JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4031 of 2020
Zafar Iqbal
Versus
Federation of Pakistan and another

Dates of Hearing:	07.09.2022, 13.09.2022 and 28.09.2022.
Petitioner by:	Mr. Muhammad Asif Gujjar, Advocate.
Respondents by:	Malik Shaukat Nawaz, learned Assistant Attorney General along with Mr. Zahid Khan, Section Officer (Lit), M/o IPC. Syed Iqbal Hussain Shah Gillani and Mr. Naeem Bhutta, Advocates for respondent No.2 along with Mr. Shafaqat Ali, Assistant Director, I.B.C.C..

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Zafar Iqbal, impugns the order dated 02.12.2020 passed by the Inter Board Committee of Chairman (**"I.B.C.C."**), Ministry of Federal Education and Professional Training, whereby his services were terminated with effect from 19.12.2012.

2. The factual background of this case is that vide letter dated 21.07.2005, the petitioner was appointed to the post of Equivalence and Attestation Clerk at I.B.C.C. Sub-office, Peshawar on contract basis for a period of two years. On 30.07.2005, the petitioner assumed the charge of his duties.

3. While the petitioner was posted at the I.B.C.C.'s Sub-office at Peshawar, he was accused of being involved in embezzlement and corruption. As per the statement of allegations dated 27.06.2011, the petitioner was accused of preparing fake fee *challan* receipts of Allied Bank, B.I.S.E. Peshawar and accepting bribes/gratification from candidates for processing equivalence and attestation cases. On 30.06.2011, the petitioner submitted his reply to the statement of allegations against him.

4. Vide office order dated 27.06.2011, the petitioner's services were placed under suspension. Inquiry proceedings under the Government Servants (Efficiency and Discipline)

UNCERTIFIED COPY

Rules, 1973, were conducted against the petitioner and in this regard, vide order dated 22.07.2011, the petitioner was directed to appear before the inquiry committee on 27.07.2011 to present his defence. On the said date, the petitioner submitted replies to the questions that had been posed to him. The inquiry committee, in its report dated 12.08.2011, recommended the award of a major penalty of termination of contract to be imposed on the petitioner. On 12.12.2011, the petitioner was issued a notice to show cause as to why the penalty of *"dismissal from service (termination of contract)"* may not be imposed on him. After the petitioner submitted his reply to the said show cause notice, I.B.C.C., vide office order dated 08.05.2012, terminated the petitioner's service contract.

5. Against the said order dated 08.05.2012, the petitioner preferred a departmental appeal. On 09.07.2012, the petitioner was afforded an opportunity of a hearing by the appellate authority. Vide order dated 13.07.2012, the appellate authority ordered that a *de-novo* inquiry be conducted against the petitioner within a period of six weeks.

6. Vide I.B.C.C.'s order dated 26.07.2012, a new inquiry committee was constituted. The inquiry report dated 17.12.2012 shows that the charges against the petitioner had been established and he was found guilty of the charges levelled against him. The inquiry committee recommended that the competent authority may impose an appropriate penalty on the petitioner and recover from him the loss caused to the national exchequer.

7. It is an admitted position that at no material stage after the issuance of the said inquiry report dated 17.12.2012 was any order passed by the competent authority imposing any penalty on the petitioner. Learned counsel for I.B.C.C. confirms that no such order was in the record of I.B.C.C.

8. On 23.08.2013, F.I.R. No.506 under Sections 302, 324, and 34 P.P.C. was registered against *inter alia* the petitioner at Police Station Margalla, Islamabad. The said F.I.R. was registered on the complaint of Mir Wais Khan. The allegation against the

UNCERTIFIED COPY

petitioner was that he had killed the grandson of Muhammad Ramzan Achakzai, who was the Secretary of I.B.C.C., and had passed the initial order of the termination of the petitioner's services. Vide judgment dated 28.03.2018 passed by the Court of the learned Sessions Judge, Islamabad, the petitioner was acquitted in the said case.

9. The petitioner remained incarcerated between 2013 and 2018. After the petitioner's acquittal in the abovementioned criminal case, he applied to I.B.C.C. for his services to be restored and his unpaid salaries / benefits to be paid to him. Having not received any response from I.B.C.C., the petitioner, on 14.07.2018, filed writ petition No.2823/2018 before this Court seeking the restoration of his services and the payment of his unpaid salaries / benefits.

10. Since the petitioner's application for the restoration of his service and the payment of his unpaid salaries / benefits had not been decided by I.B.C.C., this Court, vide order dated 10.05.2019, disposed of the said writ petition with the direction to I.B.C.C. to decide the petitioner's pending application strictly in accordance with the law and facts of the case through a speaking order after affording an opportunity of a hearing to him or his representative.

11. I.B.C.C. preferred civil petition No.2477/2019 against the said order dated 10.05.2019 before the Hon'ble Supreme Court. The said petition was allowed vide order dated 23.10.2020 with the following observations:-

> *"We have heard the learned counsel for the petitioners so also the Respondent, who is appearing in person. The only grievance of the petitioners is that the learned High Court has made certain observations in paras 22 & 23 of the impugned judgment dated 10.05.2019. The learned counsel for the petitioners states that the petitioners will be satisfied, provided they are allowed to pass an appropriate order on the basis of de novo inquiry report. We note that the petitioners have not been denied the right of passing an order on the de novo inquiry report but they are aggrieved only to the extent of some other observations made in the operative part of the impugned judgment. We hold that the petitioners may, without prejudice to such observations, pass an appropriate order on the basis of de novo inquiry report."*

UNCERTIFIED COPY

12. After the said order was passed by the Hon'ble Supreme Court, the "competent authority" in I.B.C.C., vide order dated 02.12.2020, found the petitioner guilty of misconduct on the basis of the recommendations made by the Inquiry Committee in the *de-novo* proceedings and terminated his services with effect from 19.12.2012. The said order dated 02.12.2020 has been assailed by the petitioner in the instant writ petition.

13. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the consequence of the order dated 13.07.2012 passed by the appellate authority for conducting a *de-novo* inquiry against the petitioner was that the earlier termination order dated 08.05.2012 was no longer in the field and in such circumstances, the petitioner should have been taken back in service; that this Court, vide order dated 10.05.2019 passed in writ petition No.2823/2018, had on the basis of I.B.C.C.'s letter dated 17.09.2009, the petitioner's service certificate dated 01.01.2009 and Establishment Division's office memorandum dated 29.08.2008, held that the petitioner's services had been regularized; and that at no stage was the petitioner afforded an opportunity of a hearing before the passing of the impugned order dated 02.12.2020. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

14. On the other hand, learned counsel for I.B.C.C. submitted that civil petition No.2477/2019 filed by I.B.C.C. against this Court's order dated 10.05.2019 had been allowed vide order dated 23.10.2020; that the petitioner had not denied I.B.C.C.'s right to pass an order on the basis of the *de-novo* inquiry report; that the observations of this Court made in the said order dated 10.05.2019 regarding the petitioner being a regular employee of I.B.C.C. do not hold good anymore; that at all material times the petitioner remained a contractual employee of I.B.C.C.; that I.B.C.C.'s letter dated 24.09.2010 on the basis of which the petitioner claims to be a regular employee is a forged document; that letter dated 23.01.2013 from the Ministry of Inter Provincial

UNCERTIFIED COPY

Coordination which is annexed at page 39 of this petition is also a forged document; that for producing a forged document before this Court, I.B.C.C. has filed a complaint under Section 476 Cr.P.C. against the petitioner; and that the terms and conditions of the petitioner's employment with I.B.C.C. are not governed by any statutory rules. Learned counsel for I.B.C.C. prayed for the writ petition to be dismissed.

15. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

16. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 12 above and need not be recapitulated.

17. Learned counsel for I.B.C.C. raised an objection to the maintainability of the instant petition on the ground that, at all material times, the petitioner's services with I.B.C.C. were contractual in nature. The petitioner claims that his services were regularized vide I.B.C.C.'s office order dated 24.09.2010. I.B.C.C. takes the position that the said office order is a forged document. I.B.C.C. asserts that the petitioner's contract period was extended from time to time and that it was last extended vide office order dated 31.07.2011 up to 30.07.2012. The petitioner disputes the authenticity of the said document.

18. Since the Hon'ble Supreme Court had allowed the petition filed by I.B.C.C. against this Court's order dated 10.05.2019 passed in writ petition No.2823/2018, the observations made by this Court in paragraph 15 of the said order regarding the petitioner's status as a regular employee of I.B.C.C. cannot be made the basis for holding that the instant petition is maintainable. The said paragraph is reproduced herein below:-

> *"15. As regards the question whether or not I.B.C.C.'s office order dated 24.09.2010, whereby the petitioner's services were regularized, is a disputed question of fact which cannot be resolved without the recording of evidence. Even if the said letter is not to be taken into consideration by this Court, I.B.C.C.'s letter No.F.1-35/06/Admn/ 1236, dated 17.09.2009, shows that in pursuance of Establishment Division's office memorandum dated 29.08.2008, the services of fourteen employees working in I.B.C.C. on contract basis were*

UNCERTIFIED COPY

regularized with effect from 01.07.2008. The petitioner's name appeared at serial No.9 in the list of the employees whose services were regularized. Furthermore, the service certificate dated 01.01.2009 issued by I.B.C.C. shows that the petitioner was a regular employee of I.B.C.C. Learned counsel for I.B.C.C. did not question the authenticity of I.B.C.C.'s said letter dated 17.09.2009 or the service certificate dated 01.01.2009."

19. Learned counsel for I.B.C.C., in its written arguments, have also disputed the authenticity of I.B.C.C.'s letter dated 17.09.2009 whereby the services of eight contract employees, including the petitioner, had been regularized. The authenticity of the service certificate dated 01.01.2009 has also been questioned by I.B.C.C.

20. Whether the documents which are disputed by the petitioner and I.B.C.C. are genuine or forged are disputed questions of fact that can only be resolved through the recording of evidence. This exercise cannot be undertaken by this Court but by a Court of plenary jurisdiction.

21. The Hon'ble Supreme Court, in its order dated 23.10.2020 passed in civil petition No.2477/2019, has observed *inter alia* that I.B.C.C. had not been denied the right of passing an order on the *de-novo* inquiry report. The *de-novo* inquiry report was issued by the Inquiry Committee on 17.12.2012. After the said order dated 23.10.2020 was passed by the Hon'ble Supreme Court, I.B.C.C. passed the impugned order dated 02.12.2020 on the *de-novo* inquiry report. In the said impugned order, the petitioner is referred to as a contract employee. Whether or not this Court has the jurisdiction under Article 199 of the Constitution to adjudicate upon the instant petition would depend on whether the petitioner was a contractual or a regular employee of I.B.C.C. I have already observed herein above that the disputed questions of fact as to whether the petitioner was a contractual or a regular employee of I.B.C.C. is to be determined by a Court of plenary jurisdiction. On account of this impediment, this Court cannot examine the legality of the impugned order dated 02.12.2020 at this stage.

22. An added reason why the instant petition is not maintainable is that even if it is assumed that the petitioner was a

UNCERTIFIED COPY

regular employee of I.B.C.C., the terms and conditions of his service would be governed by the Inter Board Committee of Chairman (I.B.C.C.) Employees Service Regulations, 1990. These Regulations have not been made in exercise of any specific powers conferred by statute. They have been made by the I.B.C.C. in exercise of powers conferred by some resolution of the Federal Government, Ministry of Education in 1972 and 1987. Since the said Regulations have neither been made by the Federal Government nor have they been made by I.B.C.C. in exercise of statutory power, they are clearly non-statutory in nature. In the case of Principal Cadet College Kohat Vs. Muhammad Shoaib Qureshi (PLD 1984 SC 170), this Court had held that where the terms and conditions of service of an employee of a statutory body were governed by statutory rules then any action taken against him in derogation of the said Rules could be set aside by writ jurisdiction. However, in absence of such statutory rules any violation thereof could not normally be enforced through a writ petition.

23. In view of the above, the instant petition is dismissed as not maintainable. The petitioner is at liberty to assail the impugned order dated 02.12.2020 before a Court of plenary jurisdiction.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 20.10.2022.

(JUDGE)

*Ahtesham**

UNCERTIFIED COPY