JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 483 of 2020

Sneel Nazir

Versus

Diocesan Board of Education Islamabad/Rawalpindi etc.

Date of Hearing	:	**10.06.2022.**
Petitioner by	:	Javed Iqbal Khan, Advocate
Respondent by	:	Ch. Azmat Ullah, Advocate

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, petitioner (*Sneel Nazir*) impugns letter dated 01.07.2019, issued by the respondent No. 1/Diocesan Board of Education Islamabad/Rawalpindi **('DBE')**, whereby pursuant to DBE Board's decision in its meeting dated 29.06.2019, the post of *"Administrator, Islamabad Convent School F-8/4, Islamabad*" was declared redundant with immediate effect in terms of DBE Rules of Service Clause 18.4 Redundancy with stipulation that payment in lieu of notice was to be paid for three months as per **Clause 18.5.1** and **18.5.2 '*Notice of Termination by Employer*'.**

2. The case setup by the petiotner is that he was appointed as School Information Officer on 11.05.2007 with respondent No. 4 (*Islamabad Convent School F-8/4 Campus*); that subsequently his appointment was made permanent, vide letter dated 11.05.2008; that he served at the post for almost 13 years with full dedication and was never served with any show cause or warning; that in recognition of his services and capabilities, respondent No. 4 vide letter dated 14.06.2018 requested the respondent No. 1 to extend look after charge of the **"*Administrator*"** to the petitioner which stood approved by respondent No. 1, vide letter dated 19.06.2018; that governing body of the Islamabad Convent School, F8/4, Islamabad

declared redundant the post of Administrator and terminated his services vide impugned letter without any notice or cogent reasons in arbitrary manner and that he approached the controlling authority i.e. respondent No. 2 & 3 against the impugned action but to no avail. Hence, instant writ petition.

3. The learned counsel while recapping the grounds mentioned in the memo of the petition argued that the petitioner has been treated with religious discrimination; that the services of the petitioner has been protected under the law of redundancy, where under the last had to go first; that the petitioner had been holding a substantive post of *Information Officer* prior to his holding the charge of *Administrator* and if the latter post is abolished the right of the petitioner still exist against the original post i.e. *Information Officer* and that as per the constitution and Memorandum of Association of DBE, Chapter-II, the services of an employee cannot be terminated except on reasonable grounds whereas the impugned letter did not disclose any reason of termination, therefore, same is liable to be set aside.

4. On the other hand, learned counsel for the respondent-DBE repelled the above submissions. It is argued that the DBE is a charitable organization, therefore, instant petition is not maintainable; that the relationship of the petiotner with respondent was that of master and servant; that petitioner has already availed remedy under plenary jurisdiction by filing civil suit together with an application for temporary injunction; that the petitioner against the impugned action also retains remedy before the competent authority under the relevant statute and that the impugned action was in accordance with due approval by the Board of the DBE therefore, petition is liable to be dismissed. Learned counsel relied upon case law reported as ***2021 PLC (CS) 125, 2019 SCMR 648, PLD 2004 SC 70 and PLD 2014 SC 92.***

4. Heard, record perused.

5. The Diocesan Board of Education **('DBE')** Islamabad-Rawalpindi is the central organization for the management of the Catholic Christian

Schools in the Diocese of Islamabad-Rawalpindi, Pakistan and spread over KPK and Upper Punjab. The DBE was founded and registered **as a non-profitable and a charitable organization in 1960 under the Societies Act 1860**. Thus the status of the DBE is that of a non-profitable and a charitable organization and is neither a department of Federal Government or Autonomous body created through a statute therefore, cannot be described as a person performing functions in connection with the affairs of Federation within the meaning of Article 199 of the Constitution. The Hon'ble Apex Court in the case of **"*Salahudddin V. Frontier Sugar Mills and Distillery Limited*"** (**PLD 1975 SC 244**), held that:-

> *"Private organizations or persons as distinguished from Government or Semi Government **Agencies and Functionaries cannot be regarded as persons performing functions in connection with affairs of Federation or province** simply because their activities happened to be regulated by Laws and by Statute."*

6. In view of above legal preposition, the relationship of the petitioner and that of DBE was that of master and servant, therefore, constitutional petition is not maintainable in view of dictum laid down by the Hon'ble Apex court in case title ***"Pakistan International Airlines Corporation and others v. Tanvir ur Rehman and others,*** **(PLD 2010 (Supreme Court) 676)"**. In the similar circumstances, this Court in the case of ***Manzoor Ahmad v. Federation of Pakistan, (*2018 PLC (CS) 1224*)***, has also graciously observed that:-

> *"It is well settled that a writ petition is maintainable where the respondent authority violated any provision of law or statutory rules employees who are governed by statutory rules can avail the remedy of filing of writ petition before the High Court. It is also well settled that the principle of master and servant was applicable to the employees whose services were not governed by any statutory rules. Employee of a company, owned by the Government, in the absence of violation of law or any statutory rules could not press into service the constitutional jurisdiction of a High court in order to seek relief with respect to his employment."*

7. The Hon'ble Apex Court in case **"*Pakistan Airline Pilots Association and others V. Pakistan International Airline and another*" (2019 SCMR 278)** has graciously held that:-

> "*We may also state that where conditions of service of employees are not regulated by a statutory provision then such employees are to be governed by the principle of "Master and Servant". As the terms and conditions of employment in PIAC are admittedly not governed by any statutory provision and the employees are amenable to the Rule of "Master and Servant", Article 199 of the Constitution of Pakistan 1973 cannot be invoked.*"

8. The condition precedent mandatory for invoking constitutional jurisdiction of this Court in terms of Article 199 of the Constitution is that the rules governing terms and conditions of the employees should be statutory and where conditions of service of employees are not regulated by a statutory provision then such employees are to be governed by the principle of "***master and servant***", petition in terms of Article 199 of the Constitution is not maintainable.

9. Furthermore, it is also a matter of record that earlier on 03.07.2019, petitioner filed suit for declaration, permanent and mandatory injunction wherein he had assailed the impugned termination letter. Along with the suit, and application for temporary injunction had also been filed. The application was dismissed by the learned Civil Judge 1st Class, Islamabad-West vide order dated 23.01.2020 by observing that "***the parties were of in the relationship of master and servant. It any established principle of law that a servant cannot seek reinstatement in service because it is the prerogative of the master to terminate his service at any time. Only remedy for the servant for his alleged wrongful termination is to file suit for damages alleging breach of contract. Reliance is placed on 2009 PLC (CS) 464 SC, 2017 PLC (CS) 1080 Sindh, 2019 SCMR 468."***

10. The suit of the petitioner also remained unsuccessful as the plaint was rejected being not maintainable vide order and decree dated 22.11.2021.

11. The question that even in case of severance of the services under the impugned letter, the appointment of the petitioner against the post of *Administrative Officer* still holds the field warrant factual inquiry, not permissible under the constitutional jurisdiction. Even otherwise, in case of any grievance, the petitioner may move the DBE i.e. competent authority by availing alternate efficacious remedy as recognized by the respondents under Para-05 of their written comments under the head ***"preliminary objections"*.**

12. In view of above, the instant writ petition fails and accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____06.2022.

JUDGE

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