

ORDER SHEET

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

Writ Petition No. 4663 of 2021

Rizwan Ahmed

Versus

Federation of Pakistan through Secretary, Wafaqi Mohtasib
(Ombudsman)'s Secretariat, Islamabad and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(01)	10.01.2022	Mr. Muhammad Umair Baloch, Advocate for the petitioner.

The petitioner has filed the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The petitioner has challenged orders dated 24.06.2021 and 10.09.2021, whereby major penalty of reduction from the post of Upper Division Clerk (BPS-11) to Lower Division Clerk (BPS-09), was imposed.

02. Succinctly stated facts of the case are that after death of his father, the petitioner being a nominee of bereaved family was appointed as UDC (BPS-11) in the Wafaqi Mohtasib (Ombudsman)'s

Secretariat, Islamabad on 11.12.2017, under Prime Minister's Assistance Package for families of Government Employees who died in service.

03. In order to implicate the petitioner in a false case out of malice, the petitioner was issued charge sheet along with statement of allegations, after conducting an inquiry major penalty of reduction to the post of L.D.C (BPS-09) was imposed vide impugned order dated 24.06.2021. Thereafter, the petitioner filed an appeal under Civil Servants (Appeal) Rules, 1977, Additional Secretary (Admn) being Appellate authority has dismissed the appeal vide order dated 26.07.2021 and uphold the penalty imposed by the authority under Rule 6(1)(c) of the Civil Servants (Appeal) Rules, 1977, hence the instant writ petition.

04. Learned counsel for the petitioner *inter alia* contends that impugned orders dated 24.06.2021 and 10.09.2021 are void ab initio, illegal, unlawful, arbitrary,

preposterous and against the rights of the petitioner, hence liable to be set-aside.

05. Arguments heard, record perused.

06. It is evident from the impugned orders that the petitioner is working on contract basis under Prime Minister Assistance Package for families of Government Employees but surprisingly the fact that the petitioner is contractual employee has not been mentioned in the contents of the petition. Perusal of record further reveals that contract employment letter is also not enclosed with the instant petition, on the basis of which, the terms and conditions of the appointment and date of expiry of contract could be ascertained. As the laws applicable for regular appointment and contract appointment are altogether different. When confronted, learned counsel has admitted that the said fact has not been mentioned and the contract appointment letter is also not enclosed with the instant

petition and has further stated that the same will be provided lateron.

07. It is trite that for discretionary and equitable relief, it is pre-condition that the parties should approach the Courts with clean hands, in order to get the relief. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Shafqatullah and others Vs. District and Sessions Judge, Nowshera, N.W.F.P and 4 others (2001 SCMR 274)**, that:-

"It would also appear from the record that the petitioners did not approach the High Court with clean hands entitling them to the discretionary, equitable relief under the Constitutional jurisdiction".

Reliance may also be placed upon a case titled as **Manzoor Hussain and 3 others Vs. Muhammad Siddique (2000 CLC 623 [Lahore])**.

08. Charge sheet dated 25.02.2021, was issued, wherein following allegations were mentioned:

"WHEREAS, you Mr. Rizwan Ahmed, UDC (BS-11), working in this Secretariat on contract basis, under the Prime Minister Assistance Package for employees who die during service, have committed the following acts of omission & commission:

You have been alleged in submitting applications to different authorities of AJK & Government of Pakistan, against your opponents pertaining to your personal / property disputes etc by using the umbrella of the Wafaqi Mohtasib Secretariat. It is revealed from record that prior to the in service death of your father Mr. Muhammad Yasin, ex-Naib Qasid (late) and your appointment in the Secretariat in 2017, you had been submitting such applications in the name of your deceased father. You have also been involved in dispatching fake letters with bogus signatures of the official of this Secretariat to different authorities against your opponents and affixing stamps of Law Section of the Wafaqi Mohtasib Secretariat.

Despite issuance of several warnings, you did not mend your attitude and still continued submitting applications in the name of your mother to the higher authorities of this Secretariat for withdrawal of warnings and alleging that warnings were issued to you

un-necessarily. Your behavior in this regard is questionable."

09. The petitioner submitted reply of charge sheet, which was not found satisfactory, consequently Show Cause Notice was issued on 21.05.2021 and inquiry committee comprising of Senior Officers of the Hon'ble Wafaqi Mohtasib (Ombudsman)'s Secretariat was constituted. During the course of inquiry, the petitioner has admitted in writing the allegation mentioned in the charge sheet that he used the official stamp of the Law Section of Wafaqi Mohtasib Secretariat but stated that warning was issued to him and after issuance of warning he has not committed any mis-conduct.

10. It was recommended by the inquiry committee that the petitioner was found guilty of mis-conduct in terms of Rule 2(k) of the Civil Servants (Efficiency and Discipline Rules, 2020), to the extent of influencing his neighbours / relatives by using the name of Wafaqi Mohtasib qua

embossing official stamps and forging bogus signatures of an official of Wafaqi Mohtasib on his personal applications. Therefore, it was recommended to impose major penalty upon the petitioner / official in terms of Rule 4(3)(d) i.e. *removal from service* for continuously tainting the image of the prestigious organization being involved in malpractices as discussed in detail in the inquiry report, hence the major penalty for reduction from the post of U.D.C (BPS-11) to the post of L.D.C (BPS-09) was imposed. Thereafter, the appeal was filed which has also been dismissed vide impugned order dated 10.09.2021, by the competent authority.

11. Admittedly, the petitioner is contractual employee and the superior Courts in various pronouncements settled the law that, contract employee is debarred from approaching the High Court in its constitutional jurisdiction. The only remedy available to a contract employee is to file a suit for damages against the

employer, in case of any violation. Reliance in this regard is placed upon the cases titled as **Qazi Munir Ahmed Vs. Rawalpindi Medical College and Allied Hospital (2019 SCMR 648)** and **Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs Vs. Muhammad Azam Chattha (2013 SCMR 120)**.

12. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Owais Shams Durrani and others Vs. Vice-Chancellor, Bacha Khan University, Charsadda and another (2020 SCMR 1041)** that:

"It is trite that where a citizen seeks relief in constitutional jurisdiction he must point to a right statutory or constitutional which vests in him and has been denied in violation of the law".

In this regard, reliance may also be placed upon the case titled as **N.W.F.P Public Service Commission and others Vs. Muhammad Arif and others (2011 SCMR 848)**.

13. As the learned counsel for the petitioner has failed to point out that how the respondents have committed any violation of law, rule and regulation applicable to the petitioner rather the petitioner himself has admitted that he was involved in committing gross misconduct.

14. In view foregoing discussion, instant writ petition is not maintainable, hence the same is **dismissed in limine** being merit less with no order as to costs.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-