

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

**W.P No. 3914/2019**

Muhammad Zawar

Versus

The Registrar, Islamabad High Court, Islamabad etc.

| <b>S. No. of order/ proceedings</b> | <b>Date of order/ Proceedings</b> | <b>Order with signature of Judge and that of parties or counsel where necessary.</b> |
|-------------------------------------|-----------------------------------|--|
| <b>(01)</b>                         | 13.11.2019                        | Dr. G.M Chaudhry, Advocate for the petitioner.                                       |

**MOHSIN AKHTAR KAYANI J.** Through this writ petition, the petitioner has prayed for the following relief:-

*“It is most respectfully prayed that:-*

- a) *That the Impugned Notification No. F.(99)Admn/IHC/18728, dated 31-05-2019 (Annex-A) to extent of promotion of the Respondent No.2 be set aside by also setting aside the Letter No.19044/Admn/IHC, dated 20-09-2019(Annex-E) rejecting the of the Petitioner and directions be issued for consideration of promotion to the Petitioner as the Deputy Registrar (BPS-19) with effect from 10-03-2017.*
- b) *That the Petitioner may also be awarded cost of this constrained litigation for protection of his Fundamental Rights as guaranteed by the Constitution of the Islamic Republic of Pakistan.*

*Any other relief for which, the Petitioner may be found entitled by this Honourable Court, may also be granted in the interest of justice.”*

2. Learned counsel for the petitioner inter-alia contends that petitioner was appointed as Private Secretary (BPS-18) in the Islamabad High Court vide notification dated 17.09.2008 through a competitive process and has joined the service on 22.09.2008. He further contends that in the light of the Islamabad High Court Establishment (Appointment and Conditions of Service) Rules, 2011, the promotion for

the post of Deputy Registrar (BPS-19) is to be made on the basis of seniority-cum-fitness as well as Rotation basis as provided at serial No. 7 of Part-I of the Schedule.

3. Learned counsel for the petitioner further contends that at the end of year, 2016, two (02) vacant posts of Additional Registrars (BPS-20) and twelve (12) vacant posts of Deputy Registrars (BPS-19) were referred to the Department Selection Board (DSB) by the then Chief Justice to be filled through promotion under the existing rules, whereby Hon'ble DSB in its meeting held on 09.03.2017 recommended the names of thirteen Officers amongst the cadres of Assistant Registrars, Readers and Private Secretaries including the petitioner. However, Ali Ahmed Khan/respondent No.2, the then Assistant Registrar was promoted as Deputy Registrar (BPS-19), despite the fact that he is junior to petitioner and does not qualify the requisite service and petitioner has been ignored. It has lastly been contended that the petitioner has filed representation/appeal /review dated 05.04.2017 and 25.06.2019, the same have been turned down vide their letter dated 20.09.2019 and petitioner has been left with no other option but to invoke the Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Arguments heard, record perused.

5. From the perusal of record, it has been observed that petitioner is mainly aggrieved with the promotion of respondent No.2 for the post of Deputy Registrar

(BPS-19) on the ground that respondent No.2 is junior to the petitioner and does not have the requisite length of service in terms of Islamabad High Court Establishment (Appointment and Conditions of Service) Rules, 2011. Record further reveals that the petitioner has filed Representation/Appeal/Review before the Competent Authority of this Court, whereby the same has been turned down.

6. Learned counsel for the petitioner has been confronted regarding maintainability of instant writ petition as this Court cannot issue any writ in terms of Article 199 of the Constitution of Pakistan against Islamabad High Court, whereby learned counsel has failed to answer the query, even learned counsel has further been confronted with the dictum laid down **PLD 2016 Supreme Court 931 (Ch. Muhammad Akram Vs. Registrar, Islamabad High Court and others)** and **2019 PLC (C.S) 91 (Amjad Ali Vs. Federal Shariat Court through Registrar and others)**, but the learned counsel has failed to justify the maintainability of instant writ petition and even not able to wriggle out from the dictum laid down in the above mentioned case laws.

7. The Larger Bench of Islamabad High Court while deciding the *Amjad Ali* case supra has laid down the following criteria:-

*"It is obvious from the above discussed precedent law eloquently expounded by larger Benches of the august Supreme Court that the bar contained under Article 199(5) and its wisdom are based on the premise of maintaining a high degree of comity amongst judges of the superior courts and the doctrine of coordinate jurisdiction' This has been declared as being inevitable for the smooth and harmonious functioning of the judicial system. The larger Benches of the august Supreme Court in the judgments rendered in the cases*

*of Abrar Hassan, supra, and Malik Asad Ali and others, supra, have explicitly referred to two distinct expressions in the context of the discharge of functions and powers by a judge of the superior court, i.e. as 'judge of the Court' and 'member of the Court'. The expression 'judge of the Court' has an obvious reference to the judicial functions and powers vested under the Constitution while 'member of the Court' to functions or powers required to be performed by a judge other than on the judicial side e.g as a member of the Administrative Committee or under the rules made under Article 208 of the Constitution. The judgments rendered by the august Supreme Court have held that the bar under Article 199(5) would be attracted in case of functions and powers performed either as a judge or member of the Court. The only exceptions explicitly mentioned by the larger Benches are; (i) a writ in the nature of quo warranto (ii) acts or omissions done in private capacity or persona designata, and (iii) when a sitting judge is exercising powers under some other law as a Tribunal i.e not as a judge or member of the Court. A serving Judge of a High Court, exercising powers as a Member or Chairman of the Election Commission of Pakistan, does not perform, function or exercise powers as a judge or member of the Court and, therefore, the bar under Article 199 (5) of the Constitution will not be attracted. Reference in this regard may be made to "Aftab Shahban Mirani vs. President of Pakistan and others", 1998 SCMR 1863 and "Mian Jamal Shah vs. The Member Election Commission, Government of Pakistan, Lahore, etc", PLD 1966 SC 1. The emphasis by the larger Benches of the august Supreme Court in the aforesaid cases leads us to the conclusion that the bar under Article 199(5) of the Constitution will be attracted in the case of an action or order of a judge of the superior court whether done or passed as a Judge of the Court' or as 'Member of the Court.*

8. In view of above discussion, instant writ petition is not maintainable and same is hereby **dismissed in limine** notwithstanding with the merits of the case rather in view of terms of Article 199 (5) of the Constitution of Islamic Republic of Pakistan, 1973 as well as the law laid down by the apex Court in the reported cases of Ibrar Hassan, Ch. Muhammad Akram and Malik Asad Ali, referred in preceding paragraphs.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**