

Form No: HCJD/C:

**JUDGEMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Case No: Writ Petition No.3344 of 2019**

**Ms. Shahida Gulnar and another**

**Vs.**

**The Director General, FDE and 2 others**

**Petitioners by: Ms. Aameena Sohail, Advocate.**

**Respondents by: Kh. Imtiaz Ahmed, Deputy  
Attorney-General.**

**Dr. Agha Ghulam Haider, D.D.  
(Legal) M/o Federal Education.**

**S.M. Rehan Naqvi, D.D. (Legal),  
FDE.**

**M. Irfan, S.O. (Lit-V),  
Establishment Division.**

***Date of Decision: 13.01.2022***

**AAMER FAROOQ, J.-** The petitioners are Assistant Librarians in employment of Federal Directorate of Education. They are aggrieved of SRO No.373(I)2019 dated 16.03.2019 whereby the appointment to the post of Librarian (the next post to which the petitioners were hopping to be promoted) has been made through 100% by fresh appointment.

2. Learned counsel for the petitioners, *inter alia*, contended that through the impugned notification the promotion channel of the petitioners has been done away with and their terms and conditions of service have been adversely effected in this regard. It was contended that previously it was 50% by promotion and 50% by initial appointment and with

the change in the law the petitioners are left with no promotional channel.

3. Learned Deputy Attorney-General objected to the maintainability of the writ petition on account of the fact that the matter pertains to the terms and conditions of service of civil servants, hence the remedy of the petitioners, if any, is with the Federal Service Tribunal. In this behalf he placed reliance on the case titled **Dr. Muhammad Safdar etc. v. Federation of Pakistan etc.** (W.P. No.1486 of 2019).

4. In response, learned counsel for the petitioners contended that the instant petition deserves to be decided on merit as the petitioners are without remedy. Reliance was placed on the case titled **Imdad Magsi and others v. Karachi Water and Sewerage Board and others** (PLD 2002 Supreme Court 728).

5. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. As noted above, the petitioners are aggrieved of notification SRO No.373(I)2019 dated 16.03.2019. The referred notification came under challenge before this Court in a set of writ petitions which were decided through a consolidated judgment handed down in case titled **Dr. Muhammad Safdar etc. v. Federation of Pakistan etc.** (W.P. No.1486 of 2019). This Court while deciding the writ

petitions observed that appropriate forum for the petitioners in challenging the notification in question is Federal Service Tribunal. The relevant portion from the judgment of this Court is reproduced below:

*“18. The other set of grievance, raised by the petitioners, is challenge to the impugned Notification on the basis that petitioners, being Trained Graduate Teaches, which post stands re-designated as Senior Elementary Teacher in BS-16 and promotion to the same under the impugned Notification, is 50% by quota and for the remaining by fresh appointment; conditions of eligibility for promotion in various positions have been made under Rule 3 of the impugned Notification, which again, has been challenged on the basis that qualification imposed by way of 4-years Bachelor Degree which is virtually impossible. The question of reduction in promotion quota and/or variation of the qualification for promotion pertain to the eligibility of a candidate for promotion or the number of seats for the same and the said matter pertains to terms and conditions of service, which question, falls within the domain of Federal Service Tribunal for adjudication. The only exception, provided under the law, is question of fitness as well as one of upgradation, to which, this Court has the jurisdiction. In case reported as ‘I.A. Sharwani and others Vs. Government of Pakistan through Secretary, Finance Divisional, Islamabad and others’ (1991SCMR 1041), it was held that jurisdiction of Federal Service Tribunal cannot be*

*bye-passed by adding a ground of violation of fundamental right and the Federal Service Tribunal has the jurisdiction, even to examine such issue, if the matter pertains to terms and conditions of service. It was also added that even as to the vires of a notification or/and order, the Federal Service Tribunal has the jurisdiction.*

19. In case reported as 'Tasleem Jan and others Vs. Muhammad Zaman and others' (2005 SCMR 695), the Hon'ble Supreme Court observed that jurisdiction of Federal Service Tribunal would be barred only, where matter is one of fitness of a civil servant to hold an office. It was observed that where fitness of an officer to hold a higher post was a matter of comparative suitability in light of quantification of performance as a result of subjective decision of competent authority based on objective principles, then same would relate only to personal competence and performance on the job. It was added that eligibility would relate purely to terms and conditions of service and any right, denied on the basis of eligibility or otherwise, can be challenged before Federal Service Tribunal. Similar views were expressed in case reported as 'Fazali Rehmani Vs. Chief Minister, NWFP, Peshawar and others' (PLD 2008 Supreme Court 769)."

7. In defending the maintainability of the writ petition the judgment relied upon by the learned counsel for the petitioners is **Imdad Magsi and others v. Karachi Water and Sewerage Board and others** (PLD 2002

**Supreme Court 728).** There is no cavil with the principles laid down in the referred judgment of the Hon'ble Supreme Court of Pakistan; however, the same are not applicable on the facts and circumstances of the case. In view of the above discussion, the petition is not maintainable in light of Article 212 of Constitution of the Islamic Republic of Pakistan, 1973 as the matter pertains to the terms and conditions of service of civil servants.

8. For the above reason, the instant petition is dismissed as not maintainable. Since the petition has been decided on the basis of maintainability no findings are required to be rendered on merit of the case.

**(AAMER FAROOQ)  
JUDGE**

\*M.Naveed\*