

Form No: HCJD/C.

**JUDGEMENT SHEET**

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

**Case No: Writ Petition No.251 of 2021**

**Dr. Shabeena Mushtaque and 22 others**  
**Vs.**  
**Pakistan Sports Board and 2 others**

**Petitioners by: M/s. Muhammad Shoaib Shaheen  
& Nasir Saleem, Advocates.**

**Respondents by: Mr. Muhammad Irfan Ullah Khan,  
Advocate.**

***Date of hearing: 26.11.2021.***

**AAMER FAROOQ, J.-** Dr. Shabeena Mushtaque and 22 others (**the Petitioners**) are aggrieved of stoppage of health allowance by Pakistan Sports Board (**P.S.B.**). They are employees of P.S.B. and were being paid health allowance by their employer up until recently when vide office order dated 7<sup>th</sup> January 2021, it was nixed pursuant to the decision of the Executive Committee of the P.S.B. in its 89<sup>th</sup> meeting held on 16.12.2020.

2. Mr. Muhammad Shoaib Shaheen, Advocate Supreme Court appearing for the petitioners, *inter alia*, contended that his clients are being discriminated inasmuch as in other Government Departments employees performing same function are paid health allowance. It was argued that in somewhat similar circumstances the matter came up for

consideration before Honorable Supreme Court of Pakistan with respect to employees/health workers of Pakistan Institute of Medical Sciences (P.I.M.S.) and other Government hospitals and organizations in case titled **Federation of Pakistan versus Nusrat Tahir etc.** (Civil Appeal No. 1631 to 2112 of 2017) and the august Apex Court restored payment of health allowance. It was contended that the impugned order is without reasons and is not sustainable in light of Section 24-A of General Clauses Act, 1897. Learned Counsel also submitted that under the principles of *locus poenitentiae* the respondents cannot rescind health allowance nor can affect recovery thereof; that it is the legitimate expectation of the petitioners that they shall be treated at par with other similarly placed workers/employees. Mr. Muhammad Shoaib Shaheen ASC, lastly contended that the impugned order is in violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

3. Learned Counsel for P.S.B. argued that the instant petition is not maintainable in light of the fact that the Rules of service of Pakistan Sports Board are non-statutory and the relationship between the petitioners and P.S.B. is that of master and servant. Learned Counsel took the Court through the provisions of Pakistan Sports Ordinance, 1962 (the Ordinance) and the Rules of service of the respondent

organization. He argued that the petitioners other than petitioner No. 1 are workers and provisions of Industrial Relations Act, 2012 are applicable and this Court has no jurisdiction in the matter. In support of his contentions learned counsel placed reliance on cases titled **Sabir Hussain versus Ministry of Inter Provincial Co ordination and other** (WP No. 2752 of 2017), **Province of Punjab versus Yáir Majeed** (2021 SCMR 624), **Govt. of Punjab versus Muhammad Imran** (2019 SCMR 643), **Pakistan Defence Officers Housing Authority versus Syed Jawaaid Ahmed** (2013 SCMR 1707), **Khalilullah versus Provincial Police Officer** (2021 PLC 1030) and **Syed Iqbal Hussain Shah Gillani versus Pakistan Bar Council** (2021 SCMR 425).

4. Arguments of learned counsel and the pleadings of the parties discloses the controversy in the matter in the terms mentioned hereinabove. Since P.S.B. has raised the issue of maintainability of the instant petition, hence the same shall be taken first as the same is dispositive. The stance of learned counsel for P.S.B. is that the Rules of service of P.S.B. are non-statutory, therefore, the writ petition is not competent. In this behalf the genesis of P.S.B. and its Rules was lucidly discussed by this court in case titled **Mansoor Ahmed Khan versus Ministry of Inter-Provincial Co-ordination etc.** (Writ Petition No. 1778 of

2020) which was decided by this Court on 16.11.2021 and **Sabir Hussain Malik versus Ministry of Inter Provincial Co-ordination and others** (WP No. 2752 of 2017). In paragraph 9 of the former judgment this Court observed as follows:

*“As noted above, the Pakistan Sports Board (PSB) is the creation of Sports (Development and Control) Ordinance, 1962. Under Section 3 of the same, the Central Government was to create a Board by notification in the official gazette and pursuant thereto Pakistan Sports Board Rules, 1981 were notified on 16.3.1981. Moreover, under section 5 of Sports (Development and Control) Ordinance, 1962, the Board is empowered to make rules and regulations for carrying out its objects into effect. The service rules in with respect to Pakistan Sports Board were made in 2000 through Sports Board Rules, 2000.....*

In Paragraph 10 of the judgment it was also observed

*Grievance of the petitioner with respect to his transfer vide letter/order dated 16.6.2021 is without any justification or basis inasmuch as rules of service of Pakistan Sports Board of the year 2000 are non-statutory, hence the relationship between the petitioner and Pakistan Sports Board is one of Master and Servant. This court in case titled as Sabir Hussain Malik versus Ministry of Inter Provincial Co-ordination and others (WP No. 2752 of 2017) has observed to the effect that the Rules are non-statutory.”*

5. Taking into consideration the above opinion, in both judgments of this Court, the Rules of service of the P.S.B. are non-statutory and the relationship between the petitioners and P.S.B. is that of master and servant. In this behalf the judgments relied upon by learned counsel for P.S.B. (in addition to the two judgments of this Court) on the subject are instructive and underpin his argument regarding the maintainability of the petition, hence reliance is placed on them as well. *Province of Punjab versus Yair Majeed* (2021 SCMR 624), *Govt. of Punjab versus Muhammad Imran* (2019 SCMR 643), *Pakistan Defence Officers Housing Authority versus Syed Jawaid Ahmed* (2013 SCMR 1707), *Khalilullah versus Provincial Police Officer* (2021 PLC 1030) and *Syed Iqbal Hussain Shah Gillani versus Pakistan Bar Council* (2021 SCMR 425). In addition the above judgments also hold that where Rules of service are non-statutory a writ petition to enforce terms of service is not competent.

6. As noted earlier, the petitioners seek setting aside of office order stopping payment of health allowance to them. Payment or non-payment of an allowance is a matter of terms and conditions of service and since the Governing Rules/Regulations are non-statutory cannot form the subject matter of petition under article 199 of the

Constitution of Pakistan, 1973. P.S.B. is an autonomous statutory body and is not bound to follow the Rules and Regulations or decisions of Federal Government, hence the decision of the Honorable Supreme Court of Pakistan cited hereinabove and relied upon by learned counsel for the petitioners is not apposite in the present facts and circumstances.

7. For the foregoing reasons the instant petition is not maintainable, hence is dismissed on the referred score. The petition since is being dismissed on the issue of maintainability, no finding is required to be rendered on merits of the case.

**(AAMER FAROOQ)**  
**JUDGE**

*Announced in open Court on the 11<sup>th</sup> day of February 2022*

**JUDGE**

\*M.Naveed\*