

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

I.C.A No.71/2020.

Saima Tasneem	Vs	Public Procurement Regulatory Authority (PPRA) etc.
Appellant by:		Mr. Ali Nawaz Kharal & Hafiz Munawar Iqbal, Advocates.
Respondents by:		Hafiz Arfat Ahmad Chaudhry & Mr. Tariq Zaman Chaudhry, Advocates.

I.C.A No.72/2020.

Saima Tasneem	Vs	Public Procurement Regulatory Authority (PPRA) etc.
Appellant by:		Mr. Ali Nawaz Kharal & Hafiz Munawar Iqbal, Advocates.
Respondents by:		Hafiz Arfat Ahmad Chaudhry & Mr. Tariq Zaman Chaudhry, Advocates.

I.C.A No.130/2020.

Irfan Rafique	Vs	Public Procurement Regulatory Authority (PPRA) etc.
Appellant by:		Mr. Ali Nawaz Kharal & Hafiz Munawar Iqbal, Advocates.
Respondents by:		Hafiz Arfat Ahmad Chaudhry & Mr. Tariq Zaman Chaudhry, Advocates.
Date of Hearing:		<u>30.06.2020.</u>

MOHSIN AKHTAR KAYANI, J:- Through this single judgment, we intend to decide the above titled three ICAs having common question of law and facts arisen out of the same judgment.

2. Through these ICAs, the appellants have assailed the judgment dated 18.02.2020, passed by learned Single Judge in Chambers, whereby writ petitions No.2088, 2089/2019 & 4176/2018 have been dismissed.

3. In ICA No.130/2020, appellant Irfan Rafique claims that he was appointed pursuant to advertisement published in the newspaper on 14.10.2017 after passing

all the relevant test and interview conducted by the Public Procurement Regulatory Authority for the post of Director General (IT) and he has taken this position on the basis of Court orders in previous round of proceedings, whereby this Court passed judgment in his favour and after his appointment as Director General (IT & Research) he was on probation and his termination order dated 17.05.2019 is contrary to law, which has been assailed by him before learned Single Judge in Chambers mainly on the ground that the respondents department has not evaluated his performance nor there is any structured concept of evaluated performance and conduct as such right in terms of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 has been violated. That learned Single Judge in Chambers has not appreciated legal proposition under the law and dismissed the writ petition mainly on the ground that service of an employee cannot be dispensed with on probation period but the respondents have failed to produce a single document, whereby performance has been evaluated in structured manner.

4. In ICA No.71/2020 appellant Saima Tasneem, who was appointed as Director General (HR) in Public Procurement Regulatory Authority has also assailed her termination order dated 17.05.2019 by the respondents authority in writ petition No.2088/2019 on the similar grounds as well as on the grounds that respondents authority has no right to pass any termination order, even their appointing authority is PPRA Board as such order impugned in the writ petition was passed by Managing Director PPRA, who was not authorized under the law to pass such order; that all these questions have not been dealt by learned Single Judge in Chambers while deciding the writ petition.

5. Learned counsel for the appellants contend that over all termination proceedings and orders reflect impression of misconduct and stigmatized the appellant for future prospect and as such it is mandatory to give show cause notice and right of hearing before passing the order, even though the appellant was on probation; that while gauging the performance of probation, the competent authorities are not bestowed with arbitrary and unbridled powers to exercise

discretion according to whims and without any structure; that no ACRs were framed nor any criteria was formulated to evaluate performance of the appellants despite the fact that regulation 31 of the PPRA Service Regulations provides that annual assessment report of the employee shall be prepared for three months or more but no such report was prepared or produced before learned Single Judge in Chambers by the respondents authority, even the procedure provided in Regulation 98 of the PPRA Service Regulations for determination of efficiency of employee has been violated; that learned Single Judge in Chambers has not given any reason as to why conduct and misconduct are to be construed differently in case of the appellants; that as per PPRA Service Regulations, the PPRA Board is authority to make appointments on authorized posts; that termination of service of an employee especially of Director General position, approval of PPRA Board is required and MD PPRA has no authority to pass any order under the law.

6. Conversely, learned counsel for the PPRA alongwith AAG contend that the appellants have invoked writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, which was not maintainable as Service Regulations of PPRA are non-statutory and the appellants were governed under the principle of master and servant; that in terms of section 8(7) of PPRA Ordinance, 2002, MD has powers and responsibility to exercise administrative control and he is also vested with these powers, which have been delegated by PPRA Board; that competent authority of the PPRA has evaluated service of the appellants, which were not up to the mark and their services have been terminated in terms of Regulation 16(4) of PPRA Service Regulations, which cannot be called in question before any Court and matter of termination was again placed before PPRA Board in 39 meeting, whereby the Board has unanimously given their decision against the appellants on 25.11.2019, whereas the Board was headed by Secretary Finance, being Chairman, Secretary M/o Communication, Secretary M/o Energy, Secretary M/o Water Resources as well as Managing Director PPRA as such there is nothing left in favour of the appellants to claim any right against their non-performance.

7. We have heard the arguments and perused the record.

8. Perusal of the record reveals that the appellants are aggrieved with judgment dated 18.02.2020 passed by learned Single Judge in Chambers, whereby the appellants have assailed their termination letters dated 17.05.2019, which were issued by the respondents PPRA in terms of Regulation 16(4) of the PPRA Service Regulations read with clause iii of para 1 of the offer of appointment dated 21.05.2018. Appellant Irfan Rafique was appointed as Director General (IT & Research) PPRA, whereas appellant Saima Tasneem was appointed as Director General (HR) PPRA. The primary question raised before this Court is status of present appellants, who were appointed by PPRA Authorities after due process and they were on probation, which has not been denied by both the sides.

9. The appellants have raised question regarding concept of performance evaluation, whereby they claim that their performance has not been evaluated in terms of Regulation 31 of the PPRA Service Regulations 2017, which provides mechanism for annual assessment to evaluate performance and conduct and as such not a single annual assessment report of the appellant has been brought on the record despite the fact that they are permanent employee though they are on probation. In order to deal with this question we have gone through PPRA Ordinance, 2002 to evaluate status of the present appellants as to whether they are permanent employees of the respondents/PPRA or otherwise. Section 18 deals with appointment of officers and staff, whereby section 18(2) provides the powers to the authority to prescribe the procedure for appointment of its officers etc and the terms and conditions of their service. The respondents have exercised authority while exercising powers in terms of section 18(2) read with section 27 of the PPRA Ordinance promulgated regulations called (PPRA) Service Regulations 2017 notified on 06.02.2017, which provide the concept of employees in terms of regulation 1(3) whereby "*regulation shall apply to all employees appointed on regular basis by the authority*" and term employee has been defined in section 2(8) of the regulations means "*regular employee of*

PPRA” and other relevant provisions of regulations are sections 4, 5, 7, 13 & 16, which are reproduced as under:-

“4. TERMS AND CONDITIONS OF SERVICE

(1) *Terms and conditions of an employee shall be as laid down in these Regulations or in such subsidiary orders and instructions, which may be issued from time to time with the approval of the Authority.*

(2) *In all matters not expressly provided for in these Regulations, the decisions taken by the Authority in the matter shall be applicable to the employees.*

5. EMPLOYMENT TO BE FOR WHOLE TIME.

Unless otherwise provided, the employee shall be considered a whole time employee and he may be employed in any manner required by the Authority with or without any claim for additional remuneration.

7. INITIAL APPOINTMENT

Appointments to various posts of the cadre shall be made by the Competent Authority as described in these Regulations. The appointments will generally be made at the minimum of the various pay scales. The Authority may however grant advance increments on initial appointment to deserving candidates possessing specific qualifications and/or relevant experience required for the job.

(1)

(2)

(3)

13. COMPETENT AUTHORITY TO MAKE APPOINTMENT

The authority competent to make appointment to various posts shall be the PPRA Board.

16. PROBATION, EXTENSION & TERMINATION OF PROBATION

(1) *A person appointed to a regular post by initial appointment, shall be on probation for a period of one year.*

(2) *The period of probation may be extended for a further period of one year before the expiry of the initial probation period, if the performance of the incumbent is not satisfactory during the initial probation period.*

(3) *On successful completion of the period of probation or otherwise, which ever the case may be, the employee will be informed accordingly.*

(4) *Where, in the opinion of the competent authority, 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.*

(5) *An employee who satisfactorily completes the probation period, shall be eligible for confirmation.”*

10. While considering the above provisions, it is clearly established that PPRA has different kinds of employees in their organization and the employees in

terms of section 2(8) means a regular employee of PPRA, however, services of the appellants have been considered regular, if they successfully completed their probation in terms of clause 3 of their offer of appointment as section of the regulations clearly spells out that terms and conditions of shall be governed under these regulations or in subsidiary orders and instructions, which may be issued from time to time with the approval of the authority and there is no denial to the proposition that the appellants were on probation and their working and performance has been evaluated by the authority, which is defined in regulation 2(3), which means the Managing Director. The appellants have raised serious dispute qua the powers of MD in second limb of their arguments and contend that the appellants were appointed by PPRA Board, who is appointing authority in terms of section 2(1) of Service Regulations as such there is no denial to this view that appointing authority of the appellant is PPRA Board, when confronted, the respondents side has placed the minutes of 37 & 39 PPRA Board Meeting in which question of termination of the appellants was considered by the PPRA Board. The original record of Board Meeting held on 21.04.2019 spells out that the Board in its 37 meeting has extended its powers to MD PPRA to deal with the cases of the probation of the employees of the authority. The relevant extract of the board meeting are as under:-

“Decision

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.”

11. On the basis of above mentioned approval given by the Board, MD has evaluated performance of the appellants and exercised his authority and issued the termination letters before completion of probation period of the appellants but on the other side the appointing authority in terms of regulation 2(1) is Board, which requires separate approval, however, the respondents side has placed original record of 39 PPRA Board Meeting held on 21.11.2019, in which probation of

these two appellants have been considered including their termination at agenda item No.5. The relevant extracts are reproduced as under:-

“20. MD PPRA presented the Agenda Item and informed the Board that the recruitment process initiated through OTS in 2017. The recruitment process was stopped due to the observation of a former MD. The selected candidates joined after being granted relief by the Honourable Islamabad High Court. Accordingly appointment letters have been issued to 96 selected candidates. MD PPRA also apprised the Board that PPRA will scrutinize the credentials of newly recruited employees as per codal formalities of PPRA Service Regulations. The PPRA Board in 37th meeting held on 1st April 2019 has already delegated powers to MD PPRA to decide appointment related issues as well as of probation including confirmation, extension of probation and termination of service, court matters etc. of the newly recruited employees.

21. MD PPRA highlighted that the services of two (02) probationary officers i.e. DG (HR) and DG (IT&Research) were terminated due to unsatisfactory performance and other organizational issues. However, both officers have been granted interim relief by Honorable Islamabad High Court in W.P. No.2088/2019 and 2089/2019. MD PPRA apprised that considering the sensitive nature of the legal service matter, the Authority has hired services of a professional lawyer to defend the aforementioned Writ Petitions on behalf of the Authority. The next date of hearing of the said writ petitions is 28th November, 2019.

Decision

The Board appreciated the efforts of MD PPRA and observed that the court matters of the Authority shall be fully defended in court of law. The Board ratified all the decisions of MD PPRA regarding appointment related issues as well as of probation including confirmation, extension of probation and termination of services, court matters etc. of the newly recruited employees.”

12. The above referred Board minutes spell out that five secretaries of Federal Government, who are members of the Board in their meeting held on 25.11.2019 have considered entire matter of these two appellants, whose cases have been presented to the Board and as such the Board has approved the order of MD PPRA and ratified the decision, which lefts nothing in favour of the appellants at this stage.

13. In the light of above discussion, it is settled law that terms and conditions of service of an employee, which are not governed by statutory rules/regulations Constitutional remedy in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is barred. Reliance is placed upon **1992 SCMR 1093**

(University of the Punjab, Lahore and 2 others vs. Ch. Safdar Ali) & 2017 PLC (C.S) 250 (Dr. Masood ur Rauf vs. University of the Punjab through Vice Chancellor, Lahore.

14. Similarly, the status of employee on probation in service has also been settled in **1996 PLC (C.S) 220 (Dr. Muhammad Akram vs. Vice-Chancellor and others)** and service of the employee can be terminated without any notice during initial or extended period of his probation and even the authority was not obliged to set down reasons showing unsatisfactory work of the employees.

15. The orders of the competent authority against whom no grudge or malice was alleged or order of termination of service contains no stigma and required no show cause procedure. Reliance is placed upon **1990 SCMR 1510 (Syed Tahir Hussain Shirazi vs. The Government of the Punjab and others), 1991 SCMR 382 (Muhammad Samiullah Ghauri vs. Secretary, Population Welfare Division, Islamabad and others) & 2000 SCMR 44 (Ch Muhammad Hussain Naqshabandi vs. Government of the Punjab and others)**. The probation is process of testing or observing the character abilities of a person, who is new to a role or job. Reliance is placed upon **2017 PLC (C.S) 1080 (Shakeel Ahmed Shaikh vs. Aga Khan University and another)**. It is also settled by Apex Court that termination of probationer is not dismissal or removal from the service but within domain of contract or terms of the offer letter as the probationer is a person, who is taken into service subject to condition that he has to demonstrate that he is fit person to retain in service. Reliance is placed upon **PLD 1974 SC 393 (Muhammad Siddiq Javaid Chaudhry vs. The Government of West Pakistan)**. Hence, the appellants who are governed under non-statutory rules/regulations were to be treated under the principle of master and servant in terms of **2019 PLD (C.S) 907 (Asif Majeed Paul and another vs. Ministry of Finance and another) & 1998 PLC(C.S) 828 (Ali Gohar vs. Managing Director, Sui Northern Gas Pipe Lines Limited, Lahore and 2 others)**.

15. While considering the above factual and legal aspects, there is no denial that the appellants were on probation of period of one year and their confirmation

of service is based upon successful completion of period of their probation, which was to be evaluated by the competent authority and if authority is of the opinion that performance and conduct of the person on probation is unsatisfactory or he or she has failed to pass the test or training, service shall be terminated in terms of regulation 16 of the PPRA Service Regulations. Therefore, the appellants have failed to demonstrate any of their claim at the touch stone of these rules, which are admittedly non-statutory and learned Single Judge in Chambers has rightly dealt with the proposition while relying upon 2017 SCMR 2010 (Pakistan Defence Officers Housing Authority vs. Mrs. Itrar Sajjad Khan and others) and has rightly appreciated minutes of 37 & 39 Board meetings, whereas question of appellants' service has been discussed and settled, even learned Single Judge in Chambers has rightly held that this Court will not sit over the decision of employer/PPRA and rendered judgment regarding the satisfactory performance of employee of PPRA Organization, which is beyond the mandate of the Court. Reliance is placed upon 2008 SCMR 860 (Dr. Mir Alam Jan vs. Dr. Muhammad Shahzad and others) & 2015 PLC (CS) 793 (Dr. Khalil ur Rehman vs. Government of Punjab through Chief Secretary, Punjab and 5 others), hence, no case of the appellants is made out from any angle.

16. In view of above discussion, all the above titled ICAs are misconceived and the same are hereby dismissed.

~~(GHULAM AZAM QAMBRANI)/~~
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 13th July 2020

~~JUDGE~~

JUDGE