

2019 P L C (C.S.) 632

[Lahore High Court]

Before Sayyed Mazahar Ali Akbar Naqvi, J

MUHAMMAD RAZI KHAN

Versus

The INSTITUTE OF CHARTERED ACCOUNTANT OF PAKISTAN and others

Writ Petition No. 238168 of 2018, decided on 15th February, 2019.

(a) Chartered Accountants Ordinance (X of 1961)---

---Ss. 9(b), 20-F & 20-K---Constitution of Pakistan, Art. 199---Constitutional petition filed against "The Institute of Chartered Accountants of Pakistan" ['the Institute']---Maintainability---Non-statutory service regulations/rules--- Irrespective of the fact whether the rules of an authority were statutory or non-statutory, the High Court had to come forward for rescuing a person if the act of the Authority was in sheer violation of the principles of natural justice, rules and law of the land---Constitutional petition filed by an Executive Director of the Institute against the termination of his services by the Institute was held to be maintainable.

Muhammad Rafi and another v. Federation of Pakistan and others 2016 SCMR 2146 ref.

(b) Chartered Accountants Ordinance (X of 1961)---

---Preamble---Executive Director of "The Institute of Chartered Accountants of Pakistan" ['the Institute']---Fixed term appointment contract---Violation of terms and conditions of contract---Petitioner was appointed as 'Executive Director Operations' by the Institute through a fixed term contract for a period of three years and as such the petitioner took over the charge of the office---As per a clause of the contract, the petitioner reported to the President of the Institute functionally and to the Secretary, but subsequently the reporting structure was changed in an arbitrary manner and the petitioner was asked to administratively and functionally report to the Secretary only, which ultimately culminated with the termination of the petitioner---Such act undeniably was violative of terms and conditions arrived at between the parties through the appointment contract---Termination letter of petitioner was set-aside in circumstances---Constitutional petition was allowed.

(c) Chartered Accountants Ordinance (X of 1961)---

---Preamble---Executive Director of "The Institute of Chartered Accountants of Pakistan" ['the Institute']---Fixed term appointment contract---Termination from service conveyed through an e-mail without issuance of show cause notice---Legality---Institute admitted that services of petitioner were terminated without show-cause notice, but claimed that petitioner was informed about his termination through an e-mail---E-mail for purposes of termination of services was insufficient---E-mail would be sufficient for carrying out daily business, but the same could not be equated with the proper/requisite notice under the law before taking action of a serious nature---Termination letter of petitioner was set-aside in circumstances---Constitutional petition was allowed.

Pakistan and others v. Public at Large and others PLD 1987 SC 304 ref.

(d) Administration of justice---

---Technicality of law---Substantial justice---Technicality of law and rule should not operate as an absolute bar in the way of the court, as preference to technicality of law would defeat substantial justice.

Mst. Shahista Bibi and another v. Superintendent, Central Jail Mach and 2 others
PLD 2015 SC 15 ref.

Barrister Haris Azmat and Barrister Maryam Hayat for Petitioner.

Malik Muhammad Asif Nissoana, Deputy Attorney General.

Iftikhar ud Din and Abdul Muqtadir Khan for Respondents.

ORDER

SAYYED MAZHAR ALI AKBAR NAQVI, J.---By means of instant constitutional petition filed in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has made prayer as follows:--

"In light of the above it is most humbly prayed that:

- i). Impugned Termination Letter be set aside;
- ii). The petitioner be reinstated with full benefits and salary;
- iii). Respondent No.1 be restrained from terminating the service of the petitioner and filling the vacancy left by the petitioner;
- iv). Clause 6 of the Contract be declared as void; and
- vi). Any other relief deemed appropriate may also be granted".

2. At the very outset, while opening his arguments, learned counsel for the petitioner submits that respondent No.1 (The Institute of Chartered Accountants of Pakistan) is a statutory body established under Chartered Accountant Ordinance, 1961 with the approved of the Federal Government, Adds that the petitioner is a Chartered Accountant by profession having degree in Masters of Business Administration from Imperial College London, who was appointed as 'Executive Director Operations North' by respondent No, 1 through a Fixed Term Contract/ Notification dated 6th September, 2016 for a period of three years and as such the petitioner took over the charge of the office. Learned counsel submits that as per clause 3 of the contract, the petitioner has to made report to the President functionally and to the Secretary of the Institute, but subsequently the reporting structure was changed by the respondent in an arbitrary manner and the petitioner was directed to administratively and functionally report to the Secretary via email dated 21.08.2017, which too is against the terms of the contract. Main crux of the arguments advanced by learned counsel for the petitioner is that the services of the petitioner were terminated by the respondent/authority without adopting the due course of law and even admittedly no notice, which is sine qua non has been issued, hence the act of the respondent is against the dictates of natural justice. Learned counsel has placed his reliance upon the ratio decidendi of august Supreme Court of Pakistan in the cases of "The Evacuee Trust Property Board and another v. Muhammad Nawaz" (1983 SCMR 1275) and "Anwar Hussain v. Agricultural Development Bank of Pakistan and others" (PLD 1984 Supreme Court 194).

3. On the other hand, learned Deputy Attorney General assisted by learned counsel for the respondents has opposed this petition with vehemence. While initiating his arguments,

learned counsel for the respondents submits that 'The Institute of Chartered Accountants of Pakistan' is a self-regulatory body and is not controlled by the Federal Government in any capacity whatsoever, therefore, the constitutional petition in hand is not maintainable. It is argued that the petitioner was appointed on contract basis for a period of three years and though while assuming charge, initially the petitioner has reported to the President functionally and to the Secretary of the Institute, but after appointment of full-time Secretary in the department, he was required to report to him, but despite directions he failed to do so, hence he was rightly terminated by the respondent/authority as per Clause 6 of the contract. In support of his contentions, learned counsel has placed his reliance upon the cases of 'Pakistan International Airlines Corporation and others v. Tanveer-ur-Rehman and others' (PLD 2010 Supreme Court 676) and 'Qamar-ul-Islam v. The Institute of Chartered Accountant of Pakistan' (1993 MLD 1362).

4. Arguments advanced pro and contra have been heard and record available on file perused.

5. Before going into the merits of the constitutional petition in hand, this Court is conscious of the fact that the mainstay of the learned counsel for the respondents is that the constitutional petition in hand is not maintainable as 'The Institute of Chartered Accountants of Pakistan' is a self-regulatory body and not controlled by the Federal Government in any capacity whatsoever, hence the matter cannot be agitated in a writ jurisdiction. This Court considers it more appropriate to resolve this anomaly first. The ICAP/'The Institute of Chartered Accountants of Pakistan' has been established under "The Chartered Accountants Ordinance, 1961. For settling the issue, it would be advantageous to go through sections 9(b), 20-F as well as 20-K of the Ordinance, which read as follows:-

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9. Constitution of the Council of the Institute: (1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it under this Ordinance.....

2(b). Not more than four persons nominated by the Federal Government.

20-F. Hearing of case by the High Court. On receipts of a reference under section 20-D, the High Court shall fix a date for the hearing of the reference and cause notice of the date so fixed to be given to the member of the Institute and the Council, and shall, after affording such member and the Council, either personally or through counsel or a member of the Institute, an opportunity of being heard, make any of the following orders'

-----".

20-K. Appeal and revision. (1) Any member of the Institute aggrieved by an order of the Council imposing on him any of the penalties referred to in section 20-D may, within sixty days of the date of communication of such order to him, prefer an appeal to the High Court".

While dealing with a similar question, the august Supreme Court of Pakistan in the case titled "Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Jawad Ahmed" (2013 SCMR 1707) at para 25 has observed as under:--

"The Court further candidly held, "Even otherwise it is well settled that where statutory rules govern the service conditions of an employee, then the pleasure of

the master stands surrendered to the extent the matter is covered by the relevant rules".

At para 27, it was observed:--

"Keeping in view the Statutes which established and the functions of the appellants' authorities, and having considered in the light of "functions test", we hold and declare that these are statutory bodies, performing some of the functions which are functions of the Federation/State and through the exercise of public power, these bodies create public employments. These bodies are therefore "persons" within the meanings of Article 199(1)(a)(ii) read with Article 199(5) of the Constitution. If their actions or orders passed are violative of the Statute the same could be interfered with by the High Court under Article 199 of the Constitution".

Even otherwise, irrespective of the fact whether the rules are statutory or non-statutory, this Court has to come forward for rescue of a person if the act of the authority is in sheer violation of the principles of natural justice, rules and law of the land. Guidance in this regard is sought from the dictum of law laid down by the august Supreme Court of Pakistan in its salutary judgment rendered in the case of "Muhammad Rafi and another v. Federation of Pakistan and others" (2016 SCMR 2146), wherein it has been held as follows:--

"---Art. 199---Non-Statutory service regulations/rules--Constitution petition before the High Court---Maintainability---Aggrieved person could invoke the constitutional jurisdiction of the High Court against a public authority if he satisfies that the act of the authority was violative of the service regulations even if they were non-statutory".

Keeping in view the rules of "The Chartered Accountants Ordinance, 1961" coupled with dictums of law laid down by the august Supreme Court of Pakistan in the cited cases, this court is of the considered view that the constitutional petition in hand is fully competent and the objection raised on behalf of the respondents in this regard is misconceived.

6. Now coming towards the merits of the constitutional petition in hand, this Court has observed that the petitioner, who is a Chartered Accountant by profession having degree in Master of Business Administration from Imperial College London, was undeniably appointed as 'Executive Director Operations North' by respondent No.1 through a Fixed Term Contract/Notification dated 6th September, 2016 for a period of three years and as such the petitioner took over the charge of the office and as per clause 3 of the contract, he made report to the President functionally and to the Secretary of the Institute, but subsequently a dispute arose when he was asked to administratively and functionally report to the Secretary via email dated 21-8-2017, which consequently ended in the shape of termination of the services of the petitioner. This act undeniably is violative of terms and conditions arrived at between the parties through the contract in question itself. The mainstay of learned counsel for the petitioner was that the respondent/authority while terminating his services had neither given a show-cause notice nor provided opportunity of hearing to the petitioner, rather passed the order even without taking into consideration consequences of the same. This Court made query in this regard, to which learned counsel for the respondents answered in affirmative with the claim that they had issued certain cheques in favour of the petitioner in lieu of one month's salary. It was apprised that prior to termination of his services, the petitioner was informed by the authority through email, which undeniably is insufficient as the same would be sufficient enough in carrying out daily business, but the same cannot be equaled with the proper/requisite notice under the law prior to taking action of serious nature. This act of the authority is also hit by the

principles enunciated by the superior courts from time to time. While dealing with a similar situation, the august Supreme Court of Pakistan in the case titled "Pakistan and others v. Public at Large and others" (PLD 1987 Supreme Court 304) has observed as follows:--

"---When a public authority is to be exercised for resolving a controversy regarding rights and liabilities, the decision would not be rendered without proceedings in which the person affected is also afforded an opportunity of hearing.

It is common principle which governs the administration of justice in Islam that in case of liability with penal or quasi-penal consequences and/deprivation of basic rights a notice as well as an opportunity of hearing are of absolute necessity. This by itself has to be recognized as a basic right".

7. Apart from this, this Court is of the consistent view that the act of the respondent/authority is also against the dictates of substantial justice. It is settled principle of law that technicality of law and rule shall not operate as an absolute bar in the way of the court as preference in this regard would defeat the substantial justice. Guidance in this regard is sought from the dictum of law laid down by the august Supreme Court of Pakistan in the case of 'Mst. Shahista Bibi and another v. Superintendent, Central Jail Mach and 2 others' (PLD 2015 Supreme Court 15), wherein it has been held as follows:--

"---Hardship case---Substantial justice by court---Technicality of law---For doing substantial justice in the true sense in a hardship case, technicality of law and rule shall not operate as an absolute bar in the way of the court because giving preference to the technicality of law would defeat substantial justice".

In the case of 'Nizamuddin and another v. Civil Aviation Authority and 2 others' (1999 SCMR 467), following dictum of law has been laid down by the august Supreme Court of Pakistan:--

"---Art. 25---Equity of citizens---Government is not supposed to discriminate between the citizens and its functionaries cannot be allowed to exercise discretion at their whims, sweet-will or as they please rather they are bound to act fairly, evenly and justly".

8. For the foregoing reasons and also seeking guidance from the dictum of law laid down by the august Supreme Court of Pakistan in the cases supra, this court is persuaded to accept this constitutional petition. As a consequence whereof, the petition in hand stands accepted and termination letter issued by the respondent/authority bearing Ref. No.ICAP/SEC/00607/53663, dated 2nd July 2018 is set aside.

9. The petition accepted in the aforesaid terms.

MWA/M-34/L

Petition allowed.