

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

ICA No.80/2020

Mrs Asifa Bashir

Versus

Ministry of Finance and Economic Affairs, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	13-04-2020	Mr Abdul Hafeez Amjad, Advocate for petitioner.

This appeal is directed against order, dated 16-03-2020, passed by the learned Single Judge in W.P. No. 880/2020.

2. The facts, in brief, are that Mrs Asifa Bashir (*hereinafter referred to as the 'Appellant'*) was appointed against the post of Assistant in the Economic Affairs Division. She was later transferred on the basis of deputation to the Federal Directorate of Education, Islamabad Capital Territory against a post of Trained Undergraduate Teacher (BPS-14). This transfer on deputation basis was for a period of three years and she was allowed to join the Federal Directorate of Education with effect from 25-08-2009 vide office order, dated 02-09-2009. The Federal Directorate of Education moved a

summary for her permanent absorption. It is the case of the appellant that she was permanently absorbed vide order, dated 20-04-2018, issued by the Capital Administration and Development Division, Government of Pakistan.

3. The learned counsel for the appellant has been heard at length. He has argued that the learned Single Judge failed to appreciate that it was not a case of mere repatriation. He has argued that the petitioner was permanently absorbed vide order, dated 20-04-2018 and, therefore, the repatriation order was void ab initio. He has further stated that the learned Federal Service Tribunal has no jurisdiction to entertain the grievance of the appellant and, therefore, Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the '**Constitution**'*) was not attracted.

4. The learned counsel has been heard and record perused with his able assistance.

5. It is an admitted position that the appellant asserts that she was permanently absorbed in the Federal Directorate of Education and, therefore, she was no more serving on the basis of deputation. It is, therefore, obvious that

according to the stance taken by the appellant herself, her status is that of a civil servant as a permanent employee of the Federal Directorate of Education, Islamabad Capital Territory. Her case is entirely based on order, dated 20-04-2018. It would be appropriate not to make any further observations regarding the status of order, dated 20-04-2018, lest it may prejudice case of the appellant. In the light of the admitted position and the stance taken by the appellant, her grievance falls within the ambit of terms and conditions of a civil servant. Order, dated 20-04-2018, has not been recalled by the Federal Government nor any observation has been made by the learned Single Judge with regard thereto. ^AAs long as order, dated 20-04-2018, remains in the field the appellant is to be treated as an employee of the Federal Directorate of Education because according to her own stance she is not serving on the basis of deputation. In the facts and circumstances of the case, the grievance of the petitioner which is based on order, dated 20-04-2018, is within the exclusive jurisdiction of the learned Federation Service Tribunal under Article 212 of the Constitution. The Federal Service Tribunal is also empowered to examine the legality of order, dated 20-04-2018.

6. It is settled law that the bar under Article 212 is of Constitutional nature and, therefore, curtails the jurisdiction of this Court in respect of matters committed to the learned Federal Service Tribunal. Reliance is placed on the case of "*Khalid Mehmood Wattoo versus Government of Punjab and others*" [1998 SCMR 2280]. It is also settled law that the jurisdiction of a High Court is barred under Article 212 of the Constitution even if an order assailed before the High Court or the proceedings are *malafide, coram-non-judice*, without jurisdiction or on the ground of violation of fundamental rights. Reliance is placed on the cases of "*Peer Muhammad versus Government of Baluchistan through Chief Secretary and others*" [2007 SCMR 54], "*Syed Arshad Ali and others versus Pakistan Telecommunication Company Ltd and others*" [2008 SCMR 314], "*Khalid Mehmood Wattoo versus Government of Punjab and others*" [1998 SCMR 2280] and "*Noor Badshah Khattak versus Government of N.W.F.P. and others*" [2004 PLC (C.S) 1084].

7. It is further noted that question of vires in the context of determining the rights of a civil servant can also be raised before the Federal service Tribunal. Reliance is placed on "*M. Yamin Qureshi*

versus Islamic republic of Pakistan and another"
[PLD 1980 S.C. 22], "*I.A. Sharwani and others*
versus Government of Pakistan through Secretary,
Finance Division, Islamabad and others" [1991
SCMR 1041] and "*Muhammad Zahoor Abbasi versus*
Government of the Punjab through Secretary
Education, Civil Secretariat, Lahore and 03 others"
[2004 SCMR 549]. It is also admitted that now the
Federal Service Tribunal has been validly constituted
and has become functional.

8. Keeping in view the above law
enunciated by the august Supreme Court, the
constitutional petition of the appellant was not
competent because the bar under Article 212 of the
Constitution was attracted. However, this order shall
not prejudice the statutory right of the appellant to
approach the learned Federal Service Tribunal, if so
advised.

9. In the light of the above discussion, this
appeal is without merit and is, therefore, accordingly
dismissed.

(AAMER FAROOQ)
JUDGE

(CHIEF JUSTICE)