

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT LAHORE**  
**LAHORE.**

**JUDICIAL DEPARTMENT**

**W.P.No.30395/2014**

**MUHAMMAD TAHIR IJAZ**

**VS**

**GOVT OF PUNJAB through Secretary Housing and others**

S.No of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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26.06.2015	Malik Muhammad Saeed Hassan and Imran Raza Chadhar, Advocates for the petitioner. Mr. Waqar A. Sheikh, Advocate for respondent PHA.
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Briefly the facts of the case are that petitioner was appointed Horticulture Assistant (BS-16) in the year 1986 by the Lahore Development Authority and thereafter, in the year 1994 the petitioner was promoted as Assistant Director Horticulture (BS-17). Afterwards on 21.08.1995 the post of the petitioner was upgraded as Deputy Director Horticulture (BS-18) and then petitioner was promoted as Director Horticulture (BS-19) on 21.02.2004. Subsequently, the Director General, Parks & Horticulture Authority (hereinafter to be called as PHA) through an office order No.PHA/DA/206 dated 31.03.2008 after approval of the relevant summary by the Chief Minister, further upgraded two posts including the present petitioner and one Misbah ul Hasan Dar from Directors Horticulture (North) and (South) BS-19 to Additional Directors General Horticulture (North) and (South) BS-20. After a few days of issuance of said upgradation, the same was withheld by the Director General Horticulture through order No.PHA/DA/221 dated 07.04.2008, and later-on the summary was moved to the Chief Minister for the same purpose and after approval of the summary the earlier order of upgradation of the post was withdrawn and these orders are under challenge through the instant writ petition.

2. The main stance of learned counsel for the petitioner is that the impugned office order dated 07.04.2008 passed by the Director General PHA, later-on summary approved by the Chief Minister and the order for withdrawal of the earlier order, are illegal and without jurisdiction, therefore, the instant writ petition is fully competent. Further contended that this Court has ample jurisdiction of judicial review against the administrative orders if passed on the basis of malafide, ill will or by violating the provisions of law. On merits the learned counsel has argued that under section 6(6) of PHA Act, 2012 the only competent authority is the Board constituted under the said Act to take decisions and the Director General PHA alone could not take the impugned decision without putting up the issue before the competent Board, therefore, the same is nullity in the eyes of law. Lastly, it is argued that since an order upgrading the post of the petitioner was validly passed and had been implemented by submission of joining report by the petitioner, the same could not be recalled, thus, the impugned office order is hit by the principle of locus poenitentiae and that before passing the subsequent office order the petitioner was not afforded opportunity of personal hearing thus the impugned action is also violative of principle of audi alteram partem.

3. The learned counsel representing respondent PHA opposed this writ petition tooth and nail by arguing that PHA service rules are non-statutory, therefore, instant writ petition is not maintainable. The learned counsel further argued that true facts regarding involvement of the petitioner in corruption cases and registration of FIR against him have not been disclosed by the petitioner in the instant writ petition; although the earlier office order dated 31.03.2008 was issued but the same was never implemented and the joining report submitted by the petitioner is one-sided and the petitioner never worked as Additional Director General Horticulture (South). Furthermore since the initial order was obtained by

ignoring the relevant procedure of law and principle of parity and justice in the Organization, therefore, the Director General PHA who issued the earlier orders, again under the specific approval of the Chief Minister withdrew the said order, thus, entire relevant procedure was properly followed. The learned counsel for the respondent-PHA therefore, argued that on the basis of the earlier illegal order the petitioner cannot set his claim, thus has no locus standi to file the instant writ petition.

4. The learned counsel for the petitioner in reply to the argument advanced by learned counsel for the respondent about jurisdiction of this Court, contended that earlier two petitions i.e. Writ Petition No.718/2014 and 9948/2014 on the same subject were filed by the petitioner and entertained, hence, this writ petition on the same principle is maintainable. Further submits that as the provisions of PHA Act have been violated, hence, in the light of case “PAKISTAN DEFENCE OFFICERS HOUSING AUTHORITY and others versus Lt. Col. Syed JAWAID AHMED” (2013 SCMR 1707), this writ petition is maintainable and as the Chief Minister has no authority to abolish the post and such power vests with the Board constituted under PHA Act, hence, when the provisions of stature have been violated, this court has jurisdiction to entertain this petition.

5. I have heard the arguments of learned counsel for the parties at considerable length and perused the entire available record with their able assistance.

6. As shall be seen from the narration of the writ petition and also observed during the course of arguments advanced by learned counsel for the petitioner, there is no specific and clear denial to the fact that PHA is governed by non-statutory rules. The main emphasis laid by learned counsel about maintainability of instant writ petition is that since the

impugned order is unlawful and without jurisdiction, therefore, this writ petition is maintainable. I am afraid when undeniably PHA is a private Organization having its non-statutory rules, in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, this writ petition is not maintainable and the argument of illegality or jurisdictional defect would not be sufficient for this Court to invoke its jurisdiction in this matter. Reliance has been placed on the case “ABDUL WAHAB and others versus HBL and others” (2013 SCMR 1383) and “NOOR BADSHAH versus UNITEDBANK LIMITED through President and 3 others” (2015 PLC (CS) 468).

7. I have gone through the orders passed by this Court in the earlier writ petitions and observe that in those cases the aspect about non-statutory rules and jurisdiction of this Court were not discussed, hence, those judgments/orders could not be referred as precedent to me in this regard. In this respect an unreported judgment dated 20.06.2013 passed by this Court in Writ Petition No.11584/2013 “HAROON UR RASHID versus LDA etc”, is referred.

8. The contention of learned counsel for the petitioner that as the provisions of PHA Act have been violated, hence, this Court has jurisdiction, has no force at all. The facts and circumstances of above referred cases are entirely different. In this case when the summary of the petitioner was moved for person specific upgradation, at that time the law applicable to the Organization of the petitioner was Punjab Development of Cities Act, 1976 and at the time when summary moved on the application of the petitioner and another, the relevant provisions of Section 7(xvi), 8 and 9 of the Punjab Development of Cities Act, 1976 were violated and the summary was channeled without the approval of the authority constituted under Section 4 of the said Act. This is not the case of the petitioner that authority delegated its

powers in this regard to the Director General PHA. Further as discussed above, the office order dated 31.03.2008 was not intended to be used as a policy applicable to all concerned, rather astonishingly it was meant to benefit two specific persons including the present petitioner. Another aspect of the matter is that the petitioner himself is claiming benefit on the basis of summary which was forwarded by violating the procedure of law applicable at the relevant time whereby, he was upgraded, therefore, at later stage he could not invoke the ground that the procedure of law applicable now a days has been ignored, because the earlier order of upgradation was also issued in violation of the relevant procedure, thus was an illegal order. Therefore, even under the principle of equity, the petitioner is not entitled for any relief on this score.

9. Moreover, the procedure adopted by the Director General PHA for the purpose of moving summary of upgradation of petitioner and another to the Chief Minister was not transparent, rather arbitrary, which itself establish either any sort of pressure on the Director General or this practice can be termed as an example of nepotism and favoritism, because the service structure of whole of the Organization was never changed, no permanent posts of Additional Director General (North and South) were created nor for such posts any qualification/experience criteria, was prescribed, rather two person specific upgradations were ordered, which practice cannot be permitted in a civilized society run under the constitution and law. The practice of upgrading of post, person specific, without following the prescribed procedure and permanent change in organizational structure, results in heartburning of other employees and such person specific promotion/upgradation is always prejudicial to the public interest and it cannot be said to be based on intelligible differentia, rather destroy the service structure and such like order create frustration amongst other employees who serve with hard work, acquire job skill and believe on healthy

competitive process amongst other colleagues. This is not the era where the law of the jungle could be applied, the days are bygone when such favoritism or nepotism could go unsighted for any reason whatsoever. The law is based on logical, solid and merit oriented foundation and the courts are ever free within constitutional sphere to ensure transparency and observance of merit at all levels. Favoritism or nepotism, as is reflected in the case in-hand, needs to be plugged to pave way for promotion and upgradation of employees as a policy within the parameters of certain criteria applicable to all concerned, which ultimately is bound to result in overall development of our institutions and for this purpose person specific actions have to be discouraged. Therefore, on this score alone, the order dated 31.03.2008 upgrading only the post of the present petitioner being hit by the principle of natural justice, was not sustainable in law.

10. As regards the applicability of principle of locus poenitentiae, there is no cavil to the settled legal position that said principle cannot be used where grant of relief is immoral, unfair or against the dictates of good conscience and fair play and this Court is not bound to grant relief to such petitioner simply, because he is legally entitled to some relief and further writ jurisdiction being discretionary cannot be granted to hold and retain ill-gotten gain. Reliance is placed on the case “SECRETARY TO THE GOVERNMENT OF THE PUNJAB, FOREST DEPARTMENT, PUNJAB, LAHORE through Divisional Forest Officer versus GHULAM NABI and 3 others” (PLD 2001 SC 415).

11. Even the Hon’ble Supreme Court of Pakistan in the case “THE ENGINEER-IN-CHIEF BRANCH through Ministry of Defence, Rawalpindi and another versus JALALUDDIN” (PLD 1992 SC 207) has held that “*Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed*

*becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order.”* The respondents have categorically denied that the petitioner performed duty against the upgraded post and petitioner could not establish that he received a single penny as salary for the upgraded post, therefore, it cannot be said that the earlier order of upgradation had been implemented.

12. For what has been discussed above, this instant writ petition apart from being not maintainable, also does not carry any substance. Dismissed.

(Muhammad Qasim Khan)  
Judge.

ANNOUNCED IN OPEN COURT.

APPROVED FOR REPORTING.

Javed\*