

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT)**

**Writ Petition No. 2996 of 2015**

Syed Yawar Javed  
**Vs**  
The Managing Director, Utility Stores Corporation of Pakistan and  
others

Petitioner By: Mr. Aziz Ahmed, Advocate  
Respondents By: Mr. Waqar ul Haq, Advocate  
Date of Hearing: 27.07.2020

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**Ghulam Azam Qambrani, J:** This writ petition has been  
filed with the following prayer:-

*“Under the circumstances it is very respectfully prayed  
that the Writ Petition may kindly be admitted, the illegal  
dismissal order dated 06.10.2009 passed by the  
respondent No.3 against the petitioner set aside and the  
petitioner reinstated in service from the date of his  
dismissal (06.10.2009) with all back benefits including  
seniority and promotion etc. and further criminal  
proceedings for producing false, bogus and fabricated  
evidence before this Hon. Court initiated against the  
respondents in the interest of just.*

*Any other relief which this Hon. Court deems just and  
proper may also be granted to the petitioner in the  
circumstances of the case.”*

2. Brief facts of the case are that the petitioner joined his services in the Utility Store Corporation of Pakistan at Rawalpindi (hereinafter referred to as the “**Corporation**”) as “Assistant Salesman” in 1989; after sixteen years spotless service, he was promoted as “Salesman”; and in year 2008, he was made incharge of the Mobile Store Unit No.US-2084; while serving on his last post, Mr. Naveed Nasrullah, Recovery Officer of alleged Corporation, Industrial Area, Model Town, Humak Islamabad lodged an F.I.R No.127/2009 on 04.08.2009, under Section 409 P.P.C at Police Station Sihala, Islamabad, alleging misappropriation/

embezzlement of Rs.1,652,287/- of Government store. The petitioner was arrested on same day and during trial under Section 409 PPC by the Special Judge Central, Rawalpindi, the petitioner was detained in Jail for about nine months and finally, he was honorably acquitted of the charge by the learned trial Court on 24.04.2010. After his acquittal by the learned trial Court, petitioner approached the respondents and submitted several applications to respondents to join his service as before but he was not allowed to resume his duty and was kept in dark as to any disciplinary action previously has been taken against him by the Department. Feeling aggrieved, petitioner filed a writ petition No.619/2013, wherein the respondents filed para-wise comments and brought forward some new facts which were not in the knowledge of petitioner regarding disciplinary action taken against him, his service dismissal order dated 06.10.2009 (hereinafter referred to as the "Impugned order") and a notice dated 16.04.2012 claiming damages of Rs.50,000,000/-, issued on behalf of petitioner to the respondents wherein it was admitted that services of the petitioner were terminated. On account of arising of new facts, writ petition No. 619/ 2013 was withdrawn vide court order dated 22.11.2013 to file a fresh one. Thereafter, the petitioner filed writ petition No.4701/2013, the respondent failed to file the report and para-wise comments. On 20.11.2014 learned counsel for the petitioner submitted an application for general adjournment w.e.f 27.11.2014 to 26.03.2015 which was allowed vide order dated 24.11.2014 but during the absence of learned counsel for the petitioner, the writ petition was fixed for hearing on 27.02.2015 and it was dismissed on merits in the absence of the petitioner as well as the respondents. Hence, the instant writ petition.

3. Learned counsel for the petitioner has contended that impugned dismissal order of the petitioner dated 06.10.2009 has been passed without providing proper opportunity of hearing therefore, the same is not sustainable in the eyes of law; that no charge sheet or show cause notice was served upon the petitioner,

as such, the proceedings initiated against the petitioner are void *ab-initio* and not maintainable in the eyes of law. Further submitted that no regular inquiry was held against the petitioner whereas major penalty of dismissal from service has been imposed upon the petitioner therefore, the impugned dismissal order of the petitioner is illegal and unlawful.

4. On the other hand, learned counsel for the respondent opposed the contentions of learned counsel for the petitioner contending that this is third writ petition on the same subject matter; that petitioner has the remedy of filing appeal before the Prime Minister under Section 9 of the of Removal from Service (Special Powers) Ordinance, 2000. The instant writ petition is not maintainable as the petitions relating to the terms and conditions of service of the employees of the Corporation are not amenable to the jurisdiction under article 199 of the constitution.

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

6. Perusal of the record depicts that the petitioner joined his services in the Utility Store Corporation of Pakistan at Rawalpindi, as "Assistant Salesman" in 1989. The Utility Store Corporation of Pakistan is a Corporation is a private limited company incorporated under the Companies Ordinance, 1984 and neither it is a statutory body nor has statutory rules or regulation. In the instant case, the grievance of the petitioner relates to the terms and conditions of his service, which is not amenable to the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The Hon'ble Supreme Court of Pakistan has summarized the scope of jurisdiction of this Court in matters relating to the terms and conditions of service of the employees of the Corporation in a case reported as "Pakistan Defence Officers' Housing Authority Vs. Lt. Col. Syed Jawaid Ahmed" (2013 SCMR 1707) as under:-

The principles of law which can be deduced from the foregoing survey of the precedent case-law can be summarized as under:--

*(i) Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.*

*(ii) Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.*

*(iii) In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.*

*(iv) Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.*

*(v) That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27th of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.*

7. In view of the above, it is clear that relationship of the Corporation with its employees is in the nature of "Master and Servant". Further the petitioner has alternate remedy of appeal before the Prime Minister of Pakistan under Section 9 of the Removal from Service (Special Powers) Ordinance, 2000. Further the disputed questions of fact are involved in the instant petition as to whether show cause notice addressed to the petitioner was served upon him or not, which cannot be resolved by this Court in exercise of its constitutional jurisdiction.

8. In view of the above facts and circumstances, this petition having no force is **dismissed**.

**Ghulam Azam Qambrani**  
**Judge**

Announced in Open Court, on this 30<sup>th</sup> day of July, 2020.

**Judge**

**S.Akhtar**