

# THE HIGH COURT OF SINDH, KARACHI

## Present:

Mr. Justice Muhammad Shafi Siddiqui &  
Mr. Justice Adnan Iqbal Chaudhry.

## Constitution Petition No. D-838 of 2014

[Imran Ahmed Ansari versus Federation of Pakistan and another]

Petitioner : Imran Ahmed Ansari through Malik Muhammad Asghar, Advocate.

Respondent 1 : Federation of Pakistan through Mr. Muhammad Nishat Warsi, D.A.G.

Respondent 2 : Pakistan Defence Officers Housing Authority, Karachi through M/s. Malik Naeem Iqbal and Khurram Memon Advocates.

Date of hearing : 31-10-2019

Date of decision : 22-01-2020

## JUDGMENT

**Adnan Iqbal Chaudhry J.** - The Petitioner was terminated from service by the Pakistan Defence Officers Housing Authority (DHA), the Respondent No.2, vide letter dated 15-01-2014 ('termination letter'), and therefore prays for the following writs:

- a) *Declare that impugned termination letter/order dated 15-01-2014 is illegal, without lawful authority, without assigning any reason, based on mala fide intention having been issued to punish the petitioner.*
- b) *Set aside the impugned termination letter dated 15.01.2014 (Annexure P/1) issued by respondent No.2 by holding that the same is patently illegal, uncalled for, not sustainable in law, mala fide and have not legal affect.*
- c) *Direct the respondent to reinstate the petitioner with full back benefit and subsequently deem to be in service of respondent DHA and be entitled to continue his service up to 30 years as per revised service policy approved by the Executive Board of DHA in meeting no. 1/2013 dated 20<sup>th</sup> March 2013.*
- d) *Cost of the proceedings.*
- e) *Any other relief(s) which this Hon'ble Court may deem fit and proper under the circumstances of this case may also be granted."*

2. The petitioner was appointed by the DHA as SDO (Civil) in BPS-14 under a contract dated 19-03-2008 *“for a period of 10 years extendable by another 10 years (on two yearly review basis) based on performance ....”*. The contract stipulated that the DHA Service Rules shall prevail. Those are the ‘Service Rules of Employees of the PDOHA, 2008’. The DHA is a statutory authority under President’s Order No.7 of 1980, and under Article 16 of the said Order the employees of the DHA are deemed to be the public servants within the meaning of section 21 of the Pakistan Penal Code, 1860.

3. The service of the Petitioner was terminated prior to the expiry of the first 10 years of his contract. The impugned termination letter dated 15-01-2014 states:

*“1. The Authority has decided to dispense with your services vide PDOHA Service Rules Chapter-III para 8b(1), with immediate effect with one month pay in lieu of one month notice period.”*

Rule 8(b)(1) of the DHA Service Rules cited in the termination letter empowers the Administrator of the DHA to dispense with the service of an employee without giving cause and by giving him one month’s notice or one month’s pay in lieu thereof.

4. It is the Petitioner’s case that he was a regular employee; that under the DHA Service Rules he could not have been dismissed without a show cause notice; that the real reason for his dismissal was that he had highlighted the embezzlement and corruption committed by another employee; and that under the garb of a termination simplicitor, he has been deprived of due process which is also in violation of Rule 8(b)(4) of the DHA Service Rules.

5. It is the case of the DHA that since the DHA Service Rules are non-statutory, the relationship between the parties is of master and servant and therefore a writ petition is not maintainable; that the opportunity to show-cause under Rule 8(b)(4) of the DHA Service Rules is attracted only when termination is threatened on disciplinary grounds; that in the instant case service was terminated under Rule 8(b)(1) of the DHA Service Rules which empowers the

Administrator to dispense with service without cause; and that under the DHA Service Rules, there is no distinction between a regular employee and a contract employee as all employees are on contract.

6. Heard the learned counsel and perused the record.

In support of their respective submissions on the maintainability/ non-maintainability of this writ petition, both learned counsel relied on *Pakistan Defence Officers Housing Authority v. Itrat Sajjad Khan* (2017 SCMR 2010) - [*Itrat Sajjad*], which judgment was delivered by the Supreme Court pending this petition. Learned counsel for the DHA had also relied on a judgment dated 26-02-2018 passed by a Division Bench of this Court in *Fazl-e-Akbar v. Pakistan Defence Officers Housing Authority* (C.P. No. D-1595/2017) which relied on *Itrat Sajjad* to hold that employees of the DHA cannot invoke the writ jurisdiction of the High Court as DHA Service Rules were non-statutory. However, while making submissions, none of the learned counsel noticed or pointed out that in *Itrat Sajjad* the Supreme Court of Pakistan had also declared the same Rule 8(b)(1) of the DHA Service Rules, viz. the rule under which the impugned termination letter has been issued, as *ultra vires* the Constitution of Pakistan for the following reasons:

“The provisions of Rule 8(b)(1) which empower a statutory corporation/public functionary to terminate the services of its employees without cause, of course, clearly violates the principle of natural justice/law and, therefore, its retention in the service rules of the appellant cannot be allowed being *ultra vires* the Constitution and the law. ....

In view of what has been discussed above and the fact that we have declared the provision of Rule 8(b)(1) as *ultra vires* the Constitution, therefore, declare the letter dated 11th September, 2012 whereby the services of the respondent were dispensed with, as illegal and without lawful authority. The respondent would be deemed to be in service and entitled to all consequential benefits. However, the appellant would be at liberty to initiate proceedings, if deemed fit, against the respondent in terms of Rule 8(b)(4) or any other provision but strictly in accordance with law”.

7. Since the Petitioner’s service was terminated under Rule 8(b)(1) of the DHA Service Rules, which rule has since been declared

un-constitutional by the Supreme Court of Pakistan, we are not inclined to embark on the discussion whether Rule 8(b)(4) of the DHA Service Rules is confined only to cases of termination on disciplinary grounds<sup>1</sup>, and the only point left for our consideration is whether the effect of the declaration in *Itrat Sajjad* on the case of the Petitioner can be addressed by us in writ jurisdiction.

8. It had been settled by a 5 member Bench of the Supreme Court in *Pakistan Defence Officers Housing Authority v. Lt. Col. Jawaid Ahmed* (2013 SCMR 1707) – [*DHA v. Jawaid Ahmed*], that applying the ‘function test’ certain statutory authorities including the DHA, are a ‘person’ to whom a writ can issue under Article 199(1)(a)(ii) of the Constitution of Pakistan. But then, moving to a question distinct, viz. whether the employee of a statutory authority can invoke the writ jurisdiction of the High Court to enforce service rules of the statutory authority, it was held in *DHA v. Jawaid Ahmed* that where service rules were non-statutory, those cannot normally be enforced in writ jurisdiction for such rules attract the principle of ‘master and servant’; but at the same time it was also held that where action of a statutory authority in a service matter is in violation of principles of natural justice, such action can be interfered with in writ jurisdiction. *Itrat Sajjad* reiterates the same principles, and while it was concluded that the DHA Service Rules are non-statutory and thus not enforceable ordinarily by way of a writ petition, the judgment went on to hold that since Rule 8(b)(1) of the DHA Service Rules violated the principle of natural justice, the case fell within the recognized exception that a writ can issue where the action of a statutory authority in a service matter is violative of the principle of natural justice. For the same reason, this petition, to the extent it assails termination issued under the same Rule 8(b)(1) of the DHA Service Rules, is also maintainable. The judgment of this Court in *Fazl-e-Akbar v. Pakistan Defence Housing Authority* (C.P. No.D-1595/2017) is distinguishable for the reasons that there termination of service was not under Rule 8(b)(1) of the DHA Service Rules; and the petitioner

---

<sup>1</sup> In *Itrat Sajjad* it was an admitted fact that the DHA and its employee were at odds with each other and therefore it was held that the DHA ought to have invoked Rule 8(b)(4) instead of Rule 8(b)(1) of the DHA Service Rules.

was essentially seeking a writ for the enforcement of the non-statutory DHA Service Rules.

9. In view of the foregoing, we are inclined to mould the relief prayed for and to allow this petition in the following terms. Since the impugned termination letter dated 15-01-2014 was issued under Rule 8(b)(1) of the DHA Service Rules, which rule has since been declared *ultra vires* the Constitution of Pakistan by the Supreme Court in *Itrat Sajjad*, the impugned termination letter is set-aside and the Petitioner is reinstated in service with all back benefits. Thereafter, should the DHA decide to dispense with the Petitioner's employment in terms of the contract, that shall be done strictly in accordance with law.

**JUDGE**

**JUDGE**

Karachi:

Dated: 22-01-2020