and another v. Wali Ahmed Khan and others (1991 SCMR 2434).

The august Supreme Court, in the context of rules or regulations being statutory or non-statutory, has observed and held as follows:-

"The position so far as the Constitutional remedy under Article 199 of the Constitution is identical. However, in cases where the post held by the employee of a statutory Corporation, is a public office, as defined hereinabove, then relief in the nature of quo warranto to remove a person who is unlawfully holding the post can be granted in Constitutional jurisdiction. The other exception to the aforesaid general rule is that if the freedom of contract is placed under statutory fetters, by reserving controlling power with the Government in the matter of framing of rules or regulations touching the terms and conditions of service of the employees of such a statutory body, in such a case the pleasure of the master is taken over by the statutory provisions and the case would stand outside the master and servant rule, so that Constitutional jurisdiction would be amenable to any violation of the statutory rules or regulations."

Raziuddin v. Chairman, Pakistan International Airlines Corporation and 2 others (PLD 1992 SC 531).

The august Supreme Court declared the service regulations framed by the Board of

Directors of the Pakistan International Airlines Corporation under section 30 of the Pakistan International Airlines Corporation Act, 1956, as non-statutory because they had not been framed with the previous sanction of the Central Government nor gazetted or laid before the National Assembly in terms of section 31 *ibid*. It was held, therefore, that in the absence of statutory rules and regulations governing the terms and conditions of service relief could not be sought on the ground of breach of statutory provisions.

University of the Punjab, Lahore and 2 others v. Ch. Sardar Ali (1992 SCMR 1093).

The august Supreme Court observed that the law enunciated in the case of *R.T.H. Janjua v. National Shipping Corporation* (PLD 1974 SC 146) was no more relevant after the rendering of the later judgments in the cases of *The Principal, Cadet College, Kohat* and another (*supra*) and *Anwar Hussain* (*supra*). The law laid down in the last two judgments was, therefore, reaffirmed by the august Supreme Court and it is obvious that the earlier test of making a distinction on the basis of the nature of duties performed, prescribed in the case of *R.T.H Janjua*, was overruled.

Pakistan Red Crescent Society and another v. Syed Nazir Gillani (PLD 2005 SC 806).

The august Supreme Court reaffirmed and reiterated the law expounded in the earlier judgments rendered in the cases of "*Chairman WAPDA and 2 others v. Jamil Ahmed*" [1993 SCMR 346] and "*Muhammad Yusuf Shah v. Pakistan International Airlines Corporation*" [PLD 1981 SC 224]. The relevant portion is as follows;--

"It is well-settled by now that where the Government while setting up a Corporation does not reserve to itself the power to regulate the terms of service of the Corporation's employees under the relevant statute and does not prescribe any condition, but leaves it to the discretion of the Corporation by empowering it to frame rules or regulations in respect thereof without the Government's intervention, then the Corporation will be the sole arbiter in the matter of prescribing the terms and conditions of its employees and will be competent to deal with them in accordance with the terms and conditions prescribed by it. In such a case neither a suit nor a writ petition for the relief of reinstatement will be competent and the remedy of an employee, for wrongful dismissal from or of termination of service will be a suit for damages as the principle of master and servant will be applicable. However, where the terms and conditions of service of an employee of a statutory Corporation is regulated by a statute or statutory rules, any action prejudicial taken against him in derogation or in violation of the statute and / or the statutory rules will give him a cause of action to file a suit or a writ petition for the relief of reinstatement, as the power of the Corporation will be fettered with the statutory provisions and the principle of master and servant will not be applicable. For the purpose of deciding the factum, whether the rules or the regulations of a Corporation have the statutory force, the determining factor will not be their form or name, but the source under which they have been framed".

It is noted that the review petition filed against the judgment rendered in "*Pakistan Red Crescent Society and another v. Syed Nazir Gillani*" *supra*, has recently been dismissed by the august Supreme Court in the case reported as "*Syed Nazir Gillani v. Pakistan Red Crescent Society and another*" [2014 PLC (C.S.) 961]. As a corollary the principles and law enunciated in relation to the test in the context of whether the Government, while establishing a statutory entity, had reserved for itself the control of the making the regulations or rules, stood affirmed.

Asad Bashir v. Chairman Board of Intermediate and Secondary Education, Lahore and 02 others" (2006 PLC (C.S.) 110).

The august Supreme Court reiterated the earlier law in relation to determination of service regulations as statutory or non-statutory. It was held that formal approval of the Government was a condition precedent for treating regulations or rules as statutory and in absence thereof they would be merely internal instructions or domestic rules having no

regulatory status.

Chairman, State Life Insurance Corporation and others v. Hamayun Irfan and 2 others (2010 SCMR 1495),

After examining the precedent law the august Supreme Court observed and held as follows:--

"Generally speaking, a statutory regulation means regulations which are legislative (as opposed to executive) made by a rule making authority in exercise of statutory power with the approval of the central government or provincial government. Precisely it is the exercise of the delegated legislative power by the rule making authority. Ordinarily it is necessary also that making and promulgation of a rule should be attended by certain formalities e.g. publication in government gazette as law laid down by this Court in various pronouncements."

Pakistan International Airline Corporation and others v. Tanweer ur Rehman and others (PLD 2010 SC 676),

The august Supreme Court reiterated and reaffirmed its earlier law regarding determination of rules as statutory or non-statutory within the ambit of the principle of master and servant. The judgment rendered in the case titled Pakistan Red Crescent Society and another (supra) conspicuously stood out as having been unambiguously affirmed.

Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707).

The judgment was rendered by a Bench consisting of five Hon'ble Judges of the august Supreme Court and after elaborately examining the earlier judgments the principles were summarized as follows:-

- "(i) Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.
- (ii) Where conditions of service of employees of a statutory body are not regulated by Rules / Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.
- (iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules / Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.
- (iv) Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violation of the principles of natural justice, it can be interfered with in writ jurisdiction.
- (v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution".

11. Clause (ii) of paragraph 50, reproduced above, was initially interpreted as having overruled the earlier law expounded in the case of Pakistan Red Crescent Society and another (supra). However, the dismissal of the review in the case titled "Syed Nazir Gillani v. Pakistan Red

Crescent Society and another [2014 PLC (C.S.) 961] put to rest any doubt regarding the earlier judgment rendered in the case of Pakistan Red Crescent Society and another (supra). The review against the judgment rendered in the case of "Pakistan Red Crescent Society and another v. Syed Nazir Gillani" was dismissed expressly on the basis of clause (ii) of paragraph 50 of Pakistan Defence Officer's Housing Authority and others (supra). The dismissal of the review against the judgment of Pakistan Red Crescent Society and another (supra), yet again reaffirmed the test relating to determination of the status of rules or regulations being statutory or non-statutory i.e. the approval of the Federal Government being a condition precedent.

Shafique Ahmed Khan and others v. NESCOM through Chairman, Islamabad and others (PLD 2016 SC 377).

The question before the august Supreme Court was the status of service rules/regulations framed under section 15 of the National Command Act, 2010 (hereinafter referred to as the ("Act of 2010)). The august Supreme Court declared the rules as statutory despite the fact that they had not been formally approved by the Federal Government. The august Supreme Court examined the precedent law in great detail. However, it is significant to note that the earlier law laid down in the cases of Pakistan Red Crescent Society and another (supra), The Principal, Cadet College, Kohat and another (supra) and Anwar Hussain v. Agricultural Development Bank of Pakistan and others (supra) were in fact affirmed and by no stretch of the imagination over ruled. However, in the context of the scheme of the Act of 2010 they were found distinguishable. The august Supreme Court, while recording its reasons, inter alia, has explicitly observed that the highest officials of the Federal Government were already on the Board which had framed the rules. These observations have been made in response to the contention that rules or regulations which are not approved by the Government cannot be treated as statutory. It is obvious from the said observations that the august Supreme Court for the first time has acknowledged that if the authority vested with making the service rules or regulations is controlled by the Government then approval of the latter would be implicit. Moreover, after extensively discussing the provisions of the Act of 2010, the august Supreme Court came to the conclusion that the scope and area of efficacy of the rules framed under the Act of 2010 not only stretches beyond the employees of the Authority but has an over arching effect over many other organizations. In forming this conclusion the august Supreme Court examined the scheme of the Act of 2010, particularly sections 7, 9 and 15 *ibid*. It is important to note that the National Command Authority, established under the Act of 2010, is empowered to make rules or regulations for the employees of other independent and autonomous entities declared as "Strategic Organizations" under section 8 *ibid*. The service regulations framed under section 15 are, therefore, not restricted to employees of the Authority but have an overarching reach by governing the terms and conditions of employees of other independent organizations as well. Such rules or regulations obviously could not be termed as having been issued merely for the internal use of the National Command Authority. In a nutshell the august Supreme Court, by referring to the composition of the Board, recognized or acknowledged that depending on the scheme of a statute approval of the Government could also be implicit. Moreover, the Act of 2010, after being examined in detail, was found to have scope or efficacy stretching beyond the employees of the authority. The Authority is established under section 3 of the Act of 2010 and the composition thereof is provided under subsection (4). The Chairman of the Authority is the Prime Minister of Pakistan, as provided under subsection (3), while its other Members include four Federal Cabinet Ministers besides three other Members. The reasoning of the august Supreme Court was in consonance with the principles and law enunciated in the earlier judgments of the Principal Cadet College Kohat, Anwar Hussain, Sindh Road Transport Corporation, Riazuddin and Pakistan Red Crescent Society, *supra*. The august Supreme Court, rather than revisiting the said judgments, has reaffirmed the law laid down therein, relating to the significance of the approval of the Government for determining the status of the service rules or regulations being statutory or non statutory.

Muhammad Zaman and others v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others (2017 SCMR 571).

The august Supreme Court reaffirmed and followed the test laid down in the case of Shafique Ahmed Khan and others (supra) and has observed and held as follows:-

"According to the judgment delivered in Civil Appeal No.654/2010 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".

Muhammad Rafi and another v. FOP and others (2016 SCMR 2146).

The august Supreme Court has held as follows;

"We, therefore, are of the considered view that issue in hand is fully covered by para-50 of the judgment referred to hereinabove, which provides that an aggrieved person can invoke the constitutional jurisdiction of the High Court against a public authority if he satisfies that the act of the authority is violative of the service Regulations even if they are non-statutory".

12. The above principles, therefore, may be summarized as follows:-

- (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.

13. We have already surveyed the scheme of the Ordinance of 2002 above. It is obvious that the composition of the Commission does not vest control in the Federal Government in the context of framing rules or regulations. The Government has not reserved to itself the power to regulate the terms and conditions of service of the employees. The determination has been entirely left to the discretion of the Commission. The President of Pakistan also acts and perform functions not in his former capacity or position but as the Patron-in-Chief of the Commission. Such powers and functions, under the Ordinance of 2002, have no nexus with the Government nor are vested in the President of Pakistan. Reliance is placed on "University of the Punjab, Lahore and 2 others v. Ch. Sardar Ali" [1992 SCMR 1093]. We, therefore, declare that the Rules of 2006 are non statutory. Moreover, giving an additional charge of a post is not barred under the

Ordinance of 2002 read with the Rules of 2006 and as such the impugned order was not passed in violation of the Rules of 2006. Rule 14 of the Rules of 2006 is not attracted in the case of giving an additional charge of a post. Lastly, the order impugned by the respondents Nos.1 to 7 through a constitutional petition had by no stretch of the imagination the effect of prejudicing their rights inter alia, relating to seniority or promotion. They were, therefore, not 'aggrieved' for the purposes of Article 199 of the Constitution. Moreover, a right of appeal was not available under the Rules of 2006 against the notification, dated 21.11.2016, since it was not issued by a supervisory officer. The argument regarding maintainability of the instant Intra Court Appeal in the context of Rule 29.02(1)(b) is, therefore, misconceived. This Intra Court Appeal is as such maintainable.

14. The upshot of the above discussion is that the constitutional petition filed by the respondents Nos.1 to 7 was not maintainable besides being devoid of merits. We, therefore, allow this appeal and accordingly set aside the impugned judgment.

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