

Form No: HCJD/C

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Intra Court Appeal No. 445 of 2017
In
Writ Petition No.08 of 2016

Tahir Atique Siddiqui.

Vs.

Federation of Pakistan through Secretary, Ministry of Information and
Technology, Islamabad and another.

Appellant's by : Muhammad Shahid Kamal Khan,
Advocate.

Respondent's by : Mr. Zahid Idrees Mufti and Hasnain
Idrees Mufti, Advocates.

Date of decision : 26.04.2018

AAMER FAROOQ, J. - This appeal is directed
against judgment dated 04.12.2017, whereby the petition filed
under Article 199 of the Constitution was dismissed.

2. The facts, in brief, are that the petitioner was employed
in Telephone Industries of Pakistan Limited as Deputy General
Manager and was removed from service vide order dated
03.12.2014 on the ground that vide judgment dated 27.11.2014
passed by Accountability Court No.1, Islamabad in Reference
No.15/13-IBD titled "State Vs. Azad Bakht etc.", he was convicted
and sentenced to imprisonment for five years and fine of Rs.5
million was also imposed. Petitioner filed an appeal against the said
conviction and sentence by way of an appeal before this Court. In
the appeal sentence was suspended. The petitioner also challenged

the dismissal from service through a petition under Article 199 *ibid* (Writ Petition No.08 of 2016), which was dismissed *vide* the impugned judgment by the judge-in-chamber.

3. Learned counsel for the appellant, *inter-alia*, contended that it is settled that respondent No.2 i.e. Telephone Industries, Pakistan Limited is a person for the purpose of Article 199 of the Constitution. It was further contended that the conviction and sentence which formed basis for dismissal from service has been suspended by this Court. It was further contended that though the rules of service of Telephone Industries of Pakistan are non-statutory but even then the petition under Article 199 is maintainable. In light of the law laid down by the Hon'ble Supreme Court of Pakistan in case reported as "*Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed*" **(2013 SCMR 1707)**.

4. Learned counsel for the respondents, *inter-alia*, contended that there was no need to provide an opportunity of hearing inasmuch as it is provided in the service laws that where a person is convicted of an offence he can be dismissed from service.

5. Arguments advanced by the learned counsels for the parties have been heard and the documents have been examined with their able assistance.

6. Petitioner is aggrieved of his dismissal from service by respondent No.2. The status of respondent No.2 i.e. Telephone Industries of Pakistan Limited is that it of a public limited company with no statutory rules of service, hence, it is a person for the

purpose of Article 199 of the Constitution. Admittedly, the rules of service of respondent No.2 are non-statutory, however, Hon'ble Supreme Court of Pakistan in case reported as "*Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed*" **(2013 SCMR 1707)** laid down the principles regarding the maintainability of a petition under Article 199 of the Constitution, even where the rules are non-statutory. The Hon'ble Supreme Court of Pakistan in this behalf observed as follows:-

50. 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 light of the above dictum of the august Apex Court, where there is violation of law or principles of natural justice a petition under Article 199 of the Constitution is maintainable, even where the rules are non-statutory.

8. In the instant case, admittedly, no notice or personal hearing was granted before issuance of the impugned letter from dismissal of service, hence, the petitioner has been dismissed from service in violation of the principles of natural justice. Therefore, the petition under Article 199 *ibid* was maintainable. Since, the impugned letter is in violation of principles of natural justice, therefore, is not tenable and merits setting aside.

9. For the above mentioned reasons, the instant appeal is allowed and the impugned judgment dated 04.12.2017 is set aside. Consequently, the petition under Article 199 of the Constitution filed by the appellant succeeds and the impugned letter dated 03.12.2014 is set-aside. However, respondent No.2 shall be at liberty to pass an appropriate order after affording the opportunity of hearing to the petitioner, in case it decides to proceed against him.

(MOHSIN AKHTAR KAYANI)
JUDGE

(AAMER FAROOQ)
JUDGE