JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 3898 of 2020

Faisal Ahmed Shah

VERSUS

Pakistan through Secretary, Ministry of Energy and others

PETITIONER BY:	Barrister Abdul Wahab Khan, Advocate
RESPONDENTS BY:	Mr. Fahad Khan Tareen, learned Assistant Attorney General. Mr. Ghulam Mustafa Qureshi, Assistant Director, for the Respondents No. 2 to 8.
DATE OF HEARING:	11.09.2026

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AYYAZ SHAUKAT, J:- Through the instant petition, the petitioner has assailed the Office Memorandum dated 30.11.2020 **(the "impugned Office Memorandum")**, inter alia, on the ground that he was neither called upon to participate in the initial inquiry concerning the alleged shortage of stock nor associated with any subsequent fact-finding inquiry. It is his case that the alleged shortage came to light only after a considerable period had elapsed since he relinquished charge; yet no opportunity was afforded to him to explain his position or to respond to the allegations attributed to him. The petitioner further asserts that the departmental appeal preferred by him before Respondent No. 3 was also decided ex-parte, without affording him an opportunity of being heard. According to the petitioner, the manner in which his appeal was decided was in clear derogation of Rule 37(iii) of the PMDC Employees Service Rules, 2012 **(the "Rules")**, which requires the Appellate Authority to afford the appellant an opportunity to present and argue his case, either personally or through counsel. On these premises, the petitioner contends

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that the impugned Office Memorandum suffers from procedural impropriety and is violative of the principles of natural justice (audi alteram partem) and, being allegedly arbitrary, mala fide and actuated by personal vendetta, is liable to be set aside.

2. Learned counsel for the respondents has controverted the contentions of the petitioner and submits that the impugned action was taken strictly in accordance with the PMDC Employees Service Rules, 2012, after affording him a due opportunity of defence; that successive stock verifications revealed a net shortage of 5,212 tonnes of salt, valued at Rs.5,587,264/-, whereupon disciplinary proceedings were initiated not only against the petitioner but also against other officers and officials found responsible; that the petitioner was duly served with a charge-sheet/explanation letter, submitted his reply thereto and was thereafter afforded a personal hearing, of which he availed himself on 22.10.2019; that, deeming the material available on record sufficient to fix responsibility, the Authorized Officer dispensed with any further inquiry and apportioned the loss among the responsible employees according to their respective roles, whereby thirty per cent (30%) thereof, amounting to Rs.1,676,179/-, was ordered to be recovered from the petitioner; that the departmental appeal preferred by the petitioner was duly considered by the Managing Director, being the Appellate Authority, who concurred with the findings of the Authorized Officer; and that the allegation of mala fide or personal vendetta is misconceived, particularly when other officers and officials were also proceeded against and penalized. Lastly, it is contended that PMDC is a private limited company and that the Rules are non-statutory in nature; therefore, the dispute arising out of the petitioner's terms and conditions of service is not amenable to the constitutional jurisdiction of this Court and the petition is liable to be dismissed.

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3. I have heard learned counsel for the parties at considerable length and have perused the record with their able assistance. The respective submissions, as well as the material placed on record, have been duly considered.

4. Before adverting to the merits of the controversy, it is necessary, in the first instance, to address the preliminary objection raised by learned counsel for the respondents regarding the maintainability of the instant petition. The objection proceeds on the premise that PMDC is a company incorporated as a private limited company and that the PMDC Employees Service Rules, 2012, governing the terms and conditions of service of its employees, are non-statutory in character.

5. The legal position governing such matters is, by now, well settled: where the grievance of an employee essentially arises out of, and seeks enforcement of, the terms and conditions of service regulated by non-statutory rules, such grievance cannot ordinarily be enforced in the constitutional jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **(the "Constitution")**. In ***Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others*** **(2017 SCMR 2010)**, the Hon'ble Supreme Court of Pakistan, while examining the maintainability of a constitutional petition involving the service grievance of an employee governed by non-statutory service rules, reiterated the principle earlier settled by a larger Bench in ***Abdul Wahab and others v. HBL and others*** **(2013 SCMR 1383)**, that where an employee is not governed by statutory rules of service, a grievance relating to the enforcement of such terms and conditions of service is not amenable to constitutional jurisdiction. The relevant paragraph is reproduced hereunder:-

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"10. The next question for our consideration would be the maintainability of a writ filed by an employee of Authority a statutory corporation having non statutory rules of service seeking enforcement of the terms and conditions of his service rules. Again this question was taken up and decided by a six-member Bench of this Court in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383) by holding that where a service grievance is agitated by a person/employee who is not governed by the statutory rules of service, before the High Court(s), in terms of Article 199 of the Constitution such petition shall not be maintainable. Relevant portion of para 7 of the cited judgment is reproduced as follows:-

"... It is settled law that, where a service grievance is agitated by a person/employee who is not governed by the statutory rules of service, before the High Court(s), in terms of Article 199 of the Constitution such petition shall not be maintainable; reference in this behalf can be made to PLD 2010 SC 676 (Pakistan International Airline Corporation v. Tanweer-ur-Rehman) and PLD 2011 SC 332 (Pakistan Telecommunication Co. Limited v. Iqbal Nasir) (note: the question however if that is possible in terms of Article 199(1)(c), we have deferred). But the plea that such law shall not prevent this Court while exercising its jurisdiction under Article 184(3); suffice it to say that while exercising the jurisdiction this Court is bound by the conditions of Article 184(3); and moreover by such rules which are laid by this Court for regulating its jurisdiction, keeping in view the principles of restraints. We find that in the cases of contractual service, where the grievance agitated is against a private person, there is no reason that such restraint should not be resorted to by this Court and any exception should be taken to the law laid down in Tanweer ur Rehman case supra (note: even if it pertains to the writ jurisdiction of High Courts)."

6. The distinction is material, inasmuch as the mere fact that an employer possesses a public or statutory character does not, by itself, confer statutory status upon every rule framed for the regulation of its employees. The enforceability of a service right in the constitutional

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jurisdiction, therefore, necessarily depends upon the legal character and source of the rules from which such right is claimed. The test for determining whether rules or regulations possess statutory character was further elucidated by the Hon'ble Supreme Court in ***Muhammad Zaman and others v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others*** **(2017 SCMR 571)**. It was held that the question cannot be determined merely by examining whether governmental approval was required for framing the rules; rather, regard must be had to their nature, purpose and area of efficacy. Rules which essentially operate as instructions regulating the internal administration, control or management of an organisation remain non-statutory, whereas rules having an efficacy broader than mere internal management and which complement the parent statute in matters of crucial importance may acquire statutory character. In the said judgment, the Hon'ble apex Court concluded as follows:-

> *"7. According to the judgment delivered in Civil Appeal No.654/2010 etc. titled Shafique Ahmed Khan, etc. v. NESCOM through its Chairman, Islamabad, etc. the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to section 54(1) of the Act and section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [while saving the generality of the power under section 54(1) of the Act]. Out of all the matters listed in section 54(2) of the Act, clause (j) is the most relevant which pertains to the "recruitment of officers and servants of the Bank including the terms and conditions of their service,*

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constitution of superannuation, beneficial and other funds, with or without bank's contribution, for the officers and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift". A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition."

7. When the case in hand is examined on the touchstone of the principles enunciated above, the PMDC Employees Service Rules, 2012 do not appear to possess the attributes of statutory rules. The petitioner has not demonstrated that the said Rules derive their force from any statutory provision whereby the legislature has conferred upon them the character of subordinate legislation, nor has any material been placed before this Court to establish that their area of operation extends beyond the regulation of the internal service affairs of PMDC. On the contrary, the Rules govern matters relating to the terms and conditions of employment, discipline, departmental proceedings, appeals and other incidents of service of PMDC employees and, therefore, essentially operate within the sphere of internal administration and management.

8. The aforesaid principle has been consistently reaffirmed by the Hon'ble Supreme Court of Pakistan. In ***Pakistan International Airline Corporation v. Tanweer-ur-Rehman*** **(PLD 2010 SC 676)** and ***Pakistan Telecommunication Company Limited v. Iqbal Nasir*** **(PLD 2011 SC 132)**, it was held that where the terms and conditions of service of an employee are not regulated by statutory rules, the relationship

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between the employer and the employee is that of master and servant, and a writ petition under Article 199 of the Constitution is not maintainable. The same principle was applied in ***Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawaid Ahmed*** **(2013 SCMR 1707)**. Further, in ***Shafique Ahmed Khan and others v. NESCOM through Chairman, Islamabad and others*** **(PLD 2016 SC 377)**, the Hon'ble Supreme Court laid down the test, adopted in **Muhammad Zaman** (supra), for distinguishing statutory from non-statutory rules, namely, the nature and efficacy of the rules and not merely the requirement of governmental approval for their framing. Applying that test, the Rules, being instruments of internal control and management, cannot be enforced through the constitutional jurisdiction of this Court.

9. For the reasons discussed above, this Court is of the considered view that the grievance raised by the petitioner essentially pertains to the terms and conditions of his service governed by the Rules, which are non-statutory in character and, therefore, cannot be enforced through the constitutional jurisdiction of this Court under Article 199 of the Constitution. Consequently, the instant petition, not being maintainable, is hereby **DISMISSED**. As the petition has been dismissed on the question of maintainability alone, this Court refrains from expressing any opinion on the merits of the controversy, lest it prejudice the rights of either party before any other competent forum available under the law. No order as to costs.

(AYYAZ SHAUKAT)
JUDGE

Announced in open court on **05.10.2025.**

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JUDGE

Saeed.

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