

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

W.P.No.4109 of 2019

Sadia Fatima

**Versus**

Chairperson, B.I.S.P. and others

**Date of Hearing:** 27.10.2020

**Petitioner by:** Mr. Ajmal Khan, Advocate

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

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Sadia Fatima, impugns the order dated 30.09.2019, whereby her departmental appeal against the imposition of major penalty of dismissal from service, was turned down.

2. On 07.01.2011, the petitioner was appointed as Assistant Director in Benazir Income Support Programme (“B.I.S.P.”). In the year 2017, disciplinary proceedings were initiated against the petitioner under the provisions of the Government Servants (Efficiency & Discipline) Rules, 1973 (“E&D Rules”) (as adopted through Regulation 52 of the Benazir Income Support Programme (Employees’ Service) Regulations, 2018 (“the 2018 Regulations”). Charges of inefficiency, misconduct and corruption were levelled against the petitioner. The said disciplinary proceedings culminated in the notification dated 23.11.2017, whereby a major penalty of dismissal from service was imposed on her. The departmental appeal preferred by the petitioner against the said penalty was dismissed by the appellate authority (i.e. Chairman, B.I.S.P.) vide impugned order dated 30.09.2019, which has been assailed by the petitioner in the instant writ petition.

3. At the very outset, learned counsel for B.I.S.P. raised an objection to the maintainability of this petition on the ground that the 2018 Regulations were non-statutory and that this Court had vide order dated 29.01.2015 passed in writ petition No.433/2013 and judgment dated 11.11.2019 passed in writ petition No.1360/2015 dismissed writ petitions filed by the employees of B.I.S.P. on the ground that B.I.S.P. did not have any statutory Service Rules or

Regulations. Learned counsel for B.I.S.P. prayed for the writ petition to be dismissed.

4. On the other hand, learned counsel for the petitioner submitted that since the 2018 Regulations had been published in the official Gazette, they should be treated as statutory in nature; and that the Hon'ble Lahore High Court had entertained writ petitions filed against B.I.S.P. and had granted interim relief to the employees of B.I.S.P. by suspending the operation of the orders, whereby major penalties had been imposed on them. Learned counsel for the petitioner prayed for the objection to the maintainability of this petition to be spurned and for the petition to be decided on merits.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The need for adjudication of the writ petition on merits would arise only if the objection to the maintainability of this petition does not succeed. Therefore, it is essential for the objection to be decided in the first instance.

7. The 2018 Regulations have been made by B.I.S.P. Board in exercise of the powers conferred by Section 23 of the Benazir Income Support Programme Act, 2010 ("the B.I.S.P. Act"). Section 23(1) of the said Act provides that B.I.S.P. Board may make Regulations in order to carry out the purposes of the said Act. The Regulations made by B.I.S.P. Board pursuant to Section 23(1) of the said Act are neither required to be approved by the Federal Government nor they required to be published in the official Gazette. Where Rules or Regulations are not required to be made with the approval of the Federal Government or where the Rules or Regulations are not required to be made by the Federal Government, they cannot be termed as statutory in nature. Since the 2018 Regulations were neither made by the Federal Government nor required to be made by the Federal Government or with its approval, it is safe to hold that the said Regulations are not statutory in nature.

8. Regulation 52 of the 2018 Regulations provides that for the purpose of efficiency and discipline, the employees shall be governed by the E&D Rules as amended from time to time. The

adoption of the E&D Rules through Regulation 52 of the 2018 Regulations would not *ipso facto* raise the status of the said Regulations to become statutory in nature.

9. This Court vide order dated 29.01.2015 passed in writ petition No.433/2013 and judgment dated 11.11.2019 passed in writ petition No.1360/2015 dismissed writ petitions filed by the employees of B.I.S.P., agitating grievances regarding the terms and conditions of their services, on *inter alia* the ground that B.I.S.P. did not have statutory service Rules or Regulations. In the case of Zia Ghafoor Piracha Vs. Chairman, Board of Intermediate and Secondary Education (2004 SCMR 35), it was held as follows:-

*"7. The Service Regulations of the Employees of the Board were framed by the Board. However, as has been determined by the learned Single Judge of the Lahore High Court, the Government, as required by the Act, has not given its formal approval to these Regulations. In these circumstances these Regulations may be termed as internal instructions or domestic rules having no status of statutory rules. Reference in this regard is made to the case of 'The Principal Cadet College, Kohat and another v. Muhammad Shoab Qureshi (PLD 1984 SC 170). In that case, the Government under the West Pakistan Government Educational and Training Institution Ordinance, 1960 was empowered to make Rules for carrying out the purposes of the Ordinance under section 17 thereof. Similarly, under section 18, the Board was also empowered to make Regulations subject to approval of the Government. There was identical situation in the aforesaid case as is now prevailing in the present case because the Regulations though made by the Board but the approval of the Government had not been secured. Similarly, the Government too had not made any Rules as mandated by section 17 ibid. This Court in such a situation in the aforementioned case held as under:-*

*"It is common ground that neither any rules, as contemplated by section 17 of the Ordinance nor any Regulations under section 18 thereof were framed. The Board of Governors did not frame some "rules" for governing the appointment, promotion, retirement, termination of service, and dismissal of staff employed by the Board of Governors of the College in its meeting held on 29th September, 1964, but these not having been made by the Government could not be regarded as "rules" under section 17, nor having been approved by the Government, be treated as Regulations under section 18 thereof. These "rules" therefore could only be regarded to be in the nature of mere instructions issued for the guidance of the Board of Governors and the Principal of the Cadet College, Kohat."*

*8. The learned Single Judge of the High Court has also in his judgment dated 10-6-2002 (2002 P L C (C.S.) 1571) dilated upon the status of the Regulations framed by the Board and adaptation of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1975 which approval was accorded on 9-3-1980 to the respondent-Board. It*

would be appropriate to reproduce the same which is in the following terms:-

*"The effect of adaptation of Punjab Civil Servants (Efficiency and Discipline) Rules, 1975 and the framing of Regulations and Rules under sections 20 and 21 of the Act XIII of 1976 came under consideration before a Division Bench of this Court in the case of "Muhammad Anwar Hussain v. Chairman, Board of Intermediate and Secondary Education, Gujranwala etc." (2000 PLC (C.S.) 678). It was observed as under:-*

*"It is clearly a residuary power of the Board. The purpose was to arm the Board to deal with the matters not provided for in the Act or Regulations. All such decisions of the Board have the status of domestic rules. The E&D Rules adopted by the Board through Resolution would be the rules framed under section 21 of Act, 1976, therefore, they will not have the status of statutory rules. These would be just domestic rules. Moreover, the Board is not competent to frame rules in respect of the terms and conditions of service. In this behalf, we may be fortified in our view by clause (iii) section 20(1) of Act, 1976."*

*In the instant case no prior approval of the Controlling Authority exists on the record giving life to the Service Regulations.*

*11. The approval for adoption of Punjab Civil Servants (Efficiency and Discipline) Rules, 1975 was accorded on 9-3-1980 to the respondent-Board. As observed by the Division Bench of this Court, the E&D Rules adopted by Board through resolution would be rules framed under section 21 of the Act of 1976 and will not have the status of statutory rules. These would be just internal rules.*

*As per letter No. SO(BOARDS) 1-14/82, Government of the Punjab, Education Department dated 4-4-1985, the approval was accorded to the Board of Intermediate and Secondary Education, Multan and not to the respondent Board of Intermediate and Secondary Education, Rawalpindi. The contention of the learned Assistant. Advocate-General that the endorsement to Chairman of all the Boards at the bottom of the letter for information and necessary action amounts to granting approval to the other Boards as well has no force."*

10. Recently vide order dated 29.10.2020 passed by this Court in writ petition No.2752/2017 titled Sabir Hussain Malik Vs. Ministry of Inter Provincial and others, it was held as follows:-

*"14. The decision to adopt the pension rules applicable to the civil servants had not been made by the Federal Government but by the P.S.B. Such adoption of the statutory pension rules applicable to the civil servants would not make the pension scheme for the employees of P.S.B. or the rules governing such scheme to be statutory in nature so as to give a right to employees of the P.S.B. to enforce such rules in the Constitutional jurisdiction of this Court."*

11. In view of the above, the objection taken by the learned counsel for B.I.S.P. to the maintainability of this petition succeeds. Consequently, this petition is dismissed as not maintainable. The petitioner is at liberty to challenge the order and notification dated 30.09.2019 and 23.11.2017, respectively before the competent forum. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2020**

**(JUDGE)**

*Qamar Khan\**

*Uploaded By: Engr. Umer Rasheed Dar*