

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

ICA No.142-W-2014
In
W.P. No.613-2014

Rashid Ullah Khan
Vs.
Aviation Division, Government of Pakistan, Islamabad through its
Secretary etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	13.02.2018	Dr. Attique Tahir, Advocate for appellant. Mr. Umar Khan Verdag, Advocate for respondents.

This appeal is directed against order dated 17.02.2014, whereby petition under Article 199 of the Constitution filed by the appellant (W.P. No.613-2014), was dismissed by the Judge-in-Chambers.

2. The grievance of the petitioner, as alleged in the petition under Article 199 of the Constitution, is that he was granted ante-dated promotion by the respondents vide letter dated 05.07.2013 i.e. from 04.07.2013 without pay. It was further alleged that despite repeated requests and representations, respondents have failed to do the needful. The petition filed by the appellant was dismissed vide the impugned order.

3. Learned counsel for the appellant, *inter alia*, contended that a number of persons, along with the appellant, were granted promotion as well as the salary ante dated however, the appellant has been deprived of the same, which is discriminatory. It was also contended that even though, the service regulations of respondents are non-statutory yet petition under Article 199 of the Constitution, was maintainable.

4. Learned counsel for the respondents, *inter alia*, contended that petition under Article 199 of the Constitution, was not maintainable inasmuch as the service regulations of the respondents are non-statutory.

5. The august Apex Court, vide judgment passed in a case reported as 'Pakistan International Airline Corporation and others Vs. Tanweer-ur-Rehman and others' (PLD 2010 Supreme Court 676), held that respondent Corporation falls within the definition of 'person' carrying on the affairs of the Federation for the purposes of Article 199 of the Constitution, however it was further observed as follows:-

"19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a

corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction”.

It is also an admitted position that the august Apex Court has held in a case reported as 2013 SCMR 1707 that even where, rules of service are non-statutory, a petition under Article 199 of the Constitution, is maintainable, if there is any illegality or violation of principles of natural justice.

6. On the touchstone of above judgments, admittedly, the rules of service of respondents are non-statutory however there is nothing on record which shows that there is any illegality or violation of law committed by the respondent Corporation. In such state of affairs, the relationship between the appellant and the respondent Corporation, is of Master and Servant therefore a petition under Article 199 of the Constitution, was not maintainable.

The impugned order does not suffer from any legal infirmity calling for interference in the instant appeal.

7. For the abovementioned reasons, instant appeal is without merit and is accordingly dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

(AAMER FAROOQ)
JUDGE

Zawar