JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

(W.P No.2019 of 2024)

Muhammad Farooq
Vs.
National Industrial Relations Commission and others

Date of hearing	:	07.05.2025.
Petitioner by	:	Khawaja Muhmmad Arif, Advocate.
Respondents by	:	M/s. Sardar Tariq Hussain and M.M Sikandar, Advocates.

J U D G M E N T

MUHAMMAD ASIF, J-. This Writ Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, carries the following prayer clause:

> *"It is, therefore, respectfully prayed that this writ petition may kindly be accepted and impugned order dated 18.04.2024 passed by the Respondent No.1 be set-aside with all consequential effects and the Judgment passed by the Respondent No.2 dated 06.09.2022 may kindly be restored."*

2. The ephemeral facts of the case are that the petitioner was appointed as a Junior Storeman in the Canteen Stores Department (**"CSD"**). On 17.01.2011, the petitioner was dismissed from service. Aggrieved by this dismissal, the petitioner filed a grievance petition before the Punjab Labour Court Rawalpindi. The Labour Court Rawalpindi, through its judgment dated 13.01.2012, allowed the petition, set aside the dismissal order dated 17.01.2011, and directed the petitioner's reinstatement in service along with all back benefits. Dissatisfied with this decision, Respondents No.3 and 4 challenged

the Labour Court's decision by filing a Labour Appeal before the Punjab Labour Appellate Tribunal (**"PLAT"**), Lahore. The PLAT, vide its order dated 22.06.2015, accepted the appeal and overturned the Labour Court's judgment. Being aggrieved, the petitioner filed Writ Petition No.3092/2015 before the Lahore High Court, Rawalpindi Bench. The writ petition was allowed, vide order dated 02.11.2017, and the PLAT's order was set-aside. Subsequently, Respondents No.3 and 4 filed an appeal before the Full Bench National Industrial Relations Commission (**"NIRC"**). This appeal was allowed on 28.06.2019, on the primary ground that the CSD does not qualify as a "commercial establishment" or an "industry" under the applicable legal framework. Dissatisfied with this decision, the petitioner filed Writ Petition No.3878/2019 before this Court. On 17.08.2020, this Court allowed the writ petition and remanded the matter to the Single Bench NIRC with direction to record evidence and hear the parties afresh before making its decision. Upon remand, the Single Bench NIRC, vide its order dated 06.09.2022, accepted the grievance of the petitioner and reinstated him in service with full back benefits. However, the Full Bench NIRC subsequently reversed this decision, vide order dated 18.04.2024 (**"the impugned order"**). Hence, this petition.

3. Learned counsel for the petitioner contended that the impugned order is arbitrary and devoid of reasons. It was argued that no formal inquiry was conducted against the petitioner; he was not afforded an opportunity to cross-examine witnesses; and no FIR, medical examination, or other lawful procedure was followed. The petitioner denied the alleged confession and claimed that he was coerced into signing blank papers under duress. Emphasis was laid on Standing Order 15(4) of Industrial & Commercial Employment (Standing Orders) Ordinance, 1968, asserting that its mandatory requirements were not complied with. It was further argued that CSD is a commercial establishment and thus subject to ordinary labor laws.

The learned Single Bench rightly set-aside the dismissal order of the petitioner and reinstated him in service with all back benefits, vide order dated 06.09.2022, but the same was intervened by the Full Bench NIRC via the impugned order, which is not sustainable in the eyes of law.

4. On the other hand, learned counsel for the respondents argued that the petitioner was found guilty of gross misconduct, having been discovered in an objectionable situation during duty hours with the wife of Qari. Per learned counsel show-cause notice was issued, a proper inquiry was conducted by a panel of senior officers, and the petitioner admitted to the allegations during proceedings. It was further argued that the respondents' organization is connected with Armed Forces, as such, the Single Member Bench NIRC had no jurisdiction to entertain the petitioner's petition, the Single Bench failed to appreciate this evidence, which was correctly considered by the Full Bench NIRC and resultantly the same was set aside, vide the impugned order.

5. Heard. Record perused. The background, leading to the filing of the instant petition, has already been mentioned hereinabove.

6. It may be noted that neither side raised the specific issue of maintainability of this petition on the ground of non-statutory service rules. However, since this Court is exercising constitutional jurisdiction under Article 199, it is obliged first to satisfy itself regarding the maintainability of the petition, irrespective of whether the parties raised the objection. It is a settled proposition that jurisdictional competence cannot be conferred by consent or silence of the parties.

7. The status of the CSD and its governing Rules has been conclusively settled by the Hon'ble Supreme Court in the case of *Chairman, Board of Control, CSD & others vs. Muhammad Azam Khan & others* (**Civil Appeal No.515 of 2025**), wherein it was held

that CSD is neither a statutory body nor a department of the Federal Government. It is not listed in Schedule III of the Rules of Business, 1973, and its internal instructions, such as the *"CSD Revised Instructions and Procedures Manual, 2006*," do not carry the force of law.

8. It is, therefore, evident that the service terms governing the petitioner's employment with CSD are non-statutory in nature, and the relationship is purely contractual, i.e. of a master and servant. No statutory framework exists to support a public law remedy.

9. The Hon'ble Supreme Court in a number of judgments i.e. *PIAC v. Tanweer-ur-Rehman* (**PLD 2010 SC 676**), *PIAC v. Syed Suleman Alam Rizvi* (**2015 SCMR 1545**), *Abdul Wahab v. HBL* (**2013 SCMR 1383**), *Pakistan Defence Officers' Housing Authority v. Lt.Col. Syed Jawaid Ahmed* (**2013 SCMR 1707**) *Syed Nazir Gilani v. Pakistan Red Crescent Society* (**2014 SCMR 982**) and *Pakistan Electric Power Company v Syed Salahuddin* (**2022 SCMR 991**) has consistently held that where service rules are non-statutory, constitutional jurisdiction under Article 199 cannot be invoked.

10. Accordingly, although the merits of the petitioner's dismissal may otherwise warrant examination, this Court is precluded from proceeding further in view of the clear lack of jurisdiction. The petition is, therefore, not maintainable, and is hereby **dismissed** on this ground alone.

(MUHAMMAD ASIF)
JUDGE

Announced in open court on 30.05.2025

JUDGE

Shoaib