

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1871 of 2019
Ehsan ul Haq
Versus
Secretary, Establishment Division and another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18.08.2020	Mr. M. Kowkab Iqbal, Advocate for the petitioner. Mr. Arshid Mehmood Kiani, learned Deputy Attorney General. Mr. Majid Khan, Assistant Director, Ministry of National Health Services, Regulation and Coordination. Mr. Shamsheer Khan, Superintendent (Legal), P.I.M.S.

Through the instant writ petition, the petitioner, Ehsan ul Haq, impugns the order dated 06.02.2019 issued by the Ministry of National Health Services, Regulations and Coordination, turning down the petitioner's representation for promotion as Superintendent (BS-16). In the said order dated 06.02.2019, it was observed that the question of promotion to higher scale is to be settled through seniority and relevant recruitment rules.

2. Learned counsel for the petitioner submitted that the position taken by the respondents before the Federal Service Tribunal was that the petitioner would be considered for promotion on merit when the opportunity for doing so arises; and that even though an opportunity for the petitioner's promotion arose, the petitioner was unlawfully denied promotion against the post of Superintendent (BS-16). Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned Deputy Attorney General submitted that since the petitioner is a civil servant and is aggrieved by the appellate order dated 06.02.2019, this Court does not have the jurisdiction to adjudicate upon this matter in view of the bar contained in Article 212 of the Constitution. Learned Deputy Attorney General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioner as well as the learned Deputy Attorney General.

5. Admittedly, the petitioner is a civil servant. In the instant writ petition, the petitioner has agitated a matter regarding the terms and conditions of his service. Vide the impugned order dated 06.02.2019, the petitioner's claim for promotion as Superintendent (BS-16) was turned down. Earlier, vide order dated 03.03.2015 passed in writ petition No.3664/2012, this Court had observed that the petitioner should take his grievance to the Federal Service Tribunal since it had become functional.

6. I am of the view that there is considerable substance in the objection to the maintainability of this petition raised by the learned Deputy Attorney General. Consequently, it is held that this petition is not maintainable. In holding so, reliance is placed on the following case law:-

- i) In the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456), it was held as follows:-

"149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated

under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals."

Furthermore, it was held that the exercise of jurisdiction by way of suit and Constitution petition filed by a civil servant with regard to his terms and conditions of service is violative of Articles 175, 212 and 240 of the Constitution and the law. The Hon'ble Supreme Court also observed that the admission of such suits and petitions by the learned Judges concerned *"obviously confront and defy Article 189, if not attract the provisions of Article 209 of the Constitution."*

- ii) In the case of National Assembly Secretariat Vs. Manzoor Ahmed (2015 SCMR 253), it has been held as follows:-

"8. We have heard the learned counsel for the parties and have perused the record. Admittedly, respondent No.1 is a Civil Servant and, therefore, he could not have approached the High Court under Article 199 of the Constitution for redressal of his grievance, which pertained to the terms and conditions of his Service in view of the Bar created under Article 212(2) of the Constitution. The High Court, therefore, was not competent to adjudicate the issue raised in the Writ Petition. The High Court has fallen in error while proceeding on the erroneous assumption that respondent No.1 had raised the issue of violation of the statutory Rules, therefore, it was competent to decide the issues. This was an incorrect approach of the learned High Court to entertain a Constitution Petition of a Civil Servant on the ground of the statutory violation. Such grievances of a Civil Servant fall within the domain of the Federal Service Tribunal as mandated by the Constitution."

- iii) In the case of Zafar Ullah Baloch Vs. Government of Balochistan (2002 SCMR

1056), it had been held *inter alia* that eligibility for promotion of the aggrieved civil servant could be subjected to judicial scrutiny before the Service Tribunal because it relates to the terms and conditions of his service.

- iv) In the case of Jalaluddin Vs. Board of Trustees of the Port of Karachi (2000 PLC (C.S.) 1061), it was held *inter alia* that when a person considered himself qualified for promotion and was wrongly ignored, it would be a case of eligibility pertaining to the terms and conditions of service justiciable before the Service Tribunal.
- v) In the case of Syed Badar-ud-Din Vs. Government of N.-W.F.P. (PLD 1994 S.C. 345), it has been held *inter alia* that questions relating to the determination of eligibility of a civil servant for promotion to a post is not outside the jurisdiction of the Service Tribunal constituted under Article 212 of the Constitution.

Law to the said effect has also been laid down in the cases of Engineer Musharaf Shah Vs. Government of Khyber Pakhtunkhwa (2015 PLC (C.S.) 215), Fazali Rehmani Vs. Chief Minister, N.-W.F.P. (PLD 2008 S.C. 769), Muhammad Iqbal Vs. Executive District Officer (Revenue) (2007 SCMR 682), Peer Muhammad Vs. Government of Balochistan (2007 SCMR 54), Government of the Punjab Vs. Muhammad Zafar Bhatti (PLD 2004 S.C. 317), Khalid Mahmood Wattoo Vs. Government of Punjab (1998 SCMR 2280), Muhammad Anees Vs. Abdul Haseeb (PLD 1994 S.C. 539) and Iqan Ahmad Khurram Vs. Government of Pakistan (PLD 1980 S.C. 153).

7. In view of the above, this petition is dismissed as not maintainable. I refrain from touching the merits of the case, lest it may prejudice to the either party's case before the competent forum.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*