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

W.P. No.3537 of 2016
Syed Muhammad Sajid Iqbal
Versus
The Secretary, Ministry of Overseas Pakistanis and another

Date of Hearing:	17.05.2017
Petitioner by:	Mr. Rashid Mehmood Ansari, Advocate,
Respondents by:	Ms. Sitwat Jehangir, learned Assistant Attorney-General with Mr. Irfan Farooq, Additional Director (Law).

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Syed Muhammad Sajid Iqbal, impugns the following orders:-

(i) *Orders dated 09.05.2016, passed by the Managing Director, Overseas Pakistanis Foundation (respondent No.2), whereby a major penalty of "removal from service" was imposed on the petitioner. Furthermore, minor penalties of withholding tax/stoppage of three annual increments for the years 2015-2017, and censure, were imposed on the petitioner by respondent No.2 after affording him an opportunity of hearings on 15.01.2016, and 17.02.2016.*

(ii) *Order dated 10.08.2016, passed by the Secretary, Ministry of Overseas Pakistanis and Human Resource Development (respondent No.1), whereby the petitioner's appeal against the said orders dated 09.05.2016, was dismissed.*

2. Learned counsel for the petitioner submitted that on 09.02.2010, the petitioner was appointed in the Overseas Pakistanis Foundation ("OPF") as Assistant Director (Welfare) on contract basis; that the petitioner's services were regularized on 01.09.2010; that on 08.10.2013, the petitioner was served a charge sheet under OPF Employees (Service) Regulations, 1993; that three allegations were leveled against the petitioner; that the petitioner was alleged to have issued a release order for an advertisement published in the newspapers on 29.08.2012; that the said advertisement had been issued in compliance with the orders of the then Minister for Overseas Pakistanis; that the Inquiry Officer in his report dated 09.01.2014, exonerated the petitioner of the main charge of receiving illegal gratification from an advertising agency; that the Inquiry Officer recommended the imposition of minor penalties of censure and withholding of

increments; that respondent No.2, instead of taking the decision on the recommendations of the Inquiry Officer, ordered a *de-novo* inquiry on the allegations that were already inquired into, in addition to two new charges; that the *de-novo* inquiry culminated in an inquiry report holding the petitioner guilty of four out of five charges leveled against him; that on the basis of the new inquiry report, respondent No.2, on 09.05.2016, imposed major penalty of removal from service of the petitioner; that on yet another charge minor penalty of censure and withholding of three annual increments were imposed on the petitioner; that the petitioner's departmental appeal was dismissed by respondent No.1 on 10.08.2016; and that the said orders dated 09.05.2016, and 10.08.2016, are liable to be struck down in the constitutional jurisdiction of this Court.

3. Learned counsel for the petitioner further submitted that since OPF has been established by the Federal Government, and its control also vests in the Federal Government, it is amenable to the constitutional jurisdiction of this Court. Learned counsel for the petitioner placed reliance on the law laid down in the case of Pakistan Defence Officers' Housing Authority Vs. Jawaid Ahmed (2013 SCMR 1707) in support of his contention that where the action of statuary authority in a service matter is in disregard of the procedural requirements, and is violative of the principles of natural justice, it can be interfered in writ jurisdiction. Learned counsel placed reliance on the case of Muhammad Rafi Vs. Federation of Pakistan (2016 SCMR 2146) in support of his contention that an aggrieved person could invoke the constitutional jurisdiction of the High Court against a public authority if he satisfies the Court that the act of the authority was violative of the service regulations even if they were non-statuary. Learned counsel for the petitioner also referred to the case of Muhammad Adnan Luqman Vs. Federation of Pakistan, Ministry of Overseas Pakistanis (2012 PLC (C.S.) 1525) where this Court issued a writ in a service matter against OPF. Learned counsel prayed for the impugned orders dated 09.05.2016 and 10.08.2016, to be set-aside.

4. On the other hand, the learned Assistant Attorney-General along with Mr. Irfan Farooq, Additional Director (Law), OPF, tendered appearance on behalf of the respondents and submitted that this Court did not have the jurisdiction to adjudicate upon this matter; that the OPF Employees (Service) Regulations, 1993 were non-statuary; that OPF is not a statuary body, but has been established as a Company registered under the provisions of the Companies Ordinance, 1984; that the petitioner in his writ petition has not referred to any provision of the OPF Employees (Service) Regulations, 1993, which were violated by the respondents; that the proceedings against the petitioner were conducted strictly in accordance with the law; that the petitioner was given full opportunity to defend himself; that on two previous occasions, the petitioner were suspended due to in-efficiency; that the petitioner was also issued a warning; that after the petitioner's explanation to the allegations against him were found to be unsatisfactory, the competent authority appointed a Senior Executive Director of OPF as the Authorized Officer to conduct inquiry proceedings against the petitioner; that after the Inquiry Officer was appointed to probe into the matter, a charge sheet and statement of allegations were issued to the petitioner on 08.10.2013; that after the inquiry officer submitted a report, the authorized officer issued a show cause notice to the petitioner on 03.03.2014; that after the petitioner submitted a reply to the show cause notice, he was given an opportunity of personal hearing on 02.04.2014; that since respondent No.2 was not satisfied with the recommendations of the Authorized Officer, he ordered a *de-novo* inquiry in a consolidated manner regarding all charges against the petitioner; that the new Inquiry Officer issued a charge sheet and statement of allegations to the petitioner on 27.05.2014; that after the petitioner submitted his reply, the Inquiry Officer submitted the inquiry report on 28.10.2014 which shows that four out of the five charges leveled against the petitioner were proved; that thereafter, the authorized officer, on 12.11.2014, issued a show cause notice to the petitioner; that on 08.12.2014, an opportunity of personal hearing was granted to the petitioner; that after the

Authorized Officer submitted his report to respondent No.2, the competent authority imposed a major penalty on the petitioner; that the petitioner's appeal was dismissed by the appellate authority after the petitioner was afforded an opportunity of hearing; and that there is no infirmity in the proceedings culminating in the imposition of a major penalty on the petitioner. It was prayed that the instant petition be dismissed.

5. I have heard the contentions of the learned counsel for the petitioner, as well as the learned Assistant Attorney-General and the Additional Director (Law), OPF.

6. I propose, in the first instance, to decide the question regarding the maintainability of the instant petition. Now, admittedly the OPF Employees (Service) Regulations, 1993 are not statuary. These regulations have not been made in exercise of any statuary power. Furthermore, at no material stage have these regulations been approved by the Federal Government. OPF has admittedly been incorporated as a Company under the provisions of the Companies Ordinance, 1984. The Managing Director and the Board of Governors of OPF are appointed by the Federal Government on the basis of provisions in the Memorandum and Articles of Association of OPF. The question as to whether a writ can be issued to OPF has been decided by the superior Courts in a number of cases including the following:-

(i) In the case of Tanvir Iqbal Siddiqi Vs. Principal, Overseas Pakistanis Foundation (OPF), Girls College, Islamabad (1994 SCMR 958), it has been held as follows:-

> *"2. ...We have heard the petitioner in person. The O.P.F. is decidedly not a department of the Federal Government. The fact that it has not been created by virtue of any Statute has also not been disputed before us. It is not shown that the Foundation performs the functions in connection with the affairs of the "Federation" within the meaning of Article 199 of the Constitution. The High Court, therefore, rightly came to the conclusion that the writ petition is not competent. We have not been persuaded to differ with the view expressed by the learned Single Judge."*

(ii) In the judgment dated 28.09.2006, passed by the Hon'ble Lahore High Court in Writ Petition No.2355/2006, titled

"Sohail Asif Vs. Board of Governors, etc" it has *inter-alia* been held as follows:-

> *"Since Overseas Pakistanis Foundation is not the creation of any Statute, but is a company having no statutory rules, therefore, category of its employees, whose terms and conditions of service have not been determined by the Federal Legislature and by a deeming clause, they cannot be treated civil servants as defined in section 2 (1) (b) of the Civil Servants Act, 1973 and they are not engaged in the affairs of the Federation, principle of master and servant is attracted in this case, therefore, Constitutional petition is not maintainable."*

(iii) In the judgment dated 19.01.2012, passed by the learned Single Bench of this Court in Writ Petition No.592/2011, titled "Lakhmir Vs. Federation of Pakistan and six others", it was *inter-alia* held that a writ petition against the Overseas Pakistanis Foundation, which was a company incorporated under the provisions of the Companies Ordinance, 1984, was not maintainable. The same view was taken by this Court in the judgment dated 21.04.2011, passed in Writ Petition No.38847/2009, titled, "Muhammad Saeed Vs. The Director General, Overseas Pakistanis Foundation, etc."

(iv) Vide judgment dated 24.12.2009, passed by the Hon'ble Lahore High Court in Writ Petition No.2423/2008, titled "Anjum Siddique Nagra Vs. Board of Governors, etc." it was held that since the service rules of the Overseas Pakistanis Foundation were not statutory, a writ petition by an employee of Overseas Pakistanis Foundation regarding the terms and conditions of his service, was not maintainable. Similarly, vide order dated 06.12.2010, the Division Bench of the Hon'ble High Court of Sindh, dismissed Constitution Petition No.D-1113/2010, titled "Imtaiz Ali Bhagat Vs. The Ministry of Overseas Pakistanis, etc." by *inter-alia* holding that since the service rules of the Overseas Pakistanis Foundation were not statutory, a writ petition filed a person seeking employment in the said foundation was not maintainable.

7. Recently, the Division Bench of this Court vide judgment dated 07.02.2017, passed in I.C.A. No.68/2011, titled, "Managing

Director, Overseas Pakistanis Foundation and another Vs. Federation of Pakistan through Secretary, M/o Labour, Manpower and Overseas Pakistanis and another", held that a writ petition against OPF is not maintainable.

8. In the case of Muhammad Zaman Vs. Government of Pakistan (2017 SCMR 571), the Hon'ble Supreme Court held that since the State Bank of Pakistan Officers (Pension-cum-Gratuity) Regulations, 1980, were non-statutory, therefore, the employees of the State Bank of Pakistan could not invoke the constitutional jurisdiction of the High Court for a direction for the grant of periodical increases in pension in line with those granted by the Federal Government. In the said judgment, it was *inter alia* held that in order to determine whether the Rules or Regulations of a statutory body were statutory or otherwise, it had to be seen whether the Rules or Regulations *"deal with instructions for the internal control or management, or they are broader then and or complimentary to the parents statutes in matters of crucial importance".* The former were held to be statutory, whereas the latter were to be non-statutory. OPF Employees (Service) Regulations, 1993, dealing with procedure for disciplinary proceedings of the employees of C.A.A. are clearly for the internal control and management of OPF. Since these regulations are not statutory, this petition is liable to be dismissed as not maintainable.

9. I have refrained from expressing my views on the merits of the case. The petitioner is at liberty to seek the redressal of his grievances from the Court of competent jurisdiction. In view of the above, this petition is dismissed. No order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham Majid*

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