

Form No: HCJD/C

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No. 2167 of 2015

Sardar Liaqat Ashraf and 07 others

Versus

***Federation of Pakistan, through Secretary Ministry of Water and
Power, Islamabad 04 others.***

Writ Petition No.2216 of 2012

Syed Mohsin Raza Gilani and 03 others

Versus

***Federation of Pakistan, through Secretary Ministry of Water and
Power, Islamabad 04 others.***

Petitioner's by : Mr. Ashraf Ali Awan, Advocate.

**Respondent's by : Mr. Muhammad Asif Khan, Rao
Muhammad Akram Khurram and Ch.
Adil Javed, Advocates.
Rana Khawar Hussain, AAG.**

Date of decision : 17.05.2018

AAMER FAROOQ, J. - This judgment shall decide the

instant petition as well as Writ Petition No.2216 of 2012, as
common questions of law and facts are involved.

2. The petitioners are employees of respondent No.5
working in BPS-17 and BPS-18. The decision regarding the
promotion of the employees of respondent No.5 including the
petitioners is to be taken by the Board of Directors of the referred
respondents in light of office order dated 24.11.2011 by Ministry

of Water and Power. The referred Ministry also imposed ban on intra-company posting/ transfers i.e. to other distribution companies (DISCOs). PEPCO being the controlling authority of the DISCOs issued direction and adopted promotion policy of Establishment Division. Despite being a ban there are several employees of DISCOs, who have joined respondent No.5. In the instant petition, petitioners are aggrieved of the transfer of other employees of DISCOs to IESCO.

3. Learned counsel for the petitioners, *inter-alia*, contended that the transferees from other companies to IESCO have no right to be adjusted in the company; that despite ban person from other DISCOs are being transferred; that prospects of promotion of the petitioners are likely to be adversely effected because of transfer of other employees; that transferees from other companies cannot be absorbed permanently in IESCO.

4. Learned counsel for respondents No.1 to 4, *inter-alia*, contended that no cause of action accrues to the petitioners, hence, the petition is not maintainable.

5. Learned counsel for respondent No.5, *inter-alia*, contended that since rule of service of IESCO are non-statutory, therefore, the instant petition is not maintainable; that the relief sought in the petition is vague and cannot be granted; that the petitioners have no cause of action or locus standi to file the instant petition. It was further contended that the instant petition

has become infructuous inasmuch as the petitioners have been promoted.

6. The arguments advanced by the learned counsels for the parties have been heard and record perused with their able assistance.

7. The petitioners are aggrieved of the transfer of other persons from various DISCOs to IESCO. In this regard in paragraph 05 of the petition, various instances have been cited by virtue of which the employees of other DISCOs were transferred to IESCO, however, in reply to the said paragraph, respondent No.5 has categorically denied the referred transfers. The denial of respondent No.5 to the allegation made by the petitioners makes the controversy factual in nature which cannot be adjudicated in the petition under Article 199 of the Constitution.

8. Even otherwise, the petitioners have not impleaded transferees as respondents nor have sought setting aside of their transfer orders. The main grievance of the petitioners seems to be that upon transfer of employees from other DISCOs their right to promotion shall be hampered, however, learned counsel for respondent No.5 categorically submitted that the petitioners have been promoted, hence, the petition as such has become infructuous. The said fact was not denied by learned counsel for the petitioners.

9. In so far as terms and conditions of service of employees of respondent No.5 are concerned, they are based on non-statutory rules and a petition under Article 199 of the Constitution on the basis thereof is not maintainable. In this regard, even if any authority or department borrows the rules which are statutory the same do not become statutory. Reliance is placed on cases reported as "*Muhammad Ibad Rana Vs. Government of Punjab and others*" [**2000 PLC (C.S.) 1068**] as well as "*Kamran Ahmad Vs. Water and Power Development Authority through Chairman and 03 others*" [**2014 PLC (C.S.) 332**]. This Court in case titled "*Manzoor Ahmed Vs. Federation of Pakistan through Secretary, Ministry of Water and Power, Pakistan.*" (**W.P. No.2346 of 2017**) vide judgment dated 01.03.2018 has also held that rules of service of IESCO are non-statutory, hence, a petition under Article 199 of the Constitution on the basis thereof is not competent.

10. In view of the foregoing, the above noted petitions are accordingly dismissed.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua