

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 4533/2019
Head Constable Munawar Zareef etc
Versus
IGP, ICT etc

Petitioner by: Hafiz Noor Muhammad Advocate,
Respondents by: Mr. Sadaqat Ali Jahangir, State Counsel.
Muhammad Riaz, Inspector legal.
Date of Decision: 10.03.2020.

FAIAZ AHMAD ANJUM JANDRAN, J:- This writ
petition has been filed with the following prayer:-

“That the respondents be directed to act in accordance with Constitution, Law and Rules and considered the petitioners as well as other eligible Head Constables, being most experienced, deserving, trained and qualified against the 77 remaining vacancies of ASIs as per practice and in accordance with the law, with their promotion w.e.f. 22.10.2019 i.e. the date, the other colleagues of the petitioners were promoted.”

2. Learned counsel for the petitioners contends that petitioners are entitled to be promoted as ASIs under the rules but the respondents are adamant to fill the vacancies through direct recruitment; that as per rules of the respondent department 75% posts are required to be filled through process of promotion, but the respondents are acting otherwise; that in the past, they have made some appointments through direct recruitments and till this day no vacancy had been filled on the basis of promotion quota despite of the fact that sufficient vacancies are available in that category. According to the learned counsel, petitioners have legitimate expectation for promotion and if the same is refused, it will create sense of deprivation among the employees. To support his contentions, learned counsel relied upon case laws

reported as *2020 SCMR 90, 2018 SCMR 1544, 2015 SCMR 1006, 2013 SCMR 1159, 2010 SCMR 1466, 2010 SCMR 1301, 2007 SCMR 886, 2002 SCMR 71, 2002 SCMR 82, PLD 2020 SC 01, PLD 2018 Sindh 724, PLD 2011 Lahore 160, PLD 1990 SC 612, 2018 PLC (CS) 1026, 2018 PLC (CS) 907, 2012 PLC (CS) 1355 and 2011 PLC (CS) 07.*

3. On the other hand, respondents in their written comments have asserted that stance of the petitioners is not correct regarding filing of promotion quota posts through direct recruitment; that department is totally acting as per law; that all the posts, required to be filled by promotional quota, will be filled as such and not by way of direct recruitment; that as the petitioners are civil servants, therefore, in presence of the bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, instant writ petition is not maintainable.

4. Heard the arguments advanced by learned counsels for the parties and perused the record with their able assistance.

5. Most of the judgments relied upon by the learned counsel for the petitioners are in the cases where grievance qua promotion was decided by the learned Tribunal, established under the mandate of Article 212 of the Constitution of Islamic Republic of Pakistan and rest are regarding exercise of discretionary powers while some are on the point of legitimate expectation of promotion. The case law relied upon entail different subject matter and, therefore, not relevant in the facts of the present case.

6. Admittedly, petitioners are civil servants and remedy available to them in case of any grievance through procedure provided under the Civil Servant Rules and Service Tribunal Act, 1973.

7. Factual controversies have been raised as some assertions of the petitioners have been specifically denied

by the respondents and in that eventuality writ jurisdiction cannot be exercised. Reliance is placed upon case law reported as **Amir Jamal and others Vs Malik Zahoor-ul-Haq and others (2011 SCMR 1023)** wherein it is held as under:-

“The scope of Article 199 is dependent on the questions which are devoid of factual controversy.”

8. As far as matter of promotion of petitioners is concerned, they could seek their remedy through this Court only in the situation where their case falls within the ambit of Section 4(1)(b) of the Service Tribunal Act, where fitness for promotion is the impugned criteria. The appeal to the learned Tribunal is barred/excluded by the said provision of law and in that eventuality petitioners or any civil servant may approach the other forum including the filing of writ petition before this Court but in the case at hand, neither the petitioners had been considered for promotion nor any order has been passed against them that either they are eligible, or otherwise not entitled for promotion. So in that eventuality their writ petition before this Court is not competent in the light of specific bar contained in Article 212 of the Constitution.

9. However, departmental appeals/representations of the petitioners are pending with the respondent department, available at Page 19 to Page 26 of the instant petition, which as submitted have not yet been decided. Therefore, the respondents are directed to decide their pending representations, if not already decided within 30 days of the receipt of this order in accordance with law on the subject.

10. Petition stands disposed of in above terms.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran