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

W.P.No.3118 of 2016
Sanan Ali Khiliji
Versus
Pakistan Electronic Media Regulatory Authority and another

Date of Hearing:	14.06.2017
Petitioners by:	M/s Muhammad Shoaib Shaheen, Muhammad Umair Baloch, and Mirza Waqas Qayyum, Advocates.
Respondents by:	Barrister Munawar Iqbal Duggal, and Chaudhry Adil Javed, Advocates for the respondents/PEMRA, Mr. Ahsan Mehmood Satti, learned D.A-G,

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MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Sanan Ali Khiliji, impugns the following letters:-

"(i) Letter dated 16.07.2015, whereby Pakistan Electronic Media Regulatory Authority ("PEMRA") (respondent No.1), accepted the petitioner's resignation w.e.f 20.05.2015, subject to the condition that no claim made by the petitioner will be entertained by respondent No.1.

(ii) Letter dated 26.07.2016, whereby the petitioner's appeal for reinstatement in service, was turned down."

2. The record shows that in response to an advertisement published in the "Daily Dawn" on 03.03.2009, the petitioner participated in a competitive process for appointment as Deputy General Manager Non-Technical at PEMRA. As per the said advertisement, the academic qualifications and experience required for appointment against the said post was "minimum 2nd Division MBA/ M.Sc/M.A /LL.B with 05 years of relevant experience in BS-17 and above". The applicants with 2nd Division M.Phil or Ph.D in Management Sciences / Social Sciences could also apply for the said post. On 08.10.2009, the petitioner was appointed as Deputy General Manager at PEMRA.

3. Apparently, on 08.03.2011, the Government of Pakistan (Establishment Division), issued a directive requiring all Ministries, Divisions and Departments to verify the degrees and certificates of their employees. Consequently, PEMRA required

all its officers to complete online degree attestation by the Higher Education Commission ("HEC"). As some officers in PEMRA had dragged their feet in carrying out the verification of their degrees, PEMRA issued letters dated 18.05.2011 and 01.06.2011, wherein it was explicitly mentioned that non-compliance with the instructions regarding verification of degrees would be treated as misconduct under the PEMRA (Employees Service) Regulations, 2008. Vide letter dated 06.06.2011, PEMRA required the petitioner to provide his original degrees/certificates by 15.06.2016. This letter was followed by PEMRA's letter dated 16.06.2011 calling upon the petitioner to explain as to why disciplinary proceedings should not be initiated against him for non-provision of original degrees/certificates.

4. The excuse put forth by the petitioner for the delay in the provision of his degrees/certificates was that the HEC had delayed the verification process. The petitioner submitted his MBA degree for Session 2001-2003 bearing serial No.020917, from Al-Khair University, Muzaffarabad, Azad Jammu and Kashmir, issued on 29.08.2007. This degree was said to have been attested by the HEC. The petitioner also submitted his B.A degree bearing Serial No.002471, and Roll No.12040 from Bahauddin Zakariya University, Multan, issued on 21.04.1997. This degree was also said to have been attested by the HEC. Soon after the submission of these degrees, the petitioner went on deputation for a period of three years to the Earthquake Reconstruction and Rehabilitation Authority ("ERRA"). The petitioner remained on deputation at ERRA from 2011 to 2014. Vide letter dated 18.03.2014, the petitioner was asked by PEMRA to submit the degrees and marks sheets of his Matriculation, Intermediate, Graduation and Masters. Soon after the petitioner's return from deputation at ERRA, he was sent on deputation to the Ministry of Communications.

5. The position taken by respondent No.1 was that the petitioner was appointed in PEMRA on the basis of his B.A degree and marks sheet. The non-provision by the petitioner of his marks sheet of B.A from the Bahauddin Zakariya University,

made respondent No.1 suspicious and the matter was referred to the Federal Investigation Agency ("FIA") for an inquiry. In this inquiry process, Bahauddin Zakariya University is said to have confirmed that the B.A result card in the petitioner's name was fake. Since, the HEC had earlier verified and attested the petitioner's B.A certificate, respondent No.1, vide letter dated 18.03.2015 inquired from the HEC regarding the said attestation. The HEC, in its letter dated 26.03.2015 took the position that the HEC had verified the B.A degree issued to one Mr. Muhammad Matiullah by the University of Punjab, Lahore, against the ticket number on the petitioner's attested degree. To cut the long story short, FIR No.4/2015, dated 30.03.2015 was registered at Police Station FIA, Corporate Crime Circle, Islamabad, against the petitioner. On 07.04.2015, upon the registration of said FIR, the petitioner was suspended.

6. After the petitioner was suspended, inquiry/disciplinary proceedings were initiated against him. Vide office order dated 07.05.2015, an authorized officer was appointed to probe into the matter of producing/holding a fake B.A degree by the petitioner. The authorized officer was appointed under Regulations No.158 and 159 of the PEMRA (Employees Service) Regulations, 2008. On 14.05.2015, a notice was issued to the petitioner to show cause as to why disciplinary action should not be taken against him and a major penalty should not be imposed on him.

7. On 20.05.2015, the petitioner submitted his resignation. On 16.07.2015, the petitioner's resignation was accepted. On 11.09.2015, the petitioner requested respondent No.1 to issue an experience certificate to the petitioner for the period during which he served respondent No.1.

8. Vide order dated 12.04.2016, the Special Judge Central, Islamabad, accepted the petitioner's petition under Section 265-K of the Code of Criminal Procedure, 1898 ("Cr.P.C.") and acquitted the petitioner. The said order dated 12.04.2016 has attained finality. On 23.05.2016 and 04.07.2016, the petitioner submitted undated applications to respondent No.1 seeking his

reinstatement in service. The petitioner, in his applications, invoked Regulation No.111 PEMRA (Employees Service) Regulations, 2008 (as amended in 2011), which provided that "*no resignation shall be accepted if any disciplinary proceedings against the employee concerned are in progress*". Vide letter dated 26.07.2016, respondent No.1 turned down the petitioner's appeals. The said letter dated 26.07.2016 has been impugned by the petitioner in the instant petition.

9. Learned counsel for the petitioner after narrating the facts leading to the filing of the instant petition submitted that all of petitioner's educational testimonials are perfectly in order, and that none of them are bogus; that the petitioner had been appointed in PEMRA as a result of a competitive process; that his post graduate degrees had been verified and attested by HEC; that the petitioner had been implicated in a false case; that vide order dated 12.04.2016, the petitioner had been acquitted by the Special Judge Central, Islamabad; that when the petitioner tendered his resignation, the inquiry against the petitioner had already been initiated and an authorized officer had been appointed; that five days after the show cause notice dated 14.05.2015 was issued to the petitioner, he tendered his resignation on 20.05.2015; that the petitioner's said resignation was accepted by respondent No.1 on 16.07.2015; that respondent No.1 should not have accepted the petitioner's resignation after the initiation of an inquiry proceedings against the petitioner; that Regulation No.111 of PEMRA (Employees Service) Regulations, 2008, prohibited respondent No.1 from accepting the petitioner's resignation during the disciplinary proceedings; that since the acceptance of the petitioner's resignation, was unlawful, it was obligatory on respondent No.1 to accept his application for reinstatement in service; and that the acceptance of the petitioner's resignation by respondent No.1 was *non est* and *void ab inito*. Learned counsel prayed for the writ petition to be allowed and for the impugned letter dated 16.07.2015 and 26.07.2016 to be set aside.

10. On the other hand, learned counsel for the respondents submitted that although the petitioner had submitted his resignation after the initiation of the disciplinary proceedings, but the resignation was submitted by the petitioner on his own volition; that the petitioner's resignation was accepted by the competent authority on 16.07.2015; that the petitioner consciously wanted to leave respondent No.1's employment, because he had also requested respondent No.1 for an experience certificate, after his resignation had been accepted; that the mere fact that the petitioner was acquitted by the learned Special Judge Central, Islamabad, would not *ipso facto* exonerated him in the disciplinary proceedings; that by seeking his reinstatement in service, the petitioner had taken a contradictory position; that under Regulation No.110(1) of the PEMRA (Employees Service) Regulations, 2008, if an employee withdraws his resignation before it is accepted by the competent authority, his resignation is deemed to have been withdrawn; that under Regulation No.110(2) of the said Regulation if the employee's resignation is accepted by the competent authority, he/she can still apply for the withdrawal of his/her resignation before he/she is relieved; that the petitioner's resignation was accepted and he was relieved about ten months before he applied for his reinstatement; and that the petitioner had not approached the Court with clean hands. Learned counsel for respondents prayed for the writ petition to be dismissed.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant writ petition have been set out in sufficient details in paragraphs No. 2 to 8 above, and needs not be recapitulated.

12. The sole question that needs to be determined in this case is whether the petitioner can seek the issuance of a writ of mandamus directing respondent No.1 to reinstate the petitioner in service as his resignation had been accepted by respondent No.1 after the initiation of disciplinary proceedings against him.

13. The respondents, in their written comments, have confirmed that disciplinary proceedings had been initiated against the petitioner. Vide office order dated 07.05.2015, an authorized officer was appointed to probe into the matter of the production of a fake B.A degree by the petitioner. Furthermore, on 14.05.2015 a notice was issued to the petitioner to show cause as to why disciplinary action should not be taken against him and a major penalty should not be imposed on him. It is after the initiation of the disciplinary proceedings that the petitioner tendered his resignation. Although the petitioner's resignation letter is undated, notings thereon show that it was submitted on 20.05.2015. I deem it appropriate to reproduce herein below the said resignation in its entirety:-

> ***"THE DIRECTOR GENERAL (HR),***
> ***PEMRA, ISLAMABAD***
>
> ***Subject: RESIGNATION***
>
> ***Dear Sir,***
>
> ***It is very respectfully submitted that the undersigned is not in a position to continue serving in this esteemed organization due to certain inevitable domestic circumstances. Therefore, this may be treated and accepted as resignation by the undersigned. It is further submitted that the undersigned will not press any charges or claims against the PEMRA in future.***
>
> ***-Sd-***
> ***(Sanan Ali Khilji)***
> ***Dy. General Manager"***

14. The said resignation letter was accepted by respondent No.1 on 16.07.2015. After the acceptance of the petitioner's resignation, he applied to respondent No.1 for the issuance of an experience certificate. It is not disputed that on 12.04.2016, the petitioner was acquitted by the learned Special Judge Central, Islamabad, upon the acceptance of the petitioner's application under Section 265-K Cr.P.C. On 23.05.2016 and 04.07.2016, the petitioner applied to be reinstated in service on the ground that he had been acquitted in the criminal case registered against him and that under Regulation No.111 of the PEMRA (Employees Service) Regulations, 2008, his resignation could not have been accepted by respondent No.1. On 26.07.2016, respondent No.1

turned down the petitioner's application to be reinstated in service.

15. Now, Regulation No.111 of the PEMRA (Employees Service) Regulations, 2008, is reproduced herein below:-

> ***"111. Non-acceptance of resignation.—No resignation shall be accepted in any disciplinary proceedings against the employee concerned are in progress".***

16. Since disciplinary proceedings had admittedly been initiated against the petitioner, when he submitted his resignation, respondent No.1, in view of Regulation No.111 *ibid* ought not to have accepted his resignation. But the mere fact that respondent No.1 accepted the petitioner's resignation during the disciplinary proceedings would not by itself entitle the petitioner to have respondent No.1's letters, whereby his resignation was accepted struck down by this Court in writ jurisdiction. The petitioner can be said to have acquiesced to the order/letter accepting his resignation by remaining silent for a period of almost ten months thereafter. In the case of Sharif Ahmad Hashmi Vs. Chairman, Screening Committee, Lahore (1980 SCMR 711), it has been held as follows:-

> ***"this passage does not mean that a void order is always to be struck down regardless of the consequences of such a decision, but that a void order must be struck down provided there is not statue or principle of law which would make it unjust or inequitable to strike down the void order. This qualification is very important, and that is why, for example, a writ may be refused against a void order this would enable the petitioner to circumvent the provisions of a statute of limitation. [See this Court's judgment in Civil Appeals 150 and 166 of 1970 Jalal-ud-Din and others v. Mst. Noor Sain and others) and (Jalal-ud-Din and others v. Shams-ud-Din and others) respectively. Similarly in Ghulam Mohi-ud-Din v. Chief Settlement Commissioner (PLD 1964 SC 829) a writ petition had been filed against an order which this Court held was void. Nontheless the writ petition was dismissed on the ground that it was barred by acquiescence on the part of the petitioner. There is also ample authority for the proposition that a writ against a void order may be dismissed, if the petitioner is estopped by his conduct from challenging it, or if he has been guilty of laches."***

17. Now, can this Court turn a blind eye to the fact that the petitioner had consciously submitted his resignation due to "domestic circumstances." The question of respondent No.1 accepting the petitioner's resignation would not have a reason,

had the petitioner not resigned. Since disciplinary proceedings have already been initiated against the petitioner, it is obvious that upon the acceptance of his resignation, those proceedings were abated. The petitioner, by seeking his reinstatement in service, is, in effect wants respondent No.1 as well as this Court to totally disregard the factum of his resignation. He is also, in effect, wanting this Court to disregard the fact that he had accepted the acceptance of his resignation by applying to respondent No.1 for the issuance of an experience certificate. In this way, the petitioner is approbating and reprobating, and wants to go back on his footsteps to do well what he had done ill. After having taken the advantage of the disciplinary proceedings against him being dropped on account of his resignation, for the petitioner now to take up a stand that his resignation should be disregarded and he should be accepted back in service does not appear to be justified. It is by now well settled that criminal proceedings and departmental action against an employee can go side by side and may even end in varying results. Acquittal by a criminal Court has no substantial bearing on disciplinary action against an employee. Reference in this regard may be made to the law laid down by the Hon'ble Supreme Court in the cases of "Muhammad Nazir Vs. The Superintendent of Police, Toba Tek Singh and others" (1990 SCMR 1556), Talib Hussain Vs. Anar Gul Khan and 4 others" (1993 SCMR 2177), "Arif Ghafoor Vs. Managing Director, H.M.C., Texila" (PLD 2002 SC 13), "Falak Sher Vs. Inspector General of Police, Punjab, Lahore" (2005 SCMR 1020), and "Muhammad Shafique Vs. Deputy Director, Food" (2005 SCMR 1067).

18. The said conduct and attitude of the petitioner, in my view, disentitles him from invoking the extra ordinary jurisdiction of this Court. It is well settled that the grant of a writ is in the discretion of the Court and the Court will decline to exercise the discretion where the conduct of the petitioner is such that it would be inequitable and unjust to grant him relief. S.M. Murshed J. in the case of Messrs Momin Motor Co. Vs. Regional Transport Authority, Dacca (PLD 1962 Dacca 310), observed that "Courts

would be reluctant to exercise their discretionary powers of issuing such writs, if the petitioner's conduct is found to be such as would disentitle him so as to obtain the relief prayed for." In the case of Shahid Chanzaib Vs. C.D.A. (2017 YLR 411), I have had the occasion to hold as follows:-

> *"16. In the proceedings under Article 199 of the Constitution of the Constitution, which is an extra ordinary constitutional jurisdiction, the conduct of the litigant plays an important role. Where a petitioner does not come with clean hands or the Court dins that he is not a bona fide petitioner or where his conduct is dubious, the Court may decline to go into the merits of the matter."*

19. In view of the above, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Sultan*

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