

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

W.P. No.335 of 2019  
Muhammad Imran and others  
**Versus**

Ministry of Industries and Production through its Secretary and another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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25.08.2020	<b>Ms. Natalya Kamal, Advocate for the petitioners.</b> <b>Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General.</b> <b>M/s Shoaib Akbar, Joint Secretary (Admin), Shahadat Ali Khan, Section Officer (Admin), Ajmal Khan, Section Officer (General), Khalid Mehmood, Section Officer (Litigation) and Israr Ahmad, Assistant, Ministry of Industries and Production.</b>	
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Through the instant writ petition, the petitioners, who were recently employed as Stenotypists (BPS-14) in the Ministry of Industries and Production, Government of Pakistan, impugn letter dated 24.01.2019 issued by the said Ministry, whereby they have been called upon to participate in an in-house professional test to gauge their shorthand and typing proficiency level.

2. This petition was first taken up for hearing on 28.01.2019, and as an interim measure, it was ordered that the petitioners shall participate in an in-house professional test scheduled to be held on 28.01.2019, however, the respondents were restrained from dismissing the petitioners until the next date of hearing.

3. Learned counsel for the petitioners submitted that in response to the advertisement issued by the respondents, the petitioners participated in the competitive process for appointment as Stenotypists (BPS-14); that the written tests were conducted by a private testing agency, called NCBMS College and Testing Services (Pvt.) Ltd.; that the petitioners, being the successful candidates, were interviewed

by the respondents; that after passing the interview, the petitioners were issued offers of appointment, which they accepted; that after the petitioners were medically examined, they were issued appointment letters and were given postings; and that all of a sudden, the respondents decided to subject the petitioners to fresh tests.

4. Learned counsel for the petitioners further submitted that since the petitioners had proven their ability in the competitive process prior to their appointment, the decision of the Ministry of Industries and Production to require the petitioners to again undergo the same test is not just unreasonable and irrational, but also has no backing of the law; that after the petitioners were issued their respective appointment letters, their posting orders have also been issued; that the respondents have threatened the petitioners that if they failed in the shorthand and typing proficiency tests, they would be removed from service; that the petitioners' representation dated 22.01.2019 has till date not been responded to; and that the petitioners are being victimized by the respondents without any plausible justification. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

5. On the other hand, the learned Deputy Attorney-General submitted that the instant petition is not maintainable due to the bar contained in Article 212 of the Constitution. He further submitted that the petitioners were appointed as Stenotypists (BPS-14) in January, 2019; that subsequently, the respondents felt the need to conduct an in-house test of the petitioners in order to gauge their ability and skills; that in an in-house test conducted on 28.01.2019, the petitioners' performance was very poor; and that the

petitioners' Annual Confidential Reports do not contain any adverse remarks.

6. Learned Deputy Attorney-General further submitted that after the petitioners appointed as Stenotypists (BPS-14), a fact finding Inquiry Committee was constituted on 28.04.2020 by the Industries and Production Division to probe into the credibility and integrity of the entire recruitment process on the basis of facts and figure; that after a detailed probe into the matter, the Inquiry Committee, on 17.06.2020, recommended for disciplinary proceedings to be conducted against the members of the Departmental Selection Committee, and for a process of blacklisting to be initiated against NCBMS College and Testing Services (Pvt.) Ltd. for not following the standard protocols for selection; that furthermore, it was recommended that the selected officials i.e. the petitioners be subjected to a standard skill test organized by the Staff Training Institute, Islamabad; and that the respondents cannot be prevented from conducting an aptitude test of the employees after they have been appointed. Learned Deputy Attorney-General prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the petitioners as well as the learned Deputy Attorney-General and have perused the record with their able assistance.

8. The record shows that in response to an advertisement issued by the Ministry of Industries and Production (Government of Pakistan) inviting applications for appointment against posts mentioned in the said advertisement, the petitioners applied for appointment as Stenotypists (BPS-14). The petitioners participated in the written test held on 20.10.2018 and skill and shorthand test on

25.11.2018, whereafter they were called for interview on 04.01.2019. After successfully participating in the competitive process, they were appointed as Stenotypists (BPS-14) vide letters dated 17.01.2019 issued by the Ministry of Industries and Production. The petitioners were posted on different positions vide office order dated 17.01.2019. Vide letter dated 24.01.2019, the petitioners have been called upon to participate in a professional test so that their shorthand and typing proficiency level could be gauged. The said letter dated 24.01.2019 has been impugned by the petitioners in the instant writ petition.

9. After the filing of this petition, the Industries and Production Division, on 28.04.2020, decided to constitute a fact finding Inquiry Committee to probe into the appointment process of the petitioners carried out through NCBMS College and Testing Services (Pvt.) Ltd. A copy of the inquiry report has been brought on record. The recommendations of the Inquiry Committee are as follows:-

***“55. The Committee unanimously recommends the following steps to address the irregularities committed in the said recruitment process:***

- a. Disciplinary proceedings may be initiated against Mr. Muhammad Arshad Khan, Joint Secretary (A&F) / Chairman DSC, Mr. Abdul Razzak Mughal, Deputy Secretary (Admn) / Member DSC, Mr. Abdus Samad Deputy Chief (LED)/Member DSC and Mr. Arshad Ali, Section Officer (Admn-II)/Member DSC;***
- b. The process for the blacklisting of M/s NCBMS College & Testing Services (Pvt.) Ltd. may be initiated;***
- c. Concerted efforts may be launched to get the restraining order of the Court dated 28-01-2019 vacated; and***
- d. Since the skill tests conducted by the Testing Agency and Mol&P did not follow the standard protocols the selected officials may be immediately subjected to a standardized skill test organized by the Staff Training Institute (STI), Islamabad.”***

10. It is not disputed that after the issuance of the office orders dated 17.01.2019, whereby the petitioners were appointed as Stenotypists (BPS-14) in the Ministry of Industries and Production, the status of the petitioners is that of civil servants. The question whether after the petitioners' appointments as Stenotypists (BPS-14) they could have been subjected to an in-house professional test including shorthand and typing proficiency level is a matter concerning the terms and conditions of their service.

11. It is well settled that the jurisdiction of this Court is ousted in matters which fall within the jurisdictional domain of the Service Tribunal. Even if this Court is to grant interim relief as a stopgap measure until the petitioners are in a position to agitate their grievances before the Federal Service Tribunal, it would amount to assuming jurisdiction over the *lis*. In doing so, this Court would be going against the mandate of Article 212(2) of the Constitution, which is reproduced herein below:-

*“(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal, other than an appeal pending before the Supreme Court, shall abate on such establishment:*

*Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal.”*

12. The jurisdiction of the High Court is barred under Article 212(2) of the Constitution even if an order assailed before the High Court or the

proceedings which a civil servant is aggrieved by or are alleged to be *malafide*, *coram non judice*, without jurisdiction or are assailed on the ground of violation of the civil servant's fundamental rights. Reference in this regard may be made to the following case law:-

- (i) In the case of Muhammad Amin Butt Vs. Secretary Education, Government of the Punjab (2003 PLC (C.S.) 926), a show cause notice was issued to the petitioner on the basis of a preliminary inquiry. The petitioner's case was that he had earlier been exonerated by the Anti-Corruption Agency and that the allegation against him could only be established in a regular inquiry. The Hon'ble Supreme Court held that the issue raised by the petitioner, who was a civil servant, was germane to the terms and conditions of his service and since no final order had been passed, the bar of jurisdiction contemplated by Article 212 of the Constitution was attracted.
- (ii) In the case of Akhtar Ali Vs. Province of Punjab (PLD 1992 Lahore 127), the petitioner had challenged the appointment of the inquiry committee and the framing of the charge against him. The Hon'ble Lahore High Court, after making reference to Article 212 of the Constitution as well as to the provisions of the Punjab Service Tribunal Act, 1974, held as follows:-

*"The aforementioned provisions place it beyond doubt that the Service Tribunal has been given exclusive jurisdiction in the matters relating to the terms and conditions of the service of the civil servants including disciplinary matters and the jurisdiction of all other Courts in respect of matters falling within the competence of the Service Tribunal stands ousted. Needless to observe that non obstante clause in Article 212(2) gives it overriding effect with*

*the result that the jurisdiction of this Court under Article 199 of the Constitution to entertain any proceedings in respect of matters falling within the ambit of Service Tribunal is completely excluded."*

Law to the said effect has also been laid down in the cases of Syed Arshad Ali and others Versus Pakistan Telecommunication Company Ltd and others (2008 SCMR 314), Peer Muhammad Versus Government of Baluchistan through Chief Secretary and others (2007 SCMR 54), Noor Badshah Khattak Versus Government of N.W.F.P. and others (2004 PLC (C.S.) 1084 and Khalid Mehmood Wattoo Versus Government of Punjab and others (1998 SCMR 2280).

13. In view of the above, I hold that the instant petition is not maintainable. Consequently, the same is dismissed as not maintainable. I have refrained from expressing my views on the merits of the case.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

Qamar Khan