JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT
ISLAMABAD

CASE NO. : ICA NO.294-2018
Mohammad Javed Raza etc.
Vs.
Federation of Pakistan through Ministry of National Food, Security and Research, Islamabad & Another

Appellants/Petitioners by:	Mr. Ishtiaq Ahmad Rana, Advocate Mr. Umer Sajjad Chaven, Advocate Mr. Sharafat Ali Ch. Advocate Barrister Naveed M. Khan, Advocate Raja Inam Amin Minhas, Advocate Mr. Muhammad Irfan, Advocate Syed M. Bilal Ahmad, Advocate Mr. Taimoor Aslam Khan, Advocate Mr. Mudassar Abbas, Advocate
Respondents by:	Mr. Anwar Mansoor Khan, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG, Ch. Tahir Mahmood, AAG & Mr. Saqlain Haider, AAG Mr. Sajeel Sheharyar Swati, Advocate with Muhammad Tahir Saleem, Deputy Director (Rec.) & Muhammad Zahid Akram, Assistant Director (Legal), PARC.
Date of hearing :	14.03.2019

AAMER FAROOQ J. This judgment shall decide instant appeal as well as other appeals and writ petitions, mentioned in the schedule hereto, as common questions of law and facts are involved.

2. The facts, in brief, are that in 2008-2009 during tenure of Dr. Zafar Altaf, Chairman Pakistan Agricultural Research Council (PARC), about 269 employees, in various pay scales, were appointed in violation of prescribed rules and procedure. In 2011, various inquiries were conducted by a Committee comprising of three Federal Secretaries under the then Prime Minister's directive. As a result of findings of the Committee, the employees were terminated from service. In 2012, then Secretary, Ministry of Food and Agriculture, wrongly referred the matter to the Cabinet Sub-Committee posing them as sacked employees. Meanwhile, on 26.04.2011, the then Prime Minister Syed Yousaf Raza Gillani was disqualified by the Hon'ble Supreme Court of Pakistan w.e.f. 26.04.2012 vide judgment reported as 2012 SCMR 909. The employees, whose services were terminated, filed writ petition before this Court (W.P.

No.1970-2011), which was dismissed vide judgment dated 27.04.2012. Subsequently, there was exchange of correspondence between the relevant Ministry and the Office of the Prime Minister regarding reinstatement of petitioners in service. The Prime Minister allowed reinstatement on 02.05.2012 without cancelling/withdrawal of termination orders dated 21.05.2011. It is pertinent to observe that since the Prime Minister was disqualified w.e.f. 26.04.2012 and the judgment was handed down subsequently, therefore in order to validate the acts of Prime Minister, an Ordinance was promulgated i.e. the Validation Ordinance No.06 of 2012 validating the act of Prime Minister from 26.04.2012 to 19.06.2012. The referred Ordinance lived its life and expired there-after. Mr. Naveed Saleemi, the then Chairman, Agricultural Policy Institute, implemented the orders of the Prime Minister. A writ petition was filed by the employees of PARC challenging reinstatement of 269 employees. The referred writ petition was dismissed and Intra Court Appeal (ICA No.374-2012) was filed, which also was disposed of on 30.05.2018 allowing PARC to scrutinize the reinstatement of 269 employees in fair, impartial and indiscriminate manner. Earlier, on 10.04.2013, PARC submitted a comprehensive report regarding appointment of 269 employees and as a result thereof, the Ministry of National Food, Security and Research directed PARC to resolve the issue on its own in light of the fact that it is an autonomous body. Subsequent to the disposal of above mentioned ICA, various show cause notices were issued to 269 employees and some of which culminated in termination of service. The referred show cause notices/dismissal orders were challenged by way of petitions under Article 199 of the Constitution, which were dismissed by the Judge-in-Chambers vide the impugned order, which has been challenged in appeals whilst other writ petitions challenge show cause notices issued by PARC. The writ petitions were ordered to be heard along with appeals.

3. Learned counsel for the petitioners/appellants, *inter alia,* contended that the matter regarding appointment of employees stood finalized, as the Prime Minister directed their reinstatement in service and at this subsequent stage, it could not be reopened as it has become a past and closed transaction. It was further contended that petitioners have acquired right, which cannot be taken away in an arbitrary and whimsical manner.

It was submitted that even though service regulations of PARC are non-statutory yet a petition under Article 199 of the Constitution is maintainable inasmuch as respondents while issuing show cause notices, have flouted the law; in light of judgment of Hon'ble Supreme Court of Pakistan reported as 2013 SCMR 707, a petition under Article 199 of the Constitution is maintainable where rules of service are non-statutory, if there is violation of principles of natural justice or the law.

4. Learned counsel for the respondent Council, *inter alia,* contended that writ petitions are not maintainable, as the service regulations of PARC are non-statutory. It was further contended that order of the then Prime Minister regarding reinstatement of employees in service is also without lawful authority inasmuch as order was issued on 02.05.2012, whereas Hon'ble Supreme Court of Pakistan gave effect to the disqualification of Prime Minister w.e.f. 26.04.2012 and the Validation Ordinance promulgated to protect the act of Prime Minister lapsed after 120 days, hence the protection, if any, has gone. In support of referred contention, Mr. Sajeel Sheharyar Swati, Advocate Supreme Court placed reliance on case reported as 'Pakistan Medical & Dental Council through Present and 3-others Vs. Muhammad Fahad Malik and 10-others' (2018 SCMR 1956).

5. Learned Attorney General for Pakistan also addressed the arguments and submitted that PARC is an autonomous body created and governed under Pakistan Agricultural Research Council Ordinance, 1981. It was submitted that Prime Minister has no role in the functioning of the Council and only Federal Government can give policy direction to the Council as provided in section 5 of the Ordinance, whereas the functioning of the Council vests with the Board of Governors. Learned Attorney General placed reliance on case reported as 'Miss Benazir Bhutto Vs. Federation of Pakistan etc.' (PLD 1988 SC 416) to argue that even curative Ordinance expires after lapse of 120-days.

6. In response to the arguments of learned Attorney General for Pakistan and Mr. Sajeel Sheharyar Swati, Advocate Supreme Court for PARC, learned counsel for the petitioners in W.P. No.1932-2018 and others argued that the effect of repeal of law is that amendment made outlives the Ordinance. Reliance was placed on case reported as

'Federation of Pakistan Vs. Dr. Mobashir Hassan' (PLD 2012 SC 106). It was submitted that the facts and reasoning in case reported as 'Pakistan Medical & Dental Council through Present and 3-others Vs. Muhammad Fahad Malik and 10-others' (2018 SCMR 1956) are different from the facts and circumstances of instant case. Learned counsel also placed reliance on Interpretation of Statutes by Mr. S.M. Zafar as well as case reported as 'Government of Punjab through Secretary Home Department Vs. Zia Ullah Khan and 2-others' (1992 SCMR 602).

7. Arguments on behalf of learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

8. As noted above that the appellants and petitioners have challenged show cause notices issued by PARC regarding their reinstatement in service and in some cases, termination orders.

9. It is an admitted position that terms and conditions of service of employees of PARC are governed by Pakistan Agricultural Research Council Employees Service Regulations, 1984. The referred Regulations are non-statutory and the Judge-in-Chambers, while handing down the impugned judgment, has elaborately dealt with the issue. None of the counsel for the appellants and the petitioners were able to controvert the position hence it remains an admitted and accepted position that rules of service of PARC are non-statutory.

10. It is trite law that where rules of service of any Organization are non-statutory, the relationship between the employer and employees is one of 'master and servant' and a petition under Article 199 of the Constitution is not maintainable. An exception to this general rule was created by the Hon'ble Supreme Court of Pakistan in case reported as Defence Officers Housing Authority Vs. Federation of Pakistan' (2013 SCMR 1707). In the referred judgment, the august Apex Court observed that even where the rules of service of are non-statutory, if there is violation of principles of natural justice or there is some illegality otherwise, a petition under Article 199 of the Constitution is maintainable.

11. On the touchstone of case reported as 2013 SMR 1707 supra, it is to be examined whether respondent Council has committed any breach of

natural justice and/or illegality otherwise. Notices have been issued by PARC, meaning thereby that opportunity of hearing is being provided or has been provided to the employees hence there is no violation of principles of natural justice.

12. PARC is creation of Pakistan Agricultural Research Council Ordinance, 1981. Under section 6 of the Ordinance, the management and the functioning of the Council vests with the Board of Governors. The Federal Government, as such, has no role in the governance or functioning of the Council, however, Federal Government can issue policy directives from time to time. In the referred facts and circumstances, the decision by the then Prime Minister to reinstate 269 employees on 02.05.2012 carries no weight inasmuch the Prime Minister does not surface in the functioning of PARC. Even-otherwise, if decision is to be regarded as one of Federal Government, the fact that it orders reinstatement of employees, cannot be regarded as one of policy and the then management of PARC, following the decision, committed an illegality. In view of referred position, reinstatement in service of the employees, cannot be regarded as creating a vested right or that it became past and closed transaction. The effort is being made by PARC to examine each case on its merits by issuing show cause notices and scrutinizing the qualification and eligibility of every employee.

13. The petitioners/appellants have no *locus standi,* at this stage, to assail action on behalf of PARC. In this behalf, it is trite law that a show cause notice is not an order or a decision but only sets the wheel in motion. A petition, challenging the issue of show cause notice, is not maintainable unless same is without lawful authority or jurisdiction.

14. In cases, where the petitioners/appellants have been terminated from service, no exception can be taken to the said action on behalf of PARC inasmuch regulations of service of PARC are non-statutory and no illegality exists in the referred orders. In view of above, impugned judgment handed down by the Judge-in-Chambers, does not suffer from any error of law or fact, calling for interference in the appeals; writ petitions challenging show cause notices, also fail due to the reasons mentioned in the impugned judgment and as noted above.

15. For the above reasons, ICAs and writ petitions mentioned in Schedule attached herewith, are devoid of merit, hence are dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 12th June, 2019.

JUDGE

JUDGE

Zawar

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