Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 4229 OF 2018

Zahid Ali

Vs

Federation of Pakistan through Secretary, Ministry of Overseas Pakistanis & Human Resource Development, etc.

PETITIONER BY:	Rai Azhar Iqbal Kharal, Advocate for petitioner in W.P No. 4229/2018. Syed Muddasir Abbas Kazmi, Advocate in W.P No. 1702/2020
RESPONDENTS BY:	Hafiz Arfat Ahmed Chaudhry, Mr. Tariq Zaman Chaudhry and Ms. Kashifa Niaz Awan, Advocates. Mr. Faisal Tariq, Deputy Director Legal, WWF.
DATE OF HEARING**:**	19.02.2021.

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BABAR SATTAR, J.- Through this consolidated judgment the Writ Petition titled above and W.P No. 1720/2020 are being decided.

2. In Writ Petition No. 4229/2018 the petitioner has prayed that the show cause notice (**"SCN"**) dated 26.10.2018 issued by respondent No.1 be set aside and respondents No. 1 and 2 be directed to place the final order/recommendations of the authorized officer in the departmental inquiry against the petitioner before the Court.

3. In Writ Petition No. 1720/2020, the petitioner has impugned his dismissal order dated 29.04.2020 and has sought that

such order be declared as illegal and the petitioner be reinstated in service with effect from 29.04.2020 with salary and back benefits.

4. Learned counsel for the petitioner has provided the background of grievances in the said petitions. He submitted that the SCN was issued to the petitioner on 02.06.2017 and charge sheet was issued on 20.06.2017. That the said charge sheet was amended on 12.07.2017 to add questions regarding his initial appointment dated back to 2001 which fell within the domain of respondent No.2 itself, which had appointed him in accordance with due process. That he filed a response to the charge sheet on 21.07.2017 and was exonerated by the authorized officer. The petitioner was then issued a show cause notice on 17.10.2017 which was responded to by the petitioner. The learned counsel further submitted that the petitioner was heard by the authorized officer in the departmental inquiry on 28.03.2018. That the petitioner sought a copy of order passed by the authorized officer by letter dated 19.04.2018 under Rule 57(6) of Workers' Welfare Fund (Employees' Service) Rules, 1997 (**"WWF Rules")**. The petitioner made a further request soliciting the authorized officer's order on 15.07.2018 but the same was not provided. And therefore provision of the order of the authorized officer was sough through a prayer in W.P No. 4229/2018. Learned counsel further stated that it was his understanding that the petitioner was exonerated from all charges by the authorized officer but the authority, instead of the authorized officer, issued a second show cause notice to him on 26.10.2018, on the basis of the same investigation in which he believes to have been exonerated by the authorized officer, which has been impugned in W.P No. 4229/2018. That a hearing was ordered on

19.11.2018 but no substantive hearing was conducted in view of the matter pending adjudication before this Court and the injunctive order passed on 08.11.2018. The learned counsel submitted that despite clear orders passed by this Court in C.M No. 01 of 2018 in W.P No. 4229/2018 dated 08.11.2018 which stated that *"meanwhile, the proceedings in pursuance of show cause notice may continue, however, no final order shall be passed"*, the respondents passed order dated 29.04.2020 dismissing the petitioner from service which has been impugned in W.P No. 1720/2020. The learned counsel stated that the SCN and the dismissal order are rooted in malice, and were triggered as the petitioner, in view of the judgment of the august Supreme Court in Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456), had reported that some of his superiors had been illegally absorbed within the Workers Welfare Fund and he also brought the matter to the notice of the authority initially on 07.05.2016, and subsequently on 07.06.2016 through proper channel. That the petitioner also filed an application before the august Supreme Court in relation to such illegal appointments and the Directors who were illegally appointed triggered disciplinary proceedings against him in a fit of pique which then snowballed and culminated into passing of the dismissal order. That the dismissal order has been passed in breach of an injunctive order passed in W.P No. 4229/2018. That the petitioner has also filed Criminal Original No. 81/2020 that the impugned order has been issued in breach of the petitioner's right to due process under Article 10A of the Constitution as no substantive hearing was afforded to him by Secretary WWF, no reasons were shared with the petitioner as to why Secretary WWF in his capacity as authority disagreed with his

exoneration by the authorized officer and a copy of the report of the authorized officer was denied to the petitioner and never placed on record before this Court. That the impugned order is coram non judice as it has been passed by an Assistant Director and not by the competent authority.

5. Learned counsel for the respondents submitted that there is no procedural impropriety in the proceedings that led to the impugned order and that the competent authority can disagree with the authorized officer who acts on behalf of the competent authority. That under rule 57 of the WWF Rules an authorized officer can pass a minor penalty but he can only recommend a major penalty which is then to be passed by the competent authority. That even though the Rules are silent with regard to what happens when the authorized officer exonerates any employee, they do not forbid the competent authority from disagreeing with the authorized officer. He further submitted that the injunctive order passed by this Court on 08.11.2018 was recalled by order dated 19.12.2019 when the Court held the following:

> *"At the very outset, learned counsel for the respondents pointed out that the petitioner is not attending the office and is absent without any leave. Learned counsel for the petitioner controverts the position and submitted that he is attending the office.*
>
> *Be that as it may, in case the petitioner is not attending the Office or adhering to the Rules and Regulations of the respondents/Department the employer is at liberty to act in accordance with its Rules and Regulations."*

6. The questions before this Court arising from the pleadings and the arguments of the learned counsels are the following:

1. Does the impugned SCN and dismissal order suffer from jurisdictional defect for having been issued by the officer notified as authority under Rule 51 of the WWF Rules as opposed to being issued by the officer appointed as authorized officer in exercise of powers under Rule 50(2) of the WWF Rules?

2. Has the dismissal order been issued in breach of the injunctive order passed by the Court on 08.11.2018 in C.M No. 01/2018 and was such injunctive order recalled by order of the Court dated 19.12.2019? Is the dismissal order liable to be set aside on this basis?

3. Do the impugned SCN and dismissal order suffer from bias and mala fides?

7. Let us start with Question No. 1 and the reasons that form this Court's opinion that the SCN and the dismissal order issued by the authority in relation to a matter in which an authorized officer was appointed under the WWF Rules and did not render an opinion that misconduct had been established against the petitioner, are devoid of legal authority.

(I) Our Constitution enforces a concept of rule of law that is rooted in the doctrine of limited and specified powers of public officials. As all power in a democracy flows from the people to the public officials elected by them or appointed in exercise of power delegated by the people, public officials have no inherent power and can only exercise such power as vested in them by law. This lies at the heart of the scope of authority vested in public officials as enumerated by Article 4 of the Constitution, which allows

citizens the freedom to do whatever they are not prohibited from doing, and authorizes public officials to do in exercise of public authority of the state what they are authorized by law to do.

(II) Under WWF Rules, Rule 50 provides for appointment of an authorized officer and also states that where no officer is so authorized, the authority acts as the authorized officer. Rule 51 then provides which officers are designated as the authority. Rules 52 and 57 streamline the powers and functions of the authorized officer and the authority. Under Rule 52 the formation of an opinion on whether or not an accused officer has misconducted himself is to be proved by "the authority, or as the case may be, the authorized officer". Rule 57 that prescribes the procedure for disciplinary action vests discretionary authority in the authorized officer to determine (i) whether or not an inquiry is to be conducted, (ii) whether an inquiry officer is to be appointed or an inquiry committee constituted, and (iii) who is to serve as the inquiry officer or on the inquiry committee. Rule 57 also requires the authorized officer to perform certain mandatory functions such as framing the charge, giving personal hearing to the accused, issuing a show cause notice, considering the representation of the accused and forming an opinion on whether or not the charge has been proved. If the authorized officer concludes that the charge has been proved, he has the power to impose a minor penalty himself. If he concludes that the

misconduct attracts a major penalty, he must refer the matter to the authority, along with his recommendations, and it is only the authority that can impose a major penalty.

(III) Within the scheme of the WWF Rules, the adjudication of the question of misconduct is to be undertaken by the authorized officer, and where no authorized officer is appointed, by the authority which acts as the authorized officer under Rule 50. It is at the stage of enforcing a penalty that the powers of the authorized officer have been circumscribed: he can impose a minor penalty but not a major penalty. If he imposes a minor penalty, the matter rests there. Likewise, if he forms an opinion that misconduct has not been proved, the matter rests there. WWF Rules vests no *suo motu* or review or revisional powers in the authority to step into the shoes of authorized officer during such period when the adjudication of the charge is under way or to override the opinion of the authorized officer in exercise of revisional powers in the event that the authorized officer concludes that the charge has not been proven.

(IV) In order to find such *suo motu* or revisional power, one would need to read into the text of WWF Rules such language that does not exist. If the decision to drop disciplinary proceedings or exonerate an accused officer in exercise of authority vested in an authorized officer under the WWF Rules could be overridden by the authority, as it

were not to be bound by the opinion of the authorized officer, the WWF Rules could have easily said so. This is what the august Supreme Court observed in Muhammad Ashraf Qureshi v. Government of Punjab (1992 SCMR 974) in view of Rule 7A of Punjab Civil Servants (E&D) Rules, 1975, which stated, in the relevant part that "*in case it is proposed to drop the proceedings, the authorized officer shall submit the case with all relevant material documents to the authority for appropriate orders*." Likewise, the august Supreme Court held in *M. Hanif Niazi v. the Director of Food and others* (1986 SCMR 1066) that the authority under Sindh Civil Servants (E&D) Rules, 1973 was not bound by the recommendation of the authorized officer as Rule 10A of such rules vested review and revision powers in the authority.

(V) The Civil Servants (E&D) Rules, 1973 ("**E&D Rules**") under Rule 3 clearly vest in the authority the powers to form an opinion regarding whether a ground for penalty exists in the authority and no one else. Thus, under the E&D Rules it is arguable that as the function of forming an opinion re the basis for imposing a penalty is conferred on the authority alone, the opinion of an authorized officer, where one is appointed, cannot usurp the authority's function and the opinion of the authorized officer thus remains a recommendation to be accepted or rejected by the authority. But the scheme of the E&D Rules (or that of the efficiency and discipline rules applicable in Punjab or

Sindh as highlighted above) is in clear contrast with that of WWF Rules, where Rule 52 confers the function of forming an opinion regarding the existence of a ground for penalty on the authorized officer, where one is appointed, and does not require that such opinion to be given effect must be validated by the authority. WWF Rules do not require the authorized officer to have his opinion approved by the authority regarding lack of misconduct of an accused officer or where the authorized officer believes that a minor penalty is sufficient sanction. It is only where the authorized officer believes that misconduct has been established and it attracts a major penalty that he must furnish his recommendation to the authority, who may agree or disagree and pass appropriate orders on the basis of material produced before it. To treat the authorized officer's opinion as a disregard-able opinion or recommendation in all cases, the WWF Rules needed to say so. And they do not.

(VI) In view of the text of the WWF Rules, the authority did not have the power to disregard the opinion of the authorized officer to the extent that he did not recommend a major penalty to the authority. The authority was also vested with no power to issue a fresh SCN to the accused officer while an authorized officer was adjudicating the matter or had reached a conclusion that a major penalty was not to be recommended. Likewise, the authority was not authorized to conduct a personal hearing to adjudicate

the content of a SCN that it had no authority to issue. It would be a different matter if the fresh SCN issued by the authority dealt with a different set of facts or infractions. But it was based on the same investigation ordered by the authorized officer, on the basis of which the authorized officer had formed an opinion, that the authority disagreed with as stated in the SCN issued by it. Rule 57 clarifies that in the event that the authorized officer recommends a major penalty, the authority is to reach its decision based on documentary record and is not required to conduct a personal hearing.

(VII) In view of the well-established doctrine of causus omissus and the doctrine of limited enumerated powers of public officials and the aforesaid reasons, the SCN and dismissal order issued by the authority are found to be without jurisdiction and not backed by lawful authority.

8. Question No. 2. Has the dismissal order been issued in breach of the injunctive order passed by the Court on 08.11.2018 in C.M No. 01/2018 and was such injunctive order recalled by order of the Court dated 19.12.2019? Is the dismissal order liable to be set aside on this basis?

On 08.11.2018, it was ordered by this Court in C.M No. 01/2018 that "*meanwhile, the proceedings in pursuance of show cause notice may continue however, no final order shall be passed*". On 18.01.2019, C.M No. 178/2019 came up for hearing, which was filed by the respondents seeking a vacation of the injunctive order granted on 08.11.2018 and this Court only issued a notice to the

petitioner. Neither C.M No. 01/2018 nor C.M No. 178/2019 were finally adjudicated.

9. On 19.12.2019 while hearing the main case the following was observed:

> "*Be that as it may, in case the petitioner is not attending the Office or adhering to the Rules and Regulations of the respondents/Department the employer is at liberty to act in accordance with its Rules and Regulations.*"

10. It is incomprehensible as to how respondent No.2 concluded that a clearly worded injunctive order passed in an application seeking grant of injunctive relief by the petitioner and never explicitly withdrawn, and while both the said application of the petitioner along with the petition and the application of the respondent under Order XXXIX Rule 3 of the Civil Procedure Code, 1908 seeking its recall were pending adjudication before the Court, had somehow lost efficacy. The injunctive order did not evaporate into thin air merely because the Court had observed (in response to a submission by the respondents during arguments that the Petitioner was not attending office regularly) that the respondents free to proceed against the Petitioner in accordance with law if he was not attending office. If the Court has wished to recall its injunctive order during the pendency of the petition, it would have recalled the temporary protection afforded to the Petitioner in clear terms leaving no ambiguity in what was being ordered.

11. Instead of seeking clarification from the Court in the event that there was genuine confusion regarding the meaning of the order dated 19.12.2019 and in complete disregard of the doctrine of sub

judice, it appears that the respondents chose to disregard the injunctive order dated 08.11.2018 and passed the dismissal order thereby rendering writ petition No.4229/2018 infructuous. This then led to the filing of Criminal Original No. 81-W/2020 and also W.P No. 1702/2020 wherein the dismissal order was impugned.

12. The order of a court, merely because it is an interim order, cannot be disregarded. The practice of public authorities of presenting petitioners with fait accompli by taking action in breach of court orders or issuing repeat orders on grounds already adjudicated by courts and found wanting must be deprecated. Such actions in breach of court orders and aimed at punishing petitioners and subjecting them to continuing legal proceedings and unending litigation suffer from mala fide in law and are liable to be set aside, apart from subjecting the public officials to contempt proceedings and being held to account for burdening the court system with continuing litigation, imposing undue costs on public exchequer and delaying the delivery of justice. Under our Constitution, the judicature is the machinery put in place to enforce the fundamental rights of citizens and adjudicate grievances of citizens against the state and public authorities. Article 204 of the Constitution explicitly provides for the punishment of someone who disobeys the order of the court or tends to prejudice the determination of a matter pending before the court. The illegality that attaches to an action taken or order passed by a public authority or official in disobedience of an order of the court or to prejudice the determination of a matter sub judice is sufficient ground for setting aside such action or order for being illegal. The penalty under Article 204 of the Constitution read together with the Contempt of Court Ordinance, 2003, attaches to the person who indulges in contempt of court and is independent of the

illegality that mars the action taken or order passed in breach of a court order. To allow the illegal action or order of a contemnor to stand while the contemnor is himself liable to punishment for taking such action or passing such order, would undermine the entire scheme of enforcement of fundamental rights and adjudication of grievances of citizens prescribed by the Constitution and cannot be countenanced.

13. Having found that the impugned SCN and dismissal order suffer from jurisdictional defect and are bereft of legal authority and that the dismissal order is also liable to be set aside for being passed in the presence and utter disregard of a prohibiting order passed by this Court on 08.11.2018, this Court does not feel the need to address the question of whether the SCN and the dismissal order suffer from malafide. It is however noted that the dismissal order is completely devoid of reasoning. It fails to state for example what the opinion of the authorized officer was, why the authority disagreed with the opinion of the authorized officer even if it inadvertently believed that it had the authority to do so, what reasons prevailed with the authority to impose the most severe penalty of dismissal from service on the petitioner. As such the dismissal order also suffers from a failure to give reasons in breach of Section 24A(2) of the General Clauses Act, 1897.

14. Public functionaries are fiduciaries required to act in a just, fair and reasonable manner. Suffice it to say that the charge sheet being issued in 2017 propping up charges dating back to the appointment of the petitioner in 2001-02, the inquiry report holding the administration of WWF responsible for various infractions but unabashedly recommending that the petitioner be punished for the

action of his employer that he could not possibly be responsible for, finding of wrongdoing across-the-board in respect of all allegations, disregard of the opinion the authorized officer and refusal to share the same with the petitioner, and the authority usurping the functions of the authorized officer and imposing the harshest of penalties during the pendency of the matter before this Court, inspire no confidence that the acts of the respondents might have been motivated by the duty to act in a just, fair and reasonable manner, even if misguided in law.

15. In view of the above, these petitions are allowed and the SCN and dismissal order are set aside for being devoid of legal authority, *void ab initio* and of no legal effect. The petitioner will stand reinstated in service as if the dismissal order were never passed. Respondent No. 2 is however not prohibited from initiating any proceedings against the Petitioner to investigate or adjudicate his conduct as an employee if the same is advisable on the basis of record, in accordance with law, in a just, fair and reasonable manner.

(BABAR SATTAR)
JUDGE

Announced in the open Court on 02.04.2021.

JUDGE

Approved for reporting.

Saeed.