

Form No: HCJD/C-121

JUDGEMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.2089 of 2019

Irfan Rafique

Versus

***Public Procurement Regulatory Authority (PPRA) through its
Managing Director, Islamabad and 02 others.***

Petitioner's by : Mr. Ali Nawaz Kharal, Advocate.

**Respondent's by : Hafiz Arfat Ahmad Ch., Kashifa Niaz
Awan and Tariq Zaman Ch., Advocates
for respondents No.1&3.**

Date of decision : 18.02.2020

AAMER FAROOQ, J. - For the reasons recorded in my
detailed judgment of even date passed in connected Writ Petition
No.2088 of 2019, instant petition is **dismissed**.

**(AAMER FAROOQ)
JUDGE**

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JUDGEMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.2088 of 2019

Ms. Saima Tasneem

Versus

***Public Procurement Regulatory Authority (PPRA) through its
Managing Director, Islamabad and 02 others.***

Writ Petition No.2089 of 2019

Irfan Rafique

Versus

***Public Procurement Regulatory Authority (PPRA) through its
Managing Director, Islamabad and 02 others.***

Writ Petition No.4176 of 2018

Ms. Saima Tasneem

Versus

***Managing Director, Public Procurement Regulatory Authority
(PPRA), Islamabad and others.***

Petitioner's by : Mr. Ali Nawaz Kharal, Advocate.

**Respondent's by : Hafiz Arfat Ahmad Ch., Kashifa Niaz
Awan and Tariq Zaman Ch., Advocates
for respondents No.1&3.**

Date of decision : 18.02.2020

AAMER FAROOQ, J. - This judgment shall decide the
instant petition as well as Writ Petition No.2089 of 2019 as well

as Writ Petition No.4176 of 2018, as common questions of law and facts are involved.

2. Ms. Saima Tasneem and Irfan Rafique were appointed on probation in Public Procurement Regulatory Authority (PPRA), vide appointment letter dated 21.05.2018. The probation period was for one year as provided in Regulation 16 of Public Procurement Regulatory Authority (PPRA) Service Regulations, 2017. The services of the petitioners were terminated, vide letters dated 17.05.2019, which are the subject matter of Writ Petition No.2088 of 2019 and Writ Petition No.2089 of 2019. During the course of service, Ms. Saima Tasneem filed a writ petition against respondents for interfering in her work and not cooperating, which is the subject matter of Writ Petition No.4176 of 2018.

3. Learned counsel for the petitioners, *inter-alia*, contended that the terms and conditions of service of the petitioners are regulated under Public Procurement Regulatory Authority (PPRA) Service Regulations, 2017, which are statutory, hence the instant petition is maintainable. In this behalf, it was contended that Public Procurement Regulatory Authority (PPRA) is the creation of Public Procurement Regulatory Authority Ordinance, 2002; that under Regulation 18(2) read with Regulation 27 of the referred Ordinance, PPRA has the power to frame regulations governing the procedure for appointment of his

employees. It was submitted that since the statute provides a particular procedure for framing of regulations and the same was followed, while formulating 2017 Regulations, hence the same are statutory. It was contended that even otherwise if the Regulations are non-statutory even then the instant petition is maintainable inasmuch as there is violation of law and breach of principles of natural justice while issuing the termination letters. In this behalf, it was contended that the reasons which have been mentioned in the termination letters are that the performances of the petitioners are not satisfactory and due to their conduct, they are being dismissed; that the referred reasons carry a stigma, which shall prejudice the future prospects of the petitioners to gain employment elsewhere. It was submitted that the impugned decision not to confirm the services of the petitioners has not been taken by the Competent Authority. It was submitted that under the Ordinance of 2002, the Competent Authority is the Board of the Authority, whereas the Managing Director has decided not to confirm the services, hence the decision is without lawful authority. In support of his contentions, learned counsel placed reliance on cases reported as "*Muhammad Siddiq Javaid Chaudhry Vs. The Government of West Pakistan*" (**PLD 1974 SC 393**), "*Riaz Ali Khan Vs. Pakistan*" (**PLD 1967 Lahore 491**), "*Mrs. Abida Parveen Channar Vs. High Court of Sindh*" [**2011 PLC (CS) 836**], "*Engineer Majeed Ahmed Memon Vs. Liaquat University of Medical and Health Sciences Jamshoro*"

and others" (2014 SCMR 1263), "Zahoor Ahmed Vs. WAPDA and others" (2001 SCMR 1566), "Messrs Pakistan State Oil Co. Ltd. Vs. Muhammad Tahir Khan and others" (PLD 2001 SC 980), "Government of Sindh through the Advocate-General Sindh Vs. Muhammad Hussain and 6 others" (2000 SCMR 75), "The Managing Director Vs. Tariq Bashir Hashmi" [2003 PLC (CS) 1143] and "Nadeem Asghar Nadeem and others Vs. Province of the Punjab and others" [2016 PLC (CS) 155].

4. Learned counsel for the respondents, *inter-alia*, contended that the instant petition is not maintainable as the service regulations of PPRA are non-statutory. It was submitted that at the end of the probation period the Competent Authority in its opinion did not deem it appropriate to confirm the services of the petitioners. It was submitted that in the letter, the word conduct does not amount to misconduct but is to be taken in its general connotation. It was also pointed out that the Managing Director derives his authority to refuse confirmation or terminate as the referred aspects have been delegated to him by the Board of the Authority. It was submitted that in exercise of the powers delegated to him, the Managing Director after evaluating all the cases and keeping in account the conducts and performances of the petitioners decided not to confirm them. Learned counsel further contended that an employee, who is on probation has no vested right to be confirmed and the matter vests with the Competent Authority to confirm the services or otherwise. It was

further submitted that even otherwise, there is no violation of law or principles of natural justice as there is no stigma attached, hence the petitioners were not entitled to an opportunity of hearing. Reliance was placed on cases reported as "*University of the Punjab, Lahore and 2 others Vs. Ch. Safdar Ali*" (**1992 SCMR 1093**), "*Rehan Saeed Khan and others Vs. Federation of Pakistan and others*" [**2001 PLC (C.S.) 1275**], "*Dr. Masood ur Rauf Vs. University of the Punjab through Vice-Chancellor, Lahore*" [**2017 PLC (C.S.) 250**], "*Dr. Muhammad Akram Vs. Vice-Chancellor and others*" [**1996 PLC (C.S.) 220**], "*Syed Tahir Hussain Shirazi Vs. The Government of the Punjab and others*" (**1990 SCMR 1510**), "*Muhammad Samiullah Ghauri Vs. Secretary, Population Welfare Division, Islamabad and others*" (**1991 SCMR 382**), "*Ch. Muhammad Hussain Naqshabandi Vs. Government of the Punjab and others*" (**2004 SCMR 44**), "*Shakeel Ahmed Shaikh Vs. Aga Khan University through Board of Governor and another*" [**2017 PLC (C.S.) 1080**], "*Pakistan Airlines Pilot Association Vs. Pakistan International Airline*" (**2019 SCMR 278**), "*Muhammad Siddiq Javaid Chaudhry Vs. The Government of West Pakistan*" (**PLD 1974 SC 393**), "*Ali Gohar Vs. Managing Director, Sui Northern Gas Pipe Lines Limited, Lahore and 2 others*" [**1998 PLC (C.S.) 828**], "*Asif Majeed Paul and another Vs. Ministry of Finance and another*" [**2019 PLC (C.S.) 907**], "*Dr. Mir Alam Jan Vs. Dr. Muhammad Shahzad and others*" (**2008 SCMR 960**), "*Dr. Khalil ur Rehman Vs. Government of Punjab through Chief*

Secretary, Punjab and 5 others" [2015 PLC (C.S.) 793], "Muhammad Abbasi Vs. SHO Bhara Kahu and 7 others" (PLD 2010 SC 969), "Daleel Khan Jatoi and 6 others Vs. Shaheed Benazir Bhutto University through Vice-Chancellor and 2 others" [2017 PLC (C.S.) Note 34], "Shakeel Ahmed Shaikh Vs. Aga Khan University through Board of Governors and another" [2017 PLC (C.S.) 1080] and "Dr. Masood ur Rauf Vs. University of the Punjab through Vice-Chancellor, Lahore" [2017 PLC (C.S.) 250].

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

6. As noted above, the petitioners were employees of Public Procurement Regulatory Authority (PPRA) and were appointed on probation for a period of one year in May, 2018. After lapse of one year, the services of the petitioners were terminated, vide impugned letters dated 17.05.2019 on the basis that their performances are not satisfactory and because of their conduct. The terms and conditions of the service of the petitioners are regulated under Public Procurement Regulatory Authority (PPRA) Service Regulations, 2017, which have been notified in the official gazette of Pakistan through SRO No.79(I)2017, dated 06.02.2017. The referred Regulations were framed under Section 18(2) read with Section 27 of Public

Procurement Regulatory Authority Ordinance, 2002. Section 18(2) provides for framing of regulations prescribing the procedure for appointment of the officers, servants, advisors, consultants and experts and the other terms and conditions of their service, whereas Regulation 27 generally empowers the authority to make regulations which are not inconsistent with the provisions of PPRA Ordinance, 2002.

7. The question whether or not the service Regulations of PPRA are statutory; the benchmark created through decisions of the Hon'ble Supreme Court of Pakistan is whether the rules/regulations are for internal regulation or working or with respect to the external dealings of the body. In this behalf, the Hon'ble Supreme Court of Pakistan in "*University of the Punjab, Lahore and 2 others Vs. Ch. Safdar Ali*" (**1992 SCMR 1093**) held that where the Rules, Regulations and Instructions which were devised for internal use by any statutory body would be non-statutory and the violation thereof would not normally be forced through Constitutional Petition. The latest pronouncement of the Hon'ble Supreme Court of Pakistan on the subject is "*Pakistan Defence Officers Housing Authority Vs. Mrs. Itrat Sajjad Khan and others*" (**2017 SCMR 2010**), where the same test was reiterated in the following terms:-

"15. No doubt the employees of statutory corporations in absence of violation of law or any statutory rules of service cannot press into service constitutional jurisdiction of the High Court and after we have come to the conclusion that the service rules framed by the

appellant were not statutory but for their internal guidance and, therefore, their enforcement through writ jurisdiction does not appear to be in consonance with the law settled by this Court. The directions imparted through the impugned judgment by the High Court to initiate proceedings against the respondent in terms of Removal from Service (Special Powers) Ordinance, 2000 after its repeal in the year 2010 vide Removal from Service (Special Powers) (Repeal) Act, 2010 also appear to be result of poor assistance. However, the question which escaped the attention of the High Court and needs our consideration is as to whether Rule 8(b)(1) of the Service Rules framed by the appellant in 2008 for their employees which authorizes the Administrator to dispense with the services of an employee by giving him one month's notice or a month's pay in lieu thereof without assigning any reason or providing an opportunity of hearing is violative of the principle of natural justice, which always has been treated as violation of law. The said rule further appears to be against the principles of public policy which requires the public functionaries to maintain transparency and to exercise their powers in good faith in the public interest and not on the basis of personal likes or dislikes or on the basis of whims and fancies and, therefore, it needs to be examined as to whether such rule could be allowed to be retained in the service rules (though non-statutory) of the appellant a statutory body. Rule 8 of the Service Rules 2008 of the appellant is reproduced below for the sake of convenience:-

"8. Termination/Resignation/Dismissal from Service

a. Termination / Dismissal

(1) Termination. Termination of service of an employee under the clause of 'Misconduct' as per DHA Rules Chapter IV. An employee terminated due to absence from duty under this clause will be entitled for gratuity and other emoluments under normal rules.

(2) Dismissal. In case an employee commits an offence of a serious nature as determined by the competent authority, he/she will be dismissed under relevant DHA Rules. Such an employee will not be eligible for gratuity and other benefits except provident fund (his/her share only).

b. Rules for Governing Termination/Dismissal / Resignation

(1) The Administrator may dispense with the services of an employee by giving him one month's notice or one month's pay in lieu thereof Similarly, an employee may resign from service by giving one month's notice or by paying one month's pay in lieu thereof.

(2) Withdrawal of an Employee's Resignation

(a) Before acceptance by the Administrator - the resignation shall be deemed to have been withdrawn.

(b) After its acceptance, but before the employee is relieved - the Administrator may allow/disallow withdrawal based on the merits of the case.

(3) An un-confirmed/temporary, daily wager, trainee, part time employee and visiting faculty shall not be entitled to any notice or salary in lieu thereof on termination of service. Similarly, such employee may resign without any advance notice.

(4) A regular employee shall not be removed or dismissed from service on disciplinary grounds without a prior 'show cause' notice.

(5) An employee who absents himself/herself without leave or overstays leave, he/she will be served with three notices each after every ten days to rejoin duty. In case of failure to report for duty, his/her services will be dispensed with under 'Misconduct'.

(6) In case of retrenchment/closure of a Section/Department/ Project/work area, services of an employee can be dispensed with being surplus/no longer required.”

On the basis of the above judgments of the august Apex Court, it seems that the service regulations of PPRA are non-statutory, however, the mere fact that the service regulations are non-statutory does not *per se* defeat the instant petitions inasmuch as the Hon'ble Supreme Court of Pakistan in case reported as

"Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed" **(2013 SCMR 1707)** observed that even if where the rules of service are non-statutory any violation of law or breach of principles of natural justice would make the petition under Article 199 of the Constitution maintainable.

8. The services of the petitioners were not confirmed and they were terminated allegedly under Regulation 16(4) of Public Procurement Regulatory Authority (PPRA) Service Regulations, 2017. Under the referred Regulation where in the opinion of the competent authority, the performance or conduct of a person on probation has been unsatisfactory or where he/she has failed to pass such examination or test or to complete successfully any mandatory course or training, the services of the employee shall be terminated. The test provided for confirmation or otherwise of probation period is the satisfactory performance and the conduct. It seems that the Authority issuing the letter has strictly followed the terms as provided in Regulation 16(4) *ibid*. It is the case of the respondents that under 2002 Ordinance, Public Procurement Regulatory Authority is competent to terminate or confirm the services of any employee on probation. In this behalf, reliance was placed on Section 6 of the said Ordinance read with Section 18 *ibid*. Under Section 20, the Authority may delegate its functions or powers to the Managing Director, which accordingly was done by the Board of the Authority in the minutes of 37th meeting of the Public

Procurement Regulatory Authority Board held on 01.04.2019. The decision of the Board in this regards reads as follow:-

“The Board delegated all the powers to Managing Director regarding decision on the appointment related issues as well as of probation including confirmation, extension of probation and termination of service, relevant Court matters, as the case may be, and authorized him to decide accordingly being Competent Authority and the only full time Member of the PPRA Board.”

9. The Managing Director pursuant to the above authority delegated to him took the decision of termination. One of the grounds of the petitioners is that the decision was taken without application of mind and the discretion was exercised in an arbitrary and whimsical manner. In response, learned counsel for respondents drew the attention of the Court towards the internal note sheet of the Authority, whereby the case of the various employees of respondents was taken up regarding probation, extension and termination of probation. The bare perusal of the note sheet shows that the entire background of the appointment of the petitioners alongwith other employees and their competence was taken into account including the observations made by the Division Bench of this Court in ICA No.258 of 2018 as well as ICA No.259 of 2018 and on the basis thereof it was proposed and decided that the petitioners' services would be terminated because of their unsatisfactory performance and there was no room for improvement. The said decision was taken on 17.05.2019 and was communicated though erroneously

adding the concept of conduct on 21.05.2019. Learned counsel for the respondents placed on record minutes of 39th meeting of the Public Procurement Regulatory Authority Board held on 25.11.2019, whereby the decision of the Managing Director to terminate the services of the petitioners was ratified.

10. Admittedly, the petitioners were on probation. The rights of an employee on probation were dealt in detail in the judgment of the Hon'ble Supreme Court of Pakistan reported as "*Muhammad Siddiq Javaid Chaudhry Vs. The Government of West Pakistan*" (**PLD 1974 SC 393**):-

"It appears to me that the real question for decision in this case is what is the position of a probationer in service. This aspect of the question was considered in the cases of Federation of Pakistan v. Riaz Ali Khan (P L D 1958 Lah. 22), Tasnim Ali Mir v. The Federation of Pakistan (P L D 1959 Kar. 62), Riaz Ali Khan v. Pakistan (P L D 1967 Lah. 491) and Mohammad Afzal Khan v. Superintendent of Police, Montgomery and others. In the former two decisions, it was held that in the case of a probationer the question as to whether he is or is not to be employed has not yet been finally decided whereas in the case of a temporary employee the question of employment has certainly been decided. Only he is not a permanent employee and the period of his employment is regulated by his agreement. It was further held that the question of removal or dismissal arises only when the question whether a person is to be employed has been finally decided and secondly it is only where the order of discharge by itself finds a person to be blames worthy or deficient that it can be regarded as removal or dismissal. To such a removal or dismissal a stigma attaches, but if all that has happened is that the real reason of discharge is the unsatisfactory work of an employee but the Government does not proceed on the basis that he is guilty or deficient and simply terminates his services in accordance with the terms of his

agreement of service, that would not be a removal. Contrary view was taken in the latter two decisions which have been cited earlier. The position of a probationer was also considered in Mohammad Naseem Ahmad and others v. Miss Azra Feroze Bakht and others (P L D 1968 S C 37). Hamood-ur-Rahman, J. one of us (as he then was), has, in this connection, observed as under:-

"Where conditions are prescribed for confirmation an officer remains a "probationer" until he has fulfilled those conditions and cannot be treated as a person substantively appointed to a permanent post. Nor has he any right to be confirmed from the date of his original appointment, no matter when he qualifies for confirmation. Although in the normal course, if there is nothing against the officer concerned, the general rule followed appears to be that he is confirmed from the date of his original appointment provided a permanent post is available. But it would appear from the Establishment Manual, Government of Pakistan, Volume I, that this is in the discretion of Government and that it has on occasions laid down a different rule or procedure."

It was further observed as under:-

"There is no rule or practice of general application with regard to confirmations and the Government has reserved to itself the right to determine how, when, in what manner and with what effect from what date confirmations will be made. There is also no unreasonableness in this, for it is only the employer who can say when a probationer is to be considered to have become fit for permanent retention according to his requirements and until then the probationer can have no lien to or right of retention in the service. But all other conditions being fulfilled confirmation can and does in most cases relate back to the date of original induction into service."

In the light of the above discussion, it appears to me that a probationer is a person who is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service. I agree with the view expressed in Mohammad Afzal

Khan v. The Superintendent of Police, Montgomery and Riaz Ali Khan v. Pakistan, that a person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice. In my opinion, if the service of a probationer is terminated on the ground of unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in terms of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a stigma in his favour. In the last mentioned case, the probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and will be entitled to a show-cause notice and a proper enquiry against him must be made.

Taking now the facts of each case, it will be noticed that the authorities concerned in the case of Mohammad Siddiq Javaid Chaudhry and Mumtaz Hussain Malik appellants, terminated their services on the ground of unsatisfactory work and conduct. The record shows that there were allegations against them of corruption. In these circumstances, the order terminating their services amounts to removal and dismissal within the meaning of Article 177 and they were entitled to a show-cause notice under Article 177 of the Constitution of Pakistan, 1962.

Similarly, in the case of Abdur Rashid Abbasi, appellant, the allegations of corruption were made against him and an enquiry was also held but instead of completing the enquiry, his services were terminated on the ground that he is not likely to become a good officer. It was also mentioned in the order that there' were complaints of corruption against him. In these circumstances, the order terminating his services amounts to removal and dismissal and he was entitled to the protection of Article 177 of the Constitution of 1962."

The crux of the above judgment is that a probationer is not entitled to any personal hearing or an opportunity in compliance

of natural justice where his work is found to be unsatisfactory and the competent authority decides to dispense with his services, however, where there is a charge of misconduct or any other similar allegation carrying a stigma the probationer is to be allowed a personal hearing. Similar view was expressed by the Hon'ble Sindh High Court in judgment reported as "*Daleel Khan Jatoi and 6 others Vs. Shaheed Benazir Bhutto University through Vice-Chancellor and 2 others*" [**2017 PLC (C.S.) Note 34**] and decision of the Hon'ble Lahore High Court reported as "*Dr. Masood ur Rauf Vs. University of the Punjab through Vice-Chancellor, Lahore*" [**2017 PLC (C.S.) 250**]. The fact that whether the performances of the petitioners were satisfactory or otherwise fall within the exclusive domain of the employer, this Court cannot sit over the decision and render its judgment regarding the satisfactory performance of employee of any organization. In this regard, the case law relied upon by learned counsel for the respondents is instructive. Reliance is placed on "*Dr. Mir Alam Jan Vs. Dr. Muhammad Shahzad and others*" (**2008 SCMR 960**) and "*Dr. Khalil ur Rehman Vs. Government of Punjab through Chief Secretary, Punjab and 5 others*" [**2015 PLC (C.S.) 793**].

11. In view of the above facts and the law, the decision of the Competent Authority not to confirm the services of the petitioners and terminate the same does not amount to any stigma. The word conduct mentioned in the impugned letters is

not to be taken as misconduct, however, since it is likely to be misconstrued and hamper the possibility of future prospects of employment of the petitioners, the Competent Authority may issue revised letters to the petitioners of the same date clarifying the position. In so far as Writ Petition No.4176 of 2018 is concerned, as noted above, Ms. Saima Tasneem filed the same, seeking various reliefs against her employer, since her services stand terminated, the reliefs sought have become infructuous.

12. For what has been stated above, Writ Petition No.2088 of 2019 and Writ Petition No.2089 of 2019 are without merit, hence **dismissed**, however, Writ Petition No.4176 of 2018 is **disposed of** as having become infructuous.

(AAMER FAROOQ)
JUDGE

*M. Zaheer Janjua**

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