

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.762 of 2017

Haider Zaman Khattak

Versus

*The Chairman, Pakistan Science Foundation,
Islamabad and 04 others.*

Writ Petition No.763 of 2017

Dr. Hafeez Ullah Khan

Versus

*The Chairman, Pakistan Science Foundation,
Islamabad and 04 others.*

**Petitioner's by : Dr. Babar Awan, Advocate (in W.P.
No.762 of 2017).**

**Mr. Ali Murad Baloch, Advocate (in
W.P. No.763 of 2017).**

**Respondent's by : Hafiz Arfat Ahmad and Kashifa Niaz
Awan, Advocates.
Mr. Shamshad Ullah Cheema, learned
Deputy Attorney General.**

Date of decision : 21.05.2018

AAMER FAROOQ, J. - This judgment shall decide the instant petition as well as Writ Petition No.763 of 2017, as common questions of law and facts are involved.

2. The facts, in brief, are that the Petitioner, in the instant petition, was appointed as Accounts Officer (BS-17) in Pakistan Science Foundation in 1995. Over a period of time, he

was promoted as Secretary (BS-20), Pakistan Science Foundation, which appointment was on the recommendation of the Selection Board and was subsequently approved by the Board of Trustees. The appointment of Petitioner as Secretary was initially on probation and was subsequently confirmed w.e.f. 11.11.2013. Challenge was made to the appointment of Petitioner as Secretary and as a consequence thereof Chairman, PCSIR was appointed as Authorized Officer. The Petitioner subsequently received two show cause notices, issued by Dr. Muhammad Akram Shaikh, Member Science, Pakistan Science Foundation, in his capacity as Second Authorized Officer. Challenge was made to the appointment of the Second Authorized Officer, vide Writ Petition No.2949/2016, which was dismissed, vide judgment dated 30.12.2016. The Petitioner, in pursuance of the show cause notice, was awarded major penalties of demotion one grade and compulsory retirement from service. The Petitioner challenged the order passed by this Court in Writ Petition No.2949 of 2016 through I.C.A No.02 of 2017, which was also dismissed. The Petitioner filed an appeal under Pakistan Science Foundation Employees Efficiency and Discipline Regulations, 1974, on 10.01.2017 against the penalties awarded. The Petitioner filed yet another petition, which was disposed of by this Court vide order dated 08.02.2017 with the direction to respondent No.1, to decide the pending appeal of the Petitioner, which after affording an opportunity of hearing which was accordingly done on 24.02.2017.

3. The case of Petitioner, in Writ Petition No.763 of 2017, is that he was appointed as Senior Scientific Officer (BS-18) in Pakistan Science Foundation during 2000 and subsequently was promoted as Principle Scientific Officer (BS-19), Pakistan Science Foundation and thereafter as Chief Scientific Officer (BS-20), which was duly approved by the Board of Trustees (BoT). The Probation period was completed and the Petitioner assumed the charge as Chief Scientific Officer (BS-20) w.e.f. 21.11.2013. Challenge was made to the appointment and an Authorized Officer was appointed. However, a Second Authorized Officer was appointed, who issued a show cause notice, which was challenged through Writ Petition No.2948/2016. The referred Writ Petition was dismissed, vide order dated 30.12.2016 and I.C.A. was filed (I.C.A. No.01 of 2017), which also was dismissed. Meanwhile, the Petitioner was found guilty and major penalty of compulsory retirement was imposed. The Petitioner filed an appeal under the PSF E&D Regulations, 1974. A Writ Petition was also filed against the major penalty i.e. W.P. No.468 of 2017, which was disposed of with the direction to Respondent No.1 to decide the pending appeal, which accordingly was done and the same was dismissed, vide order dated 24.02.2017.

4. Learned counsel for the Petitioner, in the instant petition, *inter-alia*, contended that the impugned orders imposing major penalties and dismissal of the appeal have been passed without lawful authorities as the relevant documents were not provided to the Petitioner during the course of proceedings; that

two major penalties have been imposed without holding regular inquiry by the Inquiry Officer, which is in violation of the law laid down by the Hon'ble Supreme Court of Pakistan in case reported as "**2004 SCMR 316**", "**2001 SCMR 1566**" and "**2000 SCMR 1321**"; that the second show cause notice was not tenable as it was against Clause 5(2) of PSF E&D Regulations, 1974. It was submitted that the Authorized Officer with malafide proceeded under Clause 5(3) of PSF E&D Regulations. It was further submitted that the penalties imposed are in violation of the fundamental rights of the Petitioner, which provides that no person shall be vexed twice for the same cause; that the Petitioner was promoted by Board of Trustees in their collective wisdom; that the Petitioner has been condemned unheard and has been deprived of fair trial.

5. Learned counsel for the Petitioner, in Writ Petition No.763 of 2017, *inter-alia*, contended that no regular inquiry has been held in the facts and circumstances of the case and major penalty of compulsory retirement has been imposed. It was further contended that the Authorized Officer wrongly proceeded under Clause 5(3) of PSF, E&D Regulations, 1974. It was contended that even where the Rules of Service are non-statutory, a petition under Article 199 of the Constitution is maintainable. It was also contended that under the facts and circumstances, regular inquiry was mandatory; that Dr. Muhammad Akram Sheikh, Member Pakistan Science Foundation, was working on look after charge and was firstly appointed as

Chairman, Fact Finding Committee and subsequently has Authorized Officer, which could not have been done. Reliance was placed on the decision of the Hon'ble Supreme Court of Pakistan titled "*Shafique Ahmed Khan, etc. Vs. NESCOM through its Chairman, Islamabad, etc.*" **(in Civil Appeals No.654 to 660 of 2010)**, as well as "*Muhammad Rafi and another Vs. Federation of Pakistan and others*" **(2016 SCMR 2146)** and "*Khawaja Muhammad Asif Vs. Federation of Pakistan and others*" **(2013 SCMR 1205)**.

6. Learned counsel for Respondents, *inter-alia*, contended that the instant petition is not maintainable as the questions raised in the instant petition have already been decided by this Court in Writ Petition No.2949 of 2016 and the Intra Court Appeal filed against the same was also dismissed; that Pakistan Science Foundation, Service Rules are non-statutory, hence, the petition is not maintainable. Reliance was placed on recent judgment of the Hon'ble Supreme Court of Pakistan in Civil Petition No.1507 of 2011. Reliance was also placed on case reported as "*Pakistan International Airlines Corporation and others Vs. Tanvir-ur-Rehman*" **(PLD 2010 SC 676)** as well as order dated 15.04.2013 passed by Hon'ble Supreme Court of Pakistan in C.P. No.1830 of 2012. Learned counsel further contended that regular inquiry is not a must in every case and can be dispensed with. Reliance was placed on "*Muhammad Aslam Vs. Auditor General of Pakistan, Islamabad*" **(2013 SCMR 1904)**, "*Mst. Samina Nazeer Vs. District Education Officer (W)*,

Khanewal and others" (2004 SCMR 290), "Muhammad Aslam Vs. Inspector General of Police, Punjab and others" (2004 PLC CS 675), "Deputy Inspector-General Investigation, Lahore Vs. Asghar Ali" [2012 PLC (C.S.) 787]. It was further contended that the Writ Petition has been filed against Chairman, Pakistan Science Foundation and it is trite law that a petition under Article 199 of the Constitution is not maintainable against the designation. Reliance was placed on "Nagina Bakery Vs. Sui Southern Gas Limited and 3 others" (2001 CLC 1559) and "Secretary, B. &R., Government of West Pakistan and 4 others Vs. Fazal Ali Khan" (PLD 1971 Karachi 625). Regarding the rules of service of Pakistan Science Foundation being non-statutory. Reliance was also placed on "Nisar Ahmed Vs. Director, Chiltan Ghee Mills and another" (1987 SCMR 1836), "Pakistan Red Crescent Society and another Vs. Syed Nazir Gillani" (PLD 2005 SC 806) and "Muhammad Zaman and others Vs. Government of Pakistan through Secretary, Finance Division, Islamabad and others" (2017 SCMR 571).

7. Mr. Hafiz Arfat Ahmad Ch., Advocate Supreme Court submitted that in Writ Petition No.4147 of 2015 vide order dated 23.12.2015, this Court directed respondent No.1 to decide representation of Dr. Raja Razi Ul Hussnain, pertaining to the irregular promotion against the post of Secretary, PSF as well as Dr. Hafeez Ullah Khan. It was contended that the disciplinary proceedings were initiated while proceeding with the representation. In this behalf, it was submitted that the Facts

Finding Committee was constituted which submitted its report and pursuant thereto, Authorized Officers were appointed, who issued show cause notice and major penalties were imposed. It was further submitted that the Authorized Officer was appointed in accordance with law inasmuch as Ministry of Science and Technology, vide letter dated 22.01.2016 informed the Board of Trustees of Pakistan Science Foundation that delegation of power to the Secretary, Ministry of Science and Technology is required for further action; that the matter was placed before the Board of Trustees in its 46th meeting held on 26.01.2016, which was approved by the Board of Trustees and the nomination of Chairman, Pakistan Council for Scientific and Industrial Research as Authorized Officer was duly approved. The said Authorized Officers initiated proceedings by serving charge sheets upon the two officers on 06.05.2016. On 23.06.2016, Chairman, PSF being the Competent Authority under PSF, E&D Regulations, 1974, designated Dr. Muhammad Akram Sheikh, Member, Pakistan Science Foundation to act as Authorized Officer in disciplinary proceedings against the Petitioners. The Authorized Officer decided not to proceed with regular inquiry as there was sufficient material, therefore, after obtaining replies to the show cause notices, he awarded major penalty. The appellant authority confirmed the penalties awarded to the Petitioners. It was further contended that in this backdrop there is no error of procedure or law in proceedings against the petitioners.

8. Learned Deputy Attorney General adopted the arguments advanced by the learned counsel for Respondents No.1 to 3.

9. The facts, leading to the filing of the above petitions, have been mentioned hereinabove, therefore, need not be reproduced.

10. The Petitioners are aggrieved of major penalties awarded to them pursuant to disciplinary proceedings initiated against them and dismissal of their appeals.

11. On behalf of the Petitioners, two major submissions have been advanced i.e. that no regular inquiry was held before imposing penalty of compulsory retirement and the appointments of the Authorized Officers were not in accordance with law. Whereas, learned counsel for Respondents No.1 to 3 categorically submitted that since the rules of service of Pakistan Science Foundation are non-statutory, hence, the petitions are not maintainable.

12. Before proceeding further it is observed that there is no cavil with the preposition that rules of service of Pakistan Science Foundation are non-statutory and the same is duly reflected from the orders passed by the Hon'ble Supreme Court of Pakistan on 15.04.2013 in Civil Petition No.1830 of 2012 as well as dated 01.12.2011 in Civil Petition No.1507 of 2011 in case titled "*Dr. Shakeel Raza v. M/o Science and Technology thr. its*

Secretary, Islamabad & others”, however, in light of the decision of Hon’ble Supreme Court of Pakistan in case reported as “*Muhammad Rafi and another Vs. Federation of Pakistan and others*” **(2016 SCMR 2146)**, a petition under Article 199 of the Constitution is maintainable, even where, the rules of service are non-statutory, while holding so, the august Apex Court placed reliance on its earlier decision cited as “*Pakistan Defence Officers Housing Authority Vs. Lt. Col. Syed Jawaid Ahmed*” **(2013 SCMR 1707)**, wherein, the Hon’ble Supreme Court of Pakistan had held that even though if rules of service are non-statutory, a petition under Article 199 of the Constitution is maintainable, if there is violation of law.

13. For the instant petitions to be maintainable there has to be violation of law committed by Respondents No.1 to 3. It was contended on behalf of Petitioners that it is trite law that before awarding major penalties a regular inquiry was mandatory. The relevant provision, in this behalf, for the purposes of present controversy is Regulation 5 of Pakistan Science Foundation, Employees Efficiency and Discipline Regulations, 1974. The relevant Regulation reads as follows:

“5. Inquiry Procedure:- The following procedure shall be observed when a P.S.F employee is proceeded against under these regulations:-

1) In case where a P.S.F employee is accused of subversion, corruption or misconduct, the authorized officer may require him to proceed on leave or, with the approval of the

authority suspend him, provided that any continuation of such leave or suspension shall require approval of the authority after every three months.

2) The authorized officer shall decide whether in the light of facts of the case or the interests of justice an inquiry should be conducted through an Inquiry Officer or Inquiry Committee. If he so decides, the procedure indicated in Regulation 6 shall apply.

3) If the authorized officer decides that it is not necessary to have an inquiry conducted through an Inquiry Officer or Inquiry Committee, he shall-

- a) by order in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of the action; and*
- b) give him a reasonable opportunity of showing cause against that action:*

Provided that no such opportunity shall be given where the authority is satisfied that in the interest of the security of Pakistan or any part thereof it is not expedient to give such opportunity.

4) On receipt of the report of the Inquiry Officer or Inquiry Committee, or where no such officer or Committee is appointed, on receipt of the explanation of the accused, if any, the authorized officer shall determine whether the charge has been proved. If it is proposed to impose a minor penalty he shall pass orders accordingly. If it is proposed to impose a major penalty, he shall forward the case to the authority, along with the charge and statement of allegations served on the accused, the explanation of the

accused, the findings of the Inquiry Officer or Inquiry Committee, if appointed, and his own recommendations regarding the penalty to be imposed. The authority shall pass such orders as it may deem proper.

14. This Court while deciding an earlier petition filed by one of the Petitioners i.e. Writ Petition No.2948 of 2016 vide judgment dated 16.12.2016, observed as follows:-

“7. The bare perusal of the rule show that the authorized officer is required to determine whether an inquiry should be conducted through an inquiry officer or the inquiry committee and in case he is of the opinion that no inquiry is to be conducted than the procedure in rule 6 ibid shall apply. However, in case the authorized officer is of the opinion that no inquiry is required he shall inform the accused in writing and give him a reasonable opportunity of showing cause against the proposed action. On receipt of the report of the inquiry committee or explanation in reply of the show cause notice the authorized officer, in case charge has been proved, shall impose a minor penalty, however, if it is felt that major penalty is to be awarded than the matter is forwarded to the authority i.e. Chairman or an officer or authority designated by him.”

In light of the referred regulation as well as explanation rendered to it in an earlier decision, regular inquiry can be dispensed with and is not essential in every case, however, the matter shall be communicated to the employee and an opportunity of hearing be provided to him. In this behalf, the show cause notice was issued by the Authorized Officer to the Petitioners and they accordingly responded to it, hence, no

illegality or irregularity was committed by the Authorized Officer in dispensing with the regular inquiry. There is no cavil with the principles laid down in the case law relied upon by the learned counsel for the Petitioners, however, they are not applicable in the facts and circumstances of the case inasmuch as Regulation 5 does not draw any distinction that regular inquiry is to be held or dispensed with where the major penalty is to be awarded.

15. Likewise, an objection was taken on behalf of Petitioners that the Authorized Officer was also Chairman of the Facts Finding Committee, hence, could not have been the Authorized Officer; the same objection was raised in the earlier petition i.e. Writ Petition No.2948 of 2016 and was dealt with by this Court in paragraph 8 of the judgment, which is as follows:-

“8. Respondent No. 2 being Authorized Officer has issued a Show Cause notice to the petitioners and the latter has raised objection that the former is biased as he was member of fact finding committee. In similar circumstance wherein an objection was raised to show cause notice issued by Security Exchange Company this Court vide judgment dated 27.11.2015, titled Imran Iqbal Panjwani Versus Federation of Pakistan, etc in Writ Petition No. 3517/2015 held as follows:

In light of the abovementioned judgement by the Apex Court the termination of services of any employee of respondent No.2 can only be undertaken by Securities & Exchange Commission of Pakistan. However, the fact finding inquiry or such like ancillary matters can be delegated to any officer including Commissioner but the final act of termination of services has to be undertaken by the collective body. The fact that a fact finding

inquiry is conducted by one of the Commissioners or was initiated on the direction of the Chairman making the referred persons biased against the petitioner is not sustainable. In this behalf in case titled the President v. Mr. Justice Shaukat Ali (PLD 1971 Supreme Court 585) it was observed as follows:

“In the absence of any pecuniary or proprietary interest in the subject-matter of the proceeding, it is essential that a real likelihood of bias must be shown. The mere fact that the Council had scrutinised the declaration of assets is not sufficient to establish such likelihood or bias, for, if it were so, then no judge, issues a rule in a motion or issues a notice to show cause in any other proceeding or frame a charge in a trial, can ever heal that matter or conduct that trial. The reason is that a preliminary inquiry intended to determine whether a prima facie case has been made out or not is a safeguard against the commencement of wholly unwarranted final proceedings against a person. To say that a charge should be framed against a person amounts to saying nothing more than that the person should be tried in respect of it. Anybody who knows the difference between a prima facie case and its final trial would reject the objection as misconceived. We accordingly reject them as misconceived.

There is furthermore, in this case, another exception which should not be

lost sight of, namely, that "the rule of disqualification must yield to the demands of necessity, and a Judge or an officer exercising judicial functions may act in a proceeding wherein he is disqualified even by interest, relationship or the like, if his jurisdiction is exclusive and there is no legal provision for calling in a substitute, so that his refusal to act would destroy the only tribunal in which relief could be had and thus prevent a termination of the proceeding" (vide American Jurisprudence, Vol, 30, page 770). The Supreme Judicial Council is the only body which can hold an inquiry into the capacity of conduct of a Judge and if this entire body is itself disqualified, there will be no other forum before which the inquiry can be conducted. The procedure of co-option under clause (3) of Article 128 would not resolve the difficulty, if this objection is allowed to prevail, for after three Judges of the Supreme Court are disqualified, there will be only 3 left to constitute the Council which has to consist of 5 persons under Article 128. There is no provision for a quorum therein. The quorum was fixed at 3 only by the amendment of the 6th May 1971. The preliminary objections are, therefore, overruled as being misconceived."

In light of the above judgement there is nothing on record to substantiate the apprehension of the petitioner that the Chairman and one of the Commissioners is biased against

him. The mere apprehension of being biased is not sufficient for disqualifying any member of the Commission.

Even otherwise, it is an established principle that show cause notice is mere initiation of proceedings and not the proceedings in itself and no Constitutional petition is maintainable against it unless the same is without jurisdiction or suffers from patent legal defective. In this behalf the case law cited by the learned counsel for respondent No.2 is instructive; in the case titled Khalid Mahmood Ch. And others v. Government of the Punjab through Secretary, Livestock and Diary Development (2002 SCMR 805) the Hon'ble Supreme Court of Pakistan held that where disputed show cause notice was still a preliminary stage as after considering the replies if the competent authority comes to the conclusion that it was a case of taking further proceedings only then the proceedings shall commence, therefore, Constitutional petition was pre-mature and ought to be dismissed."

16. It is pertinent to observe that Intra Court Appeals (I.C.A. No.01 of 2017 and I.C.A. No.02 of 2017) filed against the judgments of this Court in Writ Petitions No.2949 of 2016 and 2948 of 2016, were dismissed and the judgment in the Writ Petitions attained finality.

17. The submissions by learned counsel for Respondents No.1 to 3 on the factual aspect of the matter find due support from the documents appended with the replies to the petitions and learned counsels for the petitioners were unable to point any exception to the same.

18. In the referred facts and circumstances, there is no violation of law committed by Respondents No.1 to 3, hence, the Writ Petitions are not maintainable.

19. For the above mentioned reasons, the instant petitions are devoid of merit and are accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 10/08/2018.

JUDGE

*M. Zaheer Janjua**

Uploaded By: Engr. Umer Rasheed Dar