

(SPS-4) on regular basis vide order dated 21.05.2013 by the respondent No.1. He was issued letter for medical examination dated 21.05.2013 and after his medical examination, he joined his services on 11.06.2013, which was accepted by the respondent No.1 vide order dated 01.07.2013. According to the petitioner, he was performing his duty with the respondent No.1 honestly and without any complaint but all of sudden, his services were terminated from Pakistan Atomic Energy Commission without assigning any valid reason vide order dated 20.02.2015. Thereafter, he filed representation dated 26.02.2015 before the Chairman Pakistan Atomic Energy Commission, Islamabad, which has not been responded. Hence, this petition.

3. The respondents have filed their parawise comments stating therein that the petition filed by the petitioner is not maintainable as the petitioner has not approached this court with clean hands. It is the case of the respondents that the petitioner was appointed as Telecom Operator-I in DGRE(CROF), Site Office, Karachi with effect from 11.06.2013 subject to final security clearance from all quarters. After joining of the petitioner, it was revealed that he had served in SUPARCO on contract basis and resigned from his service at SUPARCO, he absented himself from duty and consequently his contract was terminated with effect from 07.08.2006. He concealed this fact at the time of his induction in PAEC. However, he has been declared as "Not Cleared" from security point of view by SPD under intimation to his Directorate vide letter No.763(1)SSFB/1(02)/O&I/15/649 dated 01.01.2015. The respondents have also taken the plea that question raised in this petition by the petitioner are disputed question of fact which cannot

be resolved through this constitution petition, therefore, the same may be dismissed.

4. Learned counsel for the petitioner and the learned counsel for contesting respondents have been heard and record perused. During the course of arguments, learned counsel for the petitioner and contesting respondents have almost reiterated the same facts and grounds which they have urged in the memo of petition as well as in parawise comments.

5. Learned Standing Counsel has stated that the respondents have already put up their case before this Court, therefore, any order deemed fit by this Court may be passed for just disposal of this petition.

6. It appears from the record that the petitioner was inducted as Telecom Operator-I (SPS-4) on regular basis with the respondent No.1 vide order dated 11.06.2013 after fulfilling all legal requirements as prescribed by the respondents, but apparently he has been terminated from service by the respondents on concealment of his previous employment in SUPARCO. We have gone through the statement dated 01.10.2016 filed by the learned counsel for the petitioner available on record alongwith annexure showing that the petitioner had resigned from the service of SUPARCO vide his resignation letter dated 11.08.2006 and the petitioner was inducted in service with the respondents on 11.06.2013. It appears that the petitioner joined the respondents after almost six years of his resignation from SUPARCO. We have also gone through the offer letter dated 21.05.2013 containing the terms and conditions while joining the service with the respondents. For the sake of convenience,

it would be expedient to reproduce the terms and conditions of offer letter, which are reproduced as under:-

“You are required to provide the following documents in original at the time of joining:-

- (a) Medical Fitness Certificate,
- (b) Undertaking for accepting terms and conditions of appointment,
- (c) Certificates from two officers of BPS-17/SPS-8 or above, not related to you, regarding your character and antecedents,
- (d) Oath of secrecy on enclosed form,
- (e) Six (06) recent photographs of six 1½ x 2 inches,
- (f) Relieving letter from present employer/department if you are already employed.
- (g) Attested photocopies of CNIC and Attested copies of all academic and experience certificates.

No TA/DA will be admissible for joining.”

7. From perusal of above terms and conditions of the offer letter issued to the petitioner, it does not reflect that before joining the PAEC, the petitioner was obliged to disclose his previous service with SUPARCO. It has been brought on record that the petitioner had resigned the SUPARCO on 11.08.2006 much before his joining to the PAEC. The terms and conditions in clause (f) of the offer letter appears to those, who were already in another job but here in this case, as observed above, the petitioner had resigned from his service in SUPARCO on 11.08.2006. Therefore, it does not appear that while joining the respondent, the petitioner had concealed his previous employment in SUPARCO. It is pertinent to mention here that before passing the impugned termination order, all the objections raised in the parawise comments, have not been confronted to the petitioner. During the course of arguments, we had specifically asked the

question from the learned counsel for the respondents whether the allegations as raised in the parawise comments have ever been confronted to the petitioner in writing during his employment, no answer available with him. We again asked the question whether after the induction of the petitioner with PAEC, any complaint has been received against him with regard to his integrity, credibility or inefficiency, he did not reply satisfactorily.

8. It is an admitted position that before issuing the impugned termination order dated 20.02.2015, the respondents have not afforded any opportunity of hearing in the matter to the petitioner though such action has caused serious prejudice to his interest. The respondents having National Command Authority Employees and Discipline Rules, 2010, these rules confer jurisdiction upon competent authority to award punishment, but with due process of law. But here in this case, the respondents while taking action has not followed the said rules. This being the position, we hold that instant petition is maintainable and the action of the respondents against the petitioner contained in their termination order dated 20.02.2015 is in glaring violation of the principle of natural justice, which is deemed to be embodied in each and every part of the statute. In forming this view we are guided by the judgment of Hon'ble Supreme Court of Pakistan in the case of **Mrs. Anisa Rehman v. P.I.A.C. and another (1994 SCMR 2232)**, which lays down as under:-

“7. From the above stated cases, it is evident that there is judicial consensus that the Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read into as a part of every statute if the right of hearing has not been expressly provided therein. In the present case respondent No.1 in its comments to the writ petition (at page 41 of the paper book) admitted the fact that no show-cause notice

was issued to the appellant nor she was heard before the impugned order dated 6th August, 1991, reverting her to Grade VI from Grade VII was passed. In this view of the matter there has been violation the principles of natural justice. The above violation can be equated with the violation of a provision of law warranting pressing into service Constitutional jurisdiction under Article 199 of the Constitution, which the High Court failed to exercise. The fact that there are no statutory service rules in respondent No.1 Corporation and its relationship with its employees is of that Master and Servant will not negate the application of the above Maxim audi alteram partem.”

In this regard, we are also fortified with the cases of (1) **Pakistan International Airline Corporation through Chairman and others v. Nasir Jamal Malik and others** reported as **2001 SCMR 934** and (2) **Hazara (Hill Tract) Improvement Trust through Chairman and others v. Mst. Qaisra Elahi and others** reported as **2005 SCMR 678**.

9. As observed above that before passing the impugned termination order against the petitioner, no inquiry has been held in order to ascertain the truth and falsehood about the allegations against the petitioner. The impugned termination order also does not indicate under what charges/allegations, the service of the petitioner was terminated. At this juncture, we would like to quote the operative part of the order dated 08.04.2009, passed by the learned Divisional Bench of this court in C.P. No.D-1284 of 2008, which reads as follows:-

“6. As observed in our earlier Order dated 24.04.2009, it is an admitted position that before issuing the impugned Office Memorandum dated 11.06.2008, the Respondents have not afforded any opportunity of hearing in the matter to the petitioner though such action has caused serious prejudice to his interest. This being the position, we hold that the action of respondent against the petitioner contained in their Office Memorandum dated 11.06.2008 is in glaring violation of the principle of natural justice, which is deemed to be embodied in each and every part of the statute. In forming this view we are guided by the judgment of Honorable Supreme Court of Pakistan in the

case of Mrs. Anisa Rehman vs. P.I.A.C. and another (1994 SCMR 2232), which lays down as under:

“7. From the above stated cases, it is evident that there is judicial consensus that the Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read into as a part of every statute if the right of hearing has not been expressly provided therein. In the present case respondent No.1 in its comments to the writ petition (at page 41 of the paper book) admitted the fact that no show-cause notice was issued to the appellant nor she was heard before the impugned order dated 6th August, 1991, reverting her to Grade VI from Grade VII was passed. In this view of the matter there has been violation the principles of natural justice. The above violation can be equated with the violation of a provision of law warranting pressing into service Constitutional jurisdiction under Article 199 of the Constitution, which the High Court failed to exercise. The fact that there are no statutory service rules in respondent No.1 Corporation and its relationship with its employees is of that Master and Servant will not negate the application of the above Maxim audi alteram partem.”

10. In view of the above facts and circumstances and while relying upon the judgment passed in aforesaid petition, we declare that the action of the respondents against the petitioner is/was illegal, without lawful authority and of no legal effect. Consequently, the petitioner is reinstated in service with back benefits. However, we leave it open for the respondents to initiate fresh action under the law, if necessary, against the petitioner and to decide it afresh after affording him due opportunity of hearing within one month. The petition is disposed of in the above terms alongwith listed application.

Karachi.

Dated:

JUDGE

JUDGE

Faizan A. Rathore/