

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

W.P No.607/2019.

Murad Ali Afridi and others **Vs.** **Federation of Pakistan
and others.**

Petitioners by: Mirza Waqas Qayyum, Advocate.

Respondent No.1 by: Barrister Mumtaz Ali, AAG.

Respondents No.2 to 4 by: Syed Naeem Bokhari and Mr. Kashif
Nawaz Siddiqi, Advocates.

Date of Decision: **04.11.2019.**

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the
petitioners have prayed for following relief:-

“In view of above-mentioned facts and circumstances, it is respectfully prayed that the instant writ petition may graciously be accepted and the impugned orders dated 17-12-2018, 11-01-2019, 10-12-2018, 11-01-2019, 11-12-2018, 17-12-2018 and 11-12-2018 may kindly be set aside and consequently, the petitioners may kindly be reinstated in service with all consequential back benefits, and respondent No.3 may kindly be called upon that under what authority of law, they are passing the termination orders of the employees and running the affairs of the Gun and Country Club without any authorization and without lawful authority, in the interest of justice.

It is further prayed that during the pendency of the writ petition, the impugned termination orders dated 17-12-2018, 11-01-2019, 10-12-2018, 11-01-2019, 11-12-2018, 17-12-2018 and 11-12-2018 may kindly be suspended and the petitioners may kindly be allowed to continue performing their duties in the Gun and Country Club in the interest of justice.

Any other relief, which this Hon'ble Court deems fit and appropriate, may also be awarded.”

2. Brief facts referred in the instant writ petition are that the petitioners are former employees of Gun and Country Club, who were appointed by the said Club under contract on different positions as Assistant Secretary, Secretary, Manager Administration, Manager Finance, Assistant Manager Maintenance, Manager Food & Beverages and Manager on duty, whereas Suo Moto action was initiated by Apex Court with reference to allotment of the land to the Club through Suo Moto Case No.14/2011 and subsequently the Club was handed over to Pakistan Sports Board,

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whereby the Management Committee was also notified to run affairs of the Club, report was requisitioned from the Committee and the same was submitted on 27.08.2018, whereby it has been referred in para-9(b) that “*all the employees of Club be retained*” but despite that fact all the petitioners have been given termination letters by un-authorized persons and even without any legal authority.

3. Learned counsel for the petitioners contends that the petitioner have lawfully been appointed by the Club after due process of law and the respondents have no authority to terminate services of the petitioners without due course of law, although rules of the Club are non-statutory but it is settled that if any fundamental right is violated in such eventuality writ petition is competent. In this regard learned counsel for the petitioner has relied upon *2013 SCMR 1707 (Pakistan Defence Officers’ Housing Authority vs. Lt. Col. Syed Jawaid Ahmed)* and *2016 SCMR 2146 (Muhammad Rafi vs. Federation of Pakistan)*. Learned counsel for the petitioners further contends that the respondents, who are presently holding office of management of the Club are not authorized by law as Apex Court has not acknowledged their status and even they have not been notified, therefore, all actions taken by the respondents unauthorized committee are illegal especially when the Apex Court in the order dated 28.08.2018 disposed of the matter by handing over the management of the Club to the Ministry of Inter Provincial Coordination; that the present management committee has no legal authority nor the same has been recognized under the law as such the petitioners are claiming their rights on the basis of judgment passed by Apex Court in terms of Article 187(2) of the Constitution of Islamic Republic of Pakistan, 1973.

4. Conversely, learned counsel for respondents No.2 & 3 contends that Apex Court appointed and notified new management committee vide order dated 13.11.2018 through CMA No.9421/2018 in Suo Moto Case No.14/2011 and the same was further directed to continue its working till 31.12.2019 vide order dated 15.01.2019 passed in CMA No.11230/2018 and as such the Committee is authorized to pass any order, which is in best interest of the Club; that present petitioners have no legal status to file the instant writ petition as their relationship with the Club is governed under the contract, which itself is based upon master and

servant relationship and instant writ petition is not maintainable and if the petitioners have any grievance they can agitate the same before the Court of plenary jurisdiction.

5. Learned AAG contends that Pakistan Sports Board has filed separate comments, in which it has been acknowledged that new Committee has been constituted by the Apex Court and the termination orders have been passed by the said Committee in the better interest of the Club, which have been based upon performance evaluation review; that decision has been made by the majority members of the Committee and as such the writ is not competent.

6. I have heard the arguments and perused the record.

7. Perusal of the record reveals that the petitioners are mainly aggrieved with their termination letters issued by the respondents No.3 &4, whereby services of the petitioners from the Club on different positions i.e. Assistant Secretary, Secretary, Manager Administration, Manager Finance, Assistant Manager Maintenance, Manager Food & Beverages and Manager on duty have been terminated, which were otherwise extended to the petitioners on the basis of their contracts.

8. The respondents side has agitated ground of maintainability of instant writ petition, therefore, it is necessary to address the question of maintainability at first instance, whereby contract of employment executed between the petitioners and the Club has been considered with able assistance of learned counsel for the parties. The contract is of standard pattern executed between the parties, which contains contract period as well as termination clause and there is no denial to the proposition that all the petitioners are contract employees of specific term, however, certain reaffirmation of terms of employment contract have also been referred on record, which contains clause 6 with different stance that if a specific term is not provided the termination of the contract shall be in accordance with rules of the Club till the age of 60 years.

9. I have also gone through the manual and the standard employment contract of the Club, which contains termination clause in the following manner:-

"6. All employment contracts shall remain in effect until such time; a) if a specific term is provided therein upon the expiry of such term, b) if a specific term is either provided or not provided therein upon termination in accordance with the rules

of the GCC and specifically the policies, rules and terms and conditions as applicable to employment contracts of GCC employees, and c) when you attain the age of 60 years at which time at the sole discretion of the GCC your employment contract may be extended for a fixed term not exceeding a period of one year and limited to a maximum of five such extension."

10. The above referred position leaves no room to conclude that the relationship of the petitioners with the Club is governed under contract, in which any party can terminate contract by giving one month notice and even otherwise the entire scenario discloses relationship of master and servant, even writ petition is not competent in contractual matters although learned counsel for the petitioners has relied upon **2013 SCMR 1707 (Pakistan Defence Officers' Housing Authority vs. Lt. Col. Syed Jawaid Ahmed)**, wherein it has been held that:-

"---Art. 199---Constitutional petition before High Court by an employee of a statutory body---Maintainability---Service matter---Violation of service rules or regulations framed by statutory bodies under the powers derived from statutes in absence of any adequate or efficacious remedy could be enforced through constitutional jurisdiction---Where conditions of service of employees of a statutory body were not regulated by rules/regulations framed under the statute but only by rules or instructions issued for its internal use, any violation thereof could not normally be enforced through constitutional jurisdiction and they would be governed by principle of "Master and Servant."

Learned counsel for the petitioners has also relied upon **2016 SCMR 2146 (Muhammad Rafi vs. Federation of Pakistan)**, wherein it has been held that:-

"---Art. 199---Non-statutory service regulations/rules---Constitutional petition before the High Court---Maintainability---Aggrieved person could invoke the constitutional jurisdiction of the High Court against a public authority if he satisfied that the act of the authority was violative of the service regulations even if they were non-statutory."

11. Besides the above referred position another important aspect, which has been time and again argued before this Court is authorization of present Management Committee of the Club. In order to resolve the issue, I have gone through various orders of the Apex Court as well as report produced by M/o Inter Provincial Coordination, whereby it has been observed that Suo Moto Case

No.14/2011 was taken up by the Apex Court regarding illegal allotment of the land worth billions of rupees by CDA to the Club at throwaway price.

12. During the course of hearing of the Apex Court, Committee was notified vide notification dated 18.07.2018 by the M/o Inter Provincial Coordination comprising of eight members, whereby the Secretary, M/o IPC has been notified as Chairman of the said Committee, who has been called by the Apex Court to verify different working and management of the Club and submit report. In response to the said direction a report was prepared in the light of orders dated 09.07.2018 on 27.08.2018 and submitted before the Apex Court with way forward in the following manner:-

"9. WAY FORWARD

- a) *The Gun and Country Club may be run as non commercial entity and as a not-for-profit organization to be registered as company under Section 42 of the Companies Act 2017. The income and the profits generated by the club may be utilized for promoting its charitable/useful objectives, development works and the payments of any profit, income, dividends or proceed to its members may be prohibited. The working of the company is subject to SECP rules, regulations and public disclosure requirements. Accountability and oversight mechanism can be used effectively to ensure transparency and efficient working.*
- b) *The Club is providing employment to 170 employees meaning thereby almost 1020 family members are being financially dependent upon the Club. There is also scope for further generation of employments for the needy and qualified persons. The Management Committee of the Club was of the view that all the employees of the Club be retained. However, there is a need to carry out the performance audit in order to increase the productivity and to reduce the administrative cost.*
- c) *Under the concept of Corporate Social Responsibility (CSR) the net income of the Club may be utilized to:-*
 - i) *Sustain shooting ranges and to promote sports.*
 - ii) *Provide medicines/financial support to the poor patients attending the Polyclinic Hospital, Islamabad.*
- d) *No funds will be required from the Government of Pakistan as the Club envisaged to be self sustained from its own resources.*
- e) *As per international practices, the sportsmen are provided all the facilities i.e. dining hall, swimming pools, fitness centre under one roof and the Club caters for the said needs.*

- f) *It may be mentioned that primarily shooting ranges for SAF Games were built in 2001 and subsequent structure of Gun & Country Club viz Health Club and dining area was built to facilitate the sportsmen in line with such international facilities. There are 6 shooting ranges (3 indoor and 3 outdoor) are part of the Gun and Country Club. Indoor facilities comprise of 10M, 25M & 50M shooting ranges while open ranges comprise of Big Bore Range, Steak Range Ground and Trap Ground which mainly covers a wide open area of the Club. The Restaurant, offices and health club hardly covers 4-5 Acres of total area of 33.273 Acres of Gun and Country Club.*
- g) *The Honourable Supreme Court of Pakistan is prayed that the CDA management may be directed to regularize the additional land over and above 145 acres leased out to PSB through its competent forum."*

13. After submission of the report, the matter was disposed of by the Apex Court vide order dated 28.08.2018 in the following manner:-

"Pursuant to our previous order, we have been apprised that as per the report submitted on behalf of the Management Committee of the Ministry of Inter-Provincial Coordination, the possession and management of the Gun & Country Club (Club) has been taken over by the concerned Ministry and a Committee has been constituted to run and manage the affairs of the Club. In view of the above, this matter has borne fruit and is accordingly disposed of. However, if Pakistan Sports Board requires some further land for its activities, it may apply to Capital Development Authority for the same which request shall be considered on its own merit."

14. The respondents (New Management Committee) of the Club filed C.M No.9421/2018 in Suo Moto Case No.14/2011, whereby details of Management Committee have been submitted to the following effect:-

S.No	Name of the Management Committee	Designation
1.	Mr. Khaqab Babar Director General (PSB)	Chairman
2.	Mr. Naeem Bokhari Advocate Supreme Court	Co-Chairman
3.	Mr. Mansoor Khan Dy. Director General (PSB)	Convener
4.	Syed Nayyar Abbass Rizvi Additional Attorney General	Member Coordination
5.	The Chairman, Capital Development Authority (CDA)	Member Coordination
6.	Mr. Naseem Ahmed	Member Maintenance
7.	Mr. Asif Jah	Member Finance
8.	Mrs. Aliya Agha	Member Admn
9.	Col (R) Haroon Islam	Member Shooting Area
10.	Dr. Umair Farrukh Raja	Member Food & Beverages
11.	Capt. (R) Babar Bernard Massey	Secretary of Gun & Country Club, Islamabad.

15. The above referred application was allowed by the Apex Court vide order dated 13.11.2018 in the following manner:-

“Having considered the contents of the application, the background of the matter and the earlier order dated 28.08.2018, we approve the proposed Committee mentioned at page 1-A of the instant application. The matter stands disposed of.”

16. Similarly, another CMA No.11230/2018 in Suo Moto Case No.14/2011 has been filed for extension of time of the working of the Committee and the same was allowed vide order dated 15.01.2019 with following order:-

“Having considered the contents of the application and also the best interest of the club, the term of the committee constituted by us is extended till 31.12.2019. The application is accordingly disposed of.”

17. The above referred orders of the Apex Court clearly spell out that after submission of the report by the Secretary, M/o Inter Provincial Coordination dated 27.08.2018, the matter has been regulated through orders of Apex Court, in which earlier order was passed by Chief Justice of Pakistan on 09.07.2018, whereby it was directed to Pakistan Sports Board to run affairs of the Club, which requires approval of the Court as such the present regime discussed above has prepared the long term plan, which is regularly to be submitted before Apex Court before the cut of date and all the orders of the Apex Court dated 28.08.2018, 13.11.2018 and 15.01.2019 are in continuation of the directions of the Supreme Court, who left no other meanings except that the present management committee referred in para-14 above is authorized committee to deal with the affairs of the Club. Even otherwise, this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot enter into mandate of Apex Court especially when Apex Court has passed direction in Suo Moto Case No.14/2011.

18. At last it has also been observed from the record that the petitioners have agitated similar matter in Civil Review Petition through CMA No.1588/2019, in which they have raised objections on the Committee constituted through CMA No.11230/2018 and explanation thereof but the said petition failed although the same was filed on 14.02.2019 and the instant writ petition was filed on 06.02.2019, hence, there is an active concealment on part of the petitioners, who have not

disclosed before the Apex Court that they have agitated similar matter before this Court through instant writ petition, hence, there is clear concealment on their part.

19. It is settled law that after insertion of section 2-A in Service Tribunals Act, 1973, the concept of master and servant has become alive and the employees of statutory corporation, whose terms and conditions are regulated by statutory rules fall within domain of section 2-A of the Act, however, any organization, department controlled by Federal Government having non-statutory rules of conditions of service of their employees would not fall under section 2-A of the Act rather such persons have remedy before Civil Court or if these employees fall within definition of worker and workman they have recourse to Labour Court. Reliance is placed upon **PLD 2006 Supreme Court 602 (Muhammad Mubeen-us-Salam vs. Federation of Pakistan and others).**

20. Similar view has also been highlighted in reported judgment **2013 SCMR 1383 (Abdul Wahab and others vs. HBL and others)** in the following manner:-

- (b) *Now attending to the other condition of the Article 184(3) (supra) with reference to the violation of the fundamental rights (if any) of the petitioners; there seems no room to disagree with the plea/legal position that the right to life of a person/citizen shall include the right to livelihood and right to livelihood, therefore cannot hang on to the fancies of individuals in authority; the employment is not a bounty from them (individuals in authority) nor can its survival be at their mercy¹. But at the same time it cannot be ignored and elided if a person, who is once taken into an employment by the State or any State Controlled institution, or even a private institution/individual has (such employee/person) a right in perpetuity (throughout his life time) to remain in service, and his services can never be dispensed with by his employer, even though it is so permissible in terms of the service rules (where statutory) by which he is governed, despite of his inefficiency, incapacity, misconduct etc. and compulsory retirement and more-so, where the employment is of contractual nature and with a private entity. Because such an action (termination etc.) shall be an infringement of right to life as envisaged by Article 9 of the Constitution. Upon analysis of the said Article, which stipulates "No person shall be deprived of life and liberty save in accordance with law" and when it is resorted to in respect of the issues having nexus to service matter it shall unmistakably be permissible that the employment of an employee can be brought (come) to an end, but obviously in accordance with the law (emphasis supplied), when there is some law regulating such an employment/service. Therefore,*

if the services of an employee are dispensed with by the employer, either by removal, dismissal, termination or compulsory retirement or any other adverse action is taken against him in connection with his service rights, other than in accordance with law, the employee shall have a right to take recourse to the remedies available to him and provided by or under the relevant law, before the forum of competent jurisdiction. (note: May it be the termination etc. of one employee of State/Government/institution or the group or bulk of such employees). However, in those cases where the employment/service(s) is not regulated by any law, as in the present case it is admitted position that Rules 1981 are non-statutory (emphasis supplied), and thus not a law, rather contractual stipulations, and no specific forum is designated for the resolution of such service issues, therefore an infringement of any condition of such a contract shall at the most entitle and clothe the employee to avail his ordinary remedy for the breach of the contract and on account of wrongful action against him, before the court of plenary jurisdiction. In such a situation, it cannot be urged that the fundamental right of the employee has been violated conferring upon him a right to enforce the same (in terms of Article 199 and/or under Article 184(8) (supra). Despite the above, we hereby proceed to examine, whether any alleged fundamental right(s) of the petitioners has/have at all been violated or not; From Rules 15 and 17(a) (reproduced above), it is quite obvious that the bank has the due authority to bring to an end to the services of its employees by way of termination/early retirement, likewise, the employee also has the option to give up the employment of the Bank.

(Underlining and emphasizing is mine)

21. At last this Court has also settled the question of maintainability of writ petition in case reported as PLD 2019 Islamabad 331 (Administrator Islamabad Club vs. Mrs. B. Ayisha Mustafa) in the following manner:-

15. The working of Islamabad Club is governed under the by-laws and the Rules. Under Rule 3, there are classes of membership including service members. The eligibility of the service member is provided in Rule 3.2.A whereby those in grade-17 or above in the service of government of Pakistan, commissioned officers of defence forces etc. are eligible for membership of club. In so far as the transfer of membership is concerned, the same is governed in by-laws No.3, clause-3 of the same provides that the membership can be transferred in the name of the spouse only on the death of a member. If the spouse is not interested it shall stand cancelled. Under Section 10 of the Islamabad Club Administration Ordinance, 1978, the federal government may make

Rules for carrying out the purposes of this Ordinance. The Rules of the Club cannot be termed as statutory in light of the judgment reported as "Pakistan Defence Officers Housing Authority v. Itrat Sajjad Khan and others" (2017 SCMR 2010). In the referred judgment the august Apex Court observed that Rules in dealing with instruction for internal control are treated as non statutory while those whose area of efficacy is broader and/or complementary to the parent statute in the matter of crucial importance are statutory. Similar views were expressed by the august apex Court in cases reported as "The Principal, Cadet College, Kohat and another v. Muhammad Shoab Qureshi" (PLD 1984 SC 170) and "Muhammad Zaman and others v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others (2017 SCMR 571). On the touchstone of the law laid down by the august Apex Court the Rules and by-laws of the Islamabad Club are for internal management and control, hence non-statutory. It is trite law that a petition under Article 199 of the Constitution is not maintainable for enforcement of non-statutory Rules or for civil rights, if any. Even otherwise, the essence of a club is to regulate its membership and/or govern its internal functioning and no interference can be made to such regulations and affairs by the Courts would defeat the concept of the Club. The decisions taken to oust the member and/or to refuse membership are the sole prerogative of the Administration of the Club and such decisions or administrative matters are not justiciable in a petition under Article 199 of the Constitution."

22. In view of above background, the petitioners are governed under master and servant principle as such they have no personal right to agitate the matter before this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and their termination cannot be settled through instant writ petition rather they may approach the Court of plenary jurisdiction, if so advised. Even otherwise, the instant writ petition is not competent as the Committee of the Club has been notified through CMA No.9421/2018 in Suo Moto Case No.14/2011, which has further been authorized and allowed to work till 31.12.2019 through another order of the Apex Court dated 15.01.2019 passed in CMA No.11230/2018, therefore, instant writ petition is dismissed. The Committee notified by the Apex Court shall continue to work in accordance with the mandate extended to them.

(MOHSIN AKHTAR KAYANI)
JUDGE