

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

I.C.A.No.18 of 2018

Director General Pakistan, Civil Aviation Authority and others

**Versus**

Muhammad Ayaz Butt and others

Date of Hearing: 02.11.2020  
Appellants by: M/s Amna Warsi and Ayesha Warsi, Advocates,  
Respondents by: Raja Saif-ur-Rehman, Advocate for Respondents No.1 to 4.  
Ms. Amara Batool, Advocate for applicants in C.M. No.692/2019.  
Mr. Muhammad Javid Iqbal, learned Assistant Attorney-General.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant intra Court appeal, the appellants impugn the judgment dated 04.12.2017 passed by the learned Judge-in-Chambers whereby writ petition No.1932/2015 filed by the respondents, who are serving as Superintendents (SG-11) in the Civil Aviation Authority (“C.A.A.”), was allowed with the direction to the appellants to process the cases of the respondents for upgradation in view of the policy of the government with all benefits admissible to them.

2. Learned counsel for the appellants drew the attention of the Court to serial No.1 of Schedule-I to the Rules of Business, 1973, and submitted that the Aviation Division comes under the administrative control of the Cabinet Secretariat whereas serial No.1 of Schedule-II shows that matters pertaining to the Pakistan Civil Aviation Authority Ordinance, 1982 (“the C.A.A. Ordinance”) come under the control of the Aviation Division; that Section 7 of the C.A.A. Ordinance provides that the general direction and administration of the C.A.A. and its affairs shall vest in the Board which may exercise all powers, perform all functions and do all such acts and things which may be exercised, performed or done by the C.A.A.; that Section 12(2) of the C.A.A. Ordinance provides that the C.A.A. shall prescribe by Regulations the procedure for appointment of its officers, servants, experts and consultants, and the terms and, conditions of their services; that in exercise of

the powers conferred by Section 12(2) of the said Ordinance, the Board of the C.A.A. made the Civil Aviation Authority Service Regulations, 2000 which were repealed and replaced by the Civil Aviation Authority Employees (Appointment, Promotion, Transfer and Other Service Terms and Conditions) Regulations, 2014; and that since the Civil Aviation Authority Employees (Appointment, Promotion, Transfer and Other Service Terms and Conditions) Regulations, 2014 were not statutory, the writ petition filed by the respondents was not maintainable.

3. Learned counsel for the appellants further submitted that the Finance Division's Office Memorandum ("O.M.") No.F.No.1(3)R-I/2010/2014 dated 10.09.2014, which was sought to be enforced by the respondents in the Constitutional jurisdiction of this Court, was not a policy directive of the Federal Government as contemplated by Section 4 of the C.A.A. Ordinance; that the said O.M. had not been approved by the Cabinet; that the provisions of the said O.M. did not apply on its own force to the employees of the C.A.A.; that even otherwise the respondents were not holding posts in BPS-16 or equivalent; that the respondents holding posts is SG-10/SG-11 as admitted by the respondents in their written arguments; that the learned Judge-in-Chambers ought not to have proceeded *ex-parte*; and that the principles of natural justice were violated when the appellants were proceeded against *ex-parte*. Learned counsel for the appellants prayed for the instant appeal to be allowed.

4. On the other hand, learned counsel for the respondents submitted that the impugned order dated 04.12.2017 does not suffer from any legal infirmity; that the Finance Division's O.M. dated 10.09.2014 had the effect of a policy directive of the Federal Government, and the same was binding on the C.A.A.; that vide letter dated 27.02.2015, the Aviation Division forwarded the said O.M. to the Director General, C.A.A. "*for information and necessary action;*" and that after the issuance of the said letter, it was incumbent on the C.A.A. to have granted the benefit of upgradation of post of the Superintendent from SG-11 to EG-1. Learned counsel for the respondents prayed for the instant appeal to be dismissed. In making his submissions, learned

counsel for the respondents placed reliance on the order dated 11.09.2014 passed by the Hon'ble Supreme Court in C.P.No.89/2014.

5. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The Civil Aviation Authority Employees (Appointment, Promotion, Transfer and Other Service Terms and Conditions) Regulations, 2014 (**"the 2014 Regulations"**) have admittedly been made by the Board of the C.A.A. These Regulations have neither been made or approved by the Federal Government nor have they been published in the official Gazette. These Regulations do not have the status of statutory Regulations.

7. The 2014 Regulations had repealed and replaced the Civil Aviation Authority Service Regulations, 2000 (**"the 2000 Regulations"**). The 2014 Regulations were made by the Board of the C.A.A. in exercise of the same powers under which the 2000 Regulations were made. In the case of Muhammad Nawaz Vs. Civil Aviation Authority (2011 SCMR 523), the Hon'ble Supreme Court upheld an order passed by the Service Tribunal holding that the Regulations framed by the C.A.A. had no statutory backing, and that the Service Tribunal had no jurisdiction to entertain an appeal filed by an employee of the C.A.A. with respect to a grievance arising from the terms and conditions of his service. Additionally, in the case of Muhammad Rafi Vs. Federation of Pakistan (2016 SCMR 2146), it was observed *inter alia* that the 2000 Regulations of the C.A.A. were non-statutory as they had not been approved by the Federal Government.

8. Vide order dated 06.06.2017 passed in writ petition No.2107/2017 titled "Aamir Khan Vs. Secretary Aviation Division etc.," I had the occasion to dismiss the said writ petition on the ground that the C.A.A. did not have statutory service Regulations. The operative part of the said order is as follows:-

*"12. ... C.A.A's Service Regulations dealing with procedure for disciplinary proceedings of the employees of C.A.A. are clearly for the internal control and management of C.A.A.*

*13. The provisions of the C.A.A. Ordinance do not require the Service Regulations to be approved by the Federal Government.*

*It is an admitted position that the C.A.A.'s Service Regulations, 2000, have not been approved by the Federal Government. Since the Hon'ble Supreme Court in the case of Muhammad Nawaz Vs. Civil Aviation Authority and others (2011 SCMR 523) has already declared the Service Regulations of the C.A.A. to be non-statutory, therefore, following the latest judgment of the Hon'ble Supreme Court (i.e. Muhammad Zaman's case (supra)), this petition is dismissed in limine as not maintainable. I have refrained to express any view on the merits of the case. The petitioner is at liberty to seek the redressal of his grievances from the Court of competent jurisdiction. No order as to costs."*

9. Having gone through the impugned order dated 04.12.2017, we have noticed that the learned Judge-in-Chambers did not advert to the objection taken on behalf of the appellants in their written comments regarding the maintainability of the writ petition on the ground that the 2014 Regulations were not statutory in nature. It has consistently been held that a writ petition is not maintainable wherein the grievance agitated by a petitioner is regarding the terms and conditions of his service in an organization which does not have statutory service rules or Regulations. In the writ petition filed by the respondents, they were seeking the enforcement of the Finance Division's O.M. dated 10.09.2014 by treating it as a directive of the Federal Government in terms of Section 4 of the C.A.A. Ordinance. Section 4 of the said Ordinance provides that the Federal Government may, as and when it considers necessary, issue directives to the C.A.A. on matters of policy, and such directives shall be binding on the C.A.A., and if a question arises whether any matter is a matter of policy or not, the decision of the Federal Government shall be final. In essence, the respondents were seeking the enforcement of a policy in terms of Section 4 of the said Ordinance. The case at hand has a striking similarity to the case decided by the Hon'ble Supreme Court vide order dated 11.09.2014 passed in C.P.No.89/2014. In terms of Article 189 of the Constitution, this Court is bound to follow the law laid down by the Hon'ble Supreme Court.

10. Perusal of the order dated 11.09.2014 passed by the Hon'ble Supreme Court in C.P.No.89/2014 shows that an O.M. issued by the Finance Division was treated as a directive of the Federal Government in terms of Section 4 of the C.A.A.

Ordinance, and therefore binding on the C.A.A., since it had been sent to the C.A.A. *“for information and necessary action.”* A review against the said order was dismissed by the Hon'ble Supreme Court vide order dated 10.12.2014.

11. In the case at hand, the Finance Division's O.M. dated 10.09.2014 was also sent by the Aviation Division to the Director General, C.A.A. *“for information and necessary action.”* Therefore, in view of the law laid down by the Hon'ble Supreme Court in the said order, the Finance Division's O.M. dated 10.09.2014 (which was sought to be enforced by the respondents in the Constitutional jurisdiction of this Court) would also be treated as a directive of the Federal Government in terms of Section 4 of the C.A.A. Ordinance.

12. Vide the Finance Division's O.M. dated 10.09.2014, the Superintendents (BPS-16) working in the Federal Government / Ministries / Divisions / Attached Departments / Subordinate Offices were granted higher time scale of BPS-17 irrespective of their length of service. If the respondents were working in pay scales equivalent to BPS-16 when the said O.M. was issued, they would be entitled to a higher time scale of BPS-17. This appeal stands disposed of in the above terms.

**(LUBNA SALEEM PERVEZ) (MIANGUL HASSAN AURANGZEB)**  
**JUDGE JUDGE**

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_/2020.

**JUDGE**

**JUDGE**

*M.A.Baig.*