

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No. 4179 of 2013

Safdar Abbas
Versus
Federation of Pakistan & others.

Petitioner by: Mr. Muhammad Amin Farooqi, Advocate.

Respondents 2 & 3 by: Ch. Abdul Jabbar, AAG & Haroon-ur-Rashid, Deputy Director FPSC.

Date of Hearing: 07.09.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner, Safdar Abbas, has invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

"It is respectfully that this Hon'ble Court on acceptance of this writ petition with costs, may kindly be pleased to:

- i) Declare that the impugned order contained in letter No.7/1/12 (SOPE)-PPE dated 03.05.2013, is null and void, because of being violative of Articles 25 & 27 of the Constitution of Pakistan, 1973; and*
- ii) Direct the respondents to issue result of the petitioner and if he succeeded in written test, then allow him to appear in interview of the Section Officers Promotional Exam-2012 at par with the employees of the office of Wafaqai Mohtasib, Federal Service Tribunal and Intelligence Bureau, etc*
- iii) Suspend the operation of the impugned letter dated 03.05.2013 pending adjudication of the instant writ petition.*
- iv) Award any other relief to the petitioner, which this Hon'ble Court deems expedient under the circumstances.*

2. Briefly stated facts of the case are that the petitioner joined the National Institute of Rehabilitation Medicine, Islamabad, under the

administrative control of the Ministry of Health, Government of Pakistan, with effect from 09.01.1999 as UDC/ Storekeeper (BS-07). On 13.01.2004, he was appointed as Steno-typist (BS-14). Prior to that he worked as LDC (BS-5) in the Sindh Secretariat, Government of Sindh, Karachi, with effect from 24.12.1992 and thereafter, he was promoted as UDC (BS-07) and remained at that post upto 08.01.1999; that respondent No.3-Secretary Federal Public Service Commission, Islamabad, invited applications from the civil servants for admission to the Section Officers Promotional Examination, 2012 through advertisement in the newspapers and the eligible criteria was minimum eight years service on the closing date in BS 11-16 in the Federal Secretariat and Attached Department. The employees of Wafaqi Mohtasib, Federal Service Tribunal, Federal Public Service Commission, Intelligence Bureau, President's Secretariat, Prime Minister Secretariat etc were also allowed to appear in the said competitive examination despite the fact that above mentioned departments had neither the status of Ministry or Division. The petitioner submitted an application to the Federal Public Service Commission through proper channel to appear in the Section Officer's Promotional Examination, 2012, he after receiving call letter appeared in the written examination conducted by the Federal Public Service Commission, but the result of petitioner was withheld and he was informed by respondent No.2 through letter that candidature of the petitioner was provisional and on detailed scrutiny of his application he has been found ineligible. The petitioner submitted a representation, which was rejected vide order dated 12.06.2012 without any reason and he was further asked for personal hearing. The petitioner appeared for personal hearing on 25.06.2013, but respondent No.2 sent another letter dated 23.07.2013 asking him to re-appear for personal hearing on 24.07.2013. The petitioner did not avail the remedy of review before the respondent-Federal Public Service Commission, keeping in view the attitude of the public functionaries, observed during personal hearing. The National Institute of Rehabilitation Medicine, Islamabad, is providing the services to the patients at par with PIMS as well as Federal Government Poly Clinic

Hospital, which have been declared as “Attached Department” by respondent No.1 and its employees are eligible for Section Officers Promotional Examination and denial of the same is malafide, unjust, severe discrimination and violation of Articles 25 and 27 of the Constitution of Islamic Republic of Pakistan, hence this petition.

3. Learned counsel for the petitioner contended that the eligibility criteria for Section Officers Promotional Examination, 2012 advertised by respondent No.3 is unjust, arbitrary and discriminatory; that the eligibility criteria is in violation of the provisions of the Civil Servants Act, 1973. Further contended that there is no justification to differentiate between the employees of the attached departments and employees of the subordinate departments of the Federal Government with similar qualifications and all civil servants are eligible for Section Officers Promotional Examination. Lastly, prayed for acceptance of the instant writ petition.

4. Conversely, learned Assistant Attorney General has opposed the contentions of learned counsel for the petitioner contending that the petitioner has not availed the statutory remedy of review petition before the Federal Public Service Commission; that the petitioner is estopped from his own conduct to agitate over Rules for Section Officers Promotional Examination, 2012 and filed the petition as he has accepted and admitted the terms and conditions attached with the application form for SOPE, 2012. Further contended that the petitioner is employee of National Institute of Rehabilitation Medicine, Islamabad, which has not been declared as attached departments in terms of Schedule III to Rules of Business, 1973. Next contended that the petitioner was allowed to appear in the written examination of SOPE, 2012 provisionally in terms of Rule 9 of Rules for SOPE, 2012 and after conduct of examination, scrutiny of applications, it was found that petitioner is an employee of National Institute of Rehabilitation Medicine, Islamabad, which is ineligible department. Lastly urged for dismissal of the petition.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record reveals that the petitioner had the alternate remedy of review before the Federal Public Service Commission under Rule 22 of Section Officers Promotional Examination, 2012 read with Section 7(3)(b) of the Federal Public Service Commission Ordinance, 1977. The relevant provisions of law are reproduced hereunder for ready reference:-

*“22. **Review Petition** against rejection of Representation, if so desired, may be submitted to the commission so as to reach FPSC within fifteen (15) days of issuance of the rejection of Representation. Review petition will be entertained only if accompanied with a treasury receipt of Rs.100/-. The decision of the commission on the review petition shall be final.”*

Section 7 (3) (b) of Federal Public Service Commission Ordinance, 1977.

“A candidate aggrieved by the decision of the commission made under paragraph (a) may, within fifteen days of the decision, submit a review petition to the commission and the commission shall decide the review petition within 30 days under intimation to the petitioner.”

7. In the case reported as “Indus Trading And Contracting Company Versus Collector Of Customs (Preventive) Karachi and others” (2016 SCMR 842) it has been held as follow:-

Ordinarily, the jurisdiction of the High Courts under Article 199 of the Constitution should not be invoked where alternative forum under a special law, duly empowered to decide the controversy is available and functioning. Where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. The very purpose of creating a special forum is that disputes should reach expeditious resolution headed by quasi judicial or judicial officers who with their specific knowledge, expertise and experience are well equipped to decide controversies relating to a particular subject in a shortest possible time. Therefore, in spite of such remedy being made available under the law,

resorting to the provisions of Article 199(1) of the Constitution, as a matter of course, would not only demonstrate mistrust on the functioning of the special forum but it is painful to know that High Courts have been overburdened with a very large number of such cases. This in turn results in delays in the resolution of the dispute as a large number of cases get decided after several years. These cases ought to be taken to forum provided under the Special law instead of the High Courts. Such bypass of the proper forum is contrary to the intention of the provisions of Article 199(1) of the Constitution which confers jurisdiction on the High Court only and only when there is no adequate remedy is available under any law. Where adequate forum is fully functional, the High Courts must deprecate such tendency at the very initial stage and relegate the parties to seek remedy before the special forum created under the special law to which the controversy relates. We could have relegated the appellant to seek remedy before the appropriate forum, however, as the dispute in the present case is now more than twenty years old, we for this reason only as matter of indulgence, proceed to decide the controversy on its merits.

8. The petitioner is estopped by his words and conducts to agitate the rules for Section Officers Promotional Examination, 2012 as he himself accepted and admitted the terms and conditions/ rules and instructions attached with this Application Form, whereby he submitted that he had understood the advertisement, rules, and reason for rejection as given at page-6 before filing his application form and agreed to abide by them and further that he is eligible to apply/ appear in this examination because he does not fall in the category of ineligible candidates, as he is Federal Government Servant/ Civil Servant of one of the following i.e. National Institution Of Rehabilitation Medicine (NIRM), Islamabad.

9. Section 7 (3) (c) of Federal Public Service Commission Ordinance, 1977 is reproduced hereunder for ready reference:-

“Save as provided in this Ordinance, no order made or proceeding taken under this Ordinance, or rules made hereunder, by the commission shall be called in question in any code and no injunction shall be granted by any court in respect of any decision made or taken in pursuance of any power conferred by, or under, this Ordinance.”

Moreover, the petitioner is an employee of National Institute of Rehabilitation Medicine, Islamabad, which has not been declared as attached departments in terms of Schedule III to Rules of Business, 1973, and the petitioner was only allowed to appear in the written examination of SOPE, 2012 provisionally in terms of Rule 9 of Rules for SOPE, 2012. For ready reference Rule 9 is reproduced hereunder:-

"All the candidates are admitted to the examination provisionally on their own risk subject to their being found eligible on detailed scrutiny of their applications after written examination is over. If a candidate is found ineligible his candidature will be cancelled irrespective of the fact whether he has appeared in the examination or not or even qualified there in."

After conducting examination and scrutiny of applications, it was found that petitioner is an employee of National Institute of Rehabilitation Medicine, Islamabad, which is ineligible department. In letter dated 17.05.2013, issued by the Director, (Ministry of Capital Administration and Development), National Institute of Rehabilitation Medicine, it is clearly mentioned that *"However, this institute had not yet been formally notified/ declared as attached department of the Ministry of Capital Administration Development"*.

10. In view of the above, this writ petition having no force, is hereby **dismissed**.

— (Ghulam Azam Qambrani)
Judge

Announced in Open Court, on this 24th day of September, 2020.

— Judge —

Rana M. Ift