

Stereo. HCJDA.38.

Judgment Sheet.

IN THE LAHORE HIGH COURT LAHORE JUDICIAL DEPARTMENT.

Case No. W.P.No.60763/2023

Wajahat Hussain Hussaini etc

Versus

Commissioner PESSI etc

JUDGMENT

| | |
|-----------------|------------------------------------|
| Date of hearing | 16.5.2024 |
| Petitioners by | Mr. Fida Hussain Rana, Advocate. |
| Respondents by | Mr. Muhammad Ali Farooq, Advocate. |

Abid Aziz Sheikh, J.-. Through this constitutional petition, the petitioners have challenged the office order dated 31.8.2023, whereby the Governing Body of Punjab Employees Social Security Institution (**PESSI**) amended the Punjab Employees Social Security Institution (Revised Service) Regulations, 2008 (**Regulations**) and also seeking direction against respondents to comply with the order dated 09.1.2023 passed by Chairman, Governing Body PEESI (Chairman) and appointed the petitioners

against the post of Assistant against 25% graduate quota under Regulations.

2. Relevant facts are that petitioners are permanent employees of PESSI and being graduate were entitled to be appointed for the post of Assistant against 25% quota reserved for PESSI graduate employees, prior to amendment in Regulations, however, through impugned office order dated 31.8.2023, the Governing Body of PEEESI amended the regulations, hence this constitutional petition has been filed.

3. Learned counsel for the petitioners submits that petitioners had already undergone the process of appointment as Assistant against 25% quota reserved for graduate employees of PEEESI in year 2018, however, before passing of their formal orders of appointment, Regulations have been amended through impugned order. Submits that petitioners are seeking enforcement of Regulations in compliance of order dated 09.1.2023 passed by Chairman. Further submits that said amendment in Regulations is not only beyond the scope of Punjab Employees Social Security Ordinance, 1965 (**Ordinance**), but also offends the accrued vested rights in favour of the

petitioners. Further submits that Regulations being duly notified, this constitutional petition is maintainable for its enforcement. Placed reliance on *Nadeem Zuberi vs. Civil Aviation Authority through Director General* (2023 PLC (C.S.) 1133).

4. Learned for the respondents on the other hand beside contesting this petition on merits, submits that petitioners are seeking enforcement of Regulations, which are non-statutory, therefore this constitutional petition is not maintainable. Adds that Governing Body of PEESI has lawfully amended the Regulations before any vested right accrued in favour of the petitioners.

5. Arguments heard. In crux, the petitioners on one hand are seeking the enforcement of Regulations for their appointment against the post of Assistant under 25% graduate quota of PEESI employees before the amendment of the Regulations on 31.8.2023 and on the other hand, they have also challenged the office order dated 31.8.2023, whereby the Regulations have been amended by the Governing Body of PEESI. So far as the plea for enforcement of Regulations for the appointment of

petitioners against the post of Assistant is concerned, the same can only be enforced by this Court, if the said Regulations are found to be statutory and have the force of law. Therefore, before touching the merits of the case, I would like to decide the threshold question of maintainability of this petition, to that extent.

6. The PESSI has been established under the Ordinance. Under section 79 of the Ordinance, the Provincial Government may by notification in the official gazette make Rules to carry out the purpose of the Ordinance, whereas under section 80 of the Ordinance, the Governing Body may by notification in the official gazette make Regulations not in consistent with the provision of the Ordinance or the Rules. Under sub-section 2(viii)(x) of section 80 of the Ordinance, the Regulations may also provide for the employment of the officers and staff for administration of the affairs of the institution as well as power of the Commissioner with regard to the appointment, transfer, promotion, dismissal and other matter effecting the staff of the institution.

7. For ready reference, section 79(1) and 80(1) of the Ordinance are reproduced hereunder:-

“79. Power to make rules.(1) Government may, subject to the condition of previous publication, by Notification, make rules to carrying out the purposes of the Ordinance”.

80. Power to make regulations.(1) The Governing Body may, subject to the condition of previous publication, by Notification, make regulations not inconsistent with the provisions of this Ordinance or the rules”.

From the plain reading of section 79 and 80 of the Ordinance *ibid*, it is evident that Federal Government may make rules for carrying out the purpose of the Ordinance, whereas Governing Body may make regulations for carrying out functions of the Ordinance including the appointments of officers and staff of PESSI. The Governing Body is defined under section 2(13) of the Ordinance meaning Governing Body of the institution, whereas under section 5 of the Ordinance, Governing Body will consists of members to be appointed by Government by notification. No doubt, the Governing Body members are appointed by Government but they are not the Government. It is admitted position between the parties that the Regulations in question are framed under section 80 of the Ordinance by the Governing Body and

not by the Provincial Government or with approval of the Provincial Government and therefore, same does not have the status of statutory Regulations. The position would have been different if the terms and conditions sought to be implemented through this petition, were framed by the Provincial Government by way of rules under section 79 of the Ordinance instead of Regulations by Governing Body under section 80 of the Ordinance.

8. The similar regulations framed by the Authority under section 45 of the National Data and Registration Authority Ordinance, 2000 (**Ordinance of 2000**) were declared to be non-statutory by Supreme Court for the reason that same were not framed by the Federal Government. This Court in Amir Shahzad and 3 others vs. Federation of Pakistan and 3 others (2024 PLC (C.S.) 33) followed the said judgment of Supreme Court and held that constitutional petition in such situation is not maintainable. The relevant part of the judgment is reproduced as under:-

“The question whether Regulations of NADRA are statutory or not came up before Hon’ble Supreme Court of Pakistan in Maj. (Retd.) Syed MUHAMMAD TANVEER ABBAS versus

FEDERATION OF PAKISTAN through Secretary Ministry of Interior and anothers (2019 SCMR 984). In said case, constitutional petitions were filed before learned Sindh High Court by various employees of NADRA against their orders of termination. The Division Bench of learned Sindh High Court dismissed the Constitutional Petitions on the ground that Regulations are framed by the Authority under Section 45 of the Ordinance, hence, they are non-statutory. The said judgment was challenged before the Hon'ble Supreme Court of Pakistan, where the appeals were dismissed and the August Supreme Court of Pakistan held that Regulations of NADRA are non-statutory in nature. Relevant observations of the Hon'ble Supreme Court of Pakistan is reproduced hereunder:- "When the DHA case is compared with the appellants' case, there are certain obvious similarities, the first and most important being of course that both involved situations of termination from service. Apart from that, in our view, as held by this Court in relation to DHA, there can hardly be any doubt that NADRA is also a "person" within the meaning of Article 199(1)(a)(ii) read with clause (5) thereof. Equally, it is also clear that the 2002 Regulations, like the DHA service rules of 2008, were non-statutory in nature. It also cannot be in doubt that the termination clauses involved in the present appeals are in all material respects the same as Rule 8(b)(1) of the DHA service rules. This is apparent on a bare reading of the said provisions. The crucial question therefore is whether the termination clauses involved here can be treated in the same manner as Rule 8(b)(1), and the same or similar relief accorded the present appellants?" (Emphasis supplied) The same view was also expressed by honourable Supreme Court in "Chairman NADRA, Islamabad through Chairman, Islamabad and another Vs. Muhammad Ali Shah and others" (2017 SCMR 1979), "MUHAMMAD ZAMAN and 14 others versus GOVERNMENT OF PAKISTAN through Secretary, Finance Division, (Regulation Wing), Islamabad and others" (2017 SCMR 571), "P.T.C.L. and others versus MASOOD AHMAD

BHATTI and others” (2016 SCMR 1362), ZARAI TARAQIATI BANK LIMITED and others versus SAID REHMAN and others” (2013 SCMR 642) and “PAKISTAN DEFENCE OFFICERS’ HOUSING AUTHORITY and others versus Lt. Col. Syed JAWAID AHMAD” (2013 SCMR 1707)”.

The case law relied upon by learned counsel for the petitioners is distinguishable and not applicable to the facts and circumstances of this case.

9. Now coming to the next question i.e. that whether regulations could be amended by the Governing Body and office order dated 31.8.2023 could be issued, suffice it to note that under section 80(2)(viii) and (x) of the Ordinance, the Governing Body has ample power to make regulations for the employment of the officer and staff and can also frame regulations for their transfer, promotion, dismissal and other matters. The said power to frame regulations includes the power to amend the regulations. Therefore, it cannot be said that the amendment in Regulations is without jurisdiction. Further as petitioners were never appointed as Assistant under the un-amended Regulations, hence no vested right accrued in favour of the petitioners to challenge the amendment in the regulations on this score.

10. In view of above discussion, this petition being not maintainable and also meritless is **dismissed.**

(ABID AZIZ SHEIKH)
JUDGE.

Approved for Reporting

JUDGE

Rizwan