JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 735 of 2022

Sarfraz Ali.

Versus

Federation of Pakistan through Secretary Information and Broadcasting & 10 Others.

Petitioner by	:	Ch. Muhammad Asad Raan, Advocate
Respondents by	:	Syed Nazar Hussain Shah, learned Assistant Attorney-General. Barrister Ahmed Pervez, Advocate for respondents No.2 to 4/PEMRA. Hafiz Arfat Ahmed, Auf Abdur Rehman and Muhammad Jalal Haider, Advocates for respondents No.5 to 11. Sheikh Sahibzada Ahmed, Director (Legal), PEMRA.
Date of Hearing	:	21.06.2022.

ARBAB MUHAMMAD TAHIR, J. The petitioner, Sarfraz Ali, through the writ petition at hand, seeks for a direction to be issued to the respondents to promote him to the post of Director (PS-09) with effect from the date when his juniors were promoted with all consequential / back benefits. Furthermore, the petitioner seeks a declaration to the effect that office order dated 17.01.2022 issued by the Pakistan Electronic Media Regulatory Authority (hereinafter referred to as **"PEMRA")** is illegal and unlawful and is based on discrimination since the employees junior to the petitioner, were promoted, whereas the petitioner has been discriminated and has been dealt indifferently.

02. The facts in brief, relevant for the disposal of the instant writ petition are that through memorandum dated 22.07.2010, the petitioner was offered an appointment to the post of Assistant General Manager (PS-07) in PEMRA. Consequent thereto, the petitioner joined his duties on 29.07.2010. On 20.05.2016, PEMRA issued Seniority List of the Assistant General Managers (PS-07) wherein the petitioner's name finds mention at Sr. No. 20. On 02.05.2017 on the recommendations of the Departmental Promotion Board (hereinafter referred to as **"Board")** coupled with the approval of the competent authority, the petitioner along with other similarly placed employees were promoted to the post of Deputy General Manager (PS-08). Subsequently, through office order dated 17.01.2022, upon the recommendations of the Board, the competent authority approved the promotions of similarly placed employees as the petitioner. However, the petitioner has not been extended such benefit. It is the petitioner's assertion that the promotees were juniors to him. Hence the instant writ petition.

03. Ch. Muhammad Asad Raan, Advocate, learned counsel appearing on behalf of the petitioner has argued that the petitioner has been discriminated against by PEMRA inasmuch as employees junior to the petitioner were promoted whereas the petitioner has been denied such benefit; that the petitioner was not promoted, which is in violation of Section 24-A of the General Clauses Act, 1997; that the petitioner has earned outstanding Performance Evaluation Reports, which made him entitled for promotion; that the petitioner qualifies to be promoted in terms of Section 21 of the Pakistan Electronic Media

Regulatory Authority (Employees Service) Regulations, 2011 ("hereinafter referred to as **"the Regulations of 2011"**); that under Section 22(3) of the said Regulations, the Board was under an obligation to have considered the petitioner for promotion to a higher post keeping in view his position in the Seniority List; that the petitioner was eligible to be considered for promotion to the post of Director (PS-09) on the basis of the Seniority; that PEMRA in violation of Article 4 of the Constitution deprived the petitioner of his lawful right of promotion; that PEMRA also violated the petitioner's fundamental rights guaranteed under Article 25 of the Constitution. [When confronted with the maintainability of the present writ petition, he contended that that the instant writ petition is in terms of Article 199 of the Constitution and is maintainable against a public authority in case of violation of Service Regulations even if the same are non-statutory; that under the Regulations of 2011, the Board was bound to consider the eligible employees for promotion to higher posts in order of their seniority; that the administrative actions should be fair and transparent while the impugned action is an example of the abuse of discretion by using colorable exercise of powers; that by the term "fairness" means impartial and "to treat an individual without favoritism and discrimination"; that the act of PEMRA is tainted with *malafide* intent which resulted in causing an injury to the petitioner; that the petitioner is entitled to be promoted since his juniors were promoted on the basis of the same Seniority List in which the petitioner's name exists; and that in case of the petitioner, the principle of natural justice has been violated. In order to supplement his arguments, learned counsel placed reliance on the cases reported as

PLD 2002 SC 667, 2010 SCMR 1301, 2013 PLC (CS) 223, , 2015 PTD 1207, 2021 SCMR 1281, PLD 2010 SC 676, 2010 SCMR 1301, 2013 PLC(CS) 223 and 2021 SCMR 128.

04 Conversely, Barrister Ahmed Pervez, learned counsel appearing on behalf of PEMRA has, at the very outset, raised a preliminary objection as to the maintainability of the present writ petition by contending that the petitioner has failed to mention that the promotion in question had been made in accordance with PEMRA (Employees Service) Regulations, 2021 ("hereinafter referred to as "the Regulations of 2021") and not in accordance with the Regulations of 2011, which amended the Service Regulations of 2008; that the Regulations of 2011 are neither framed by the Federal Government nor approved by it and thus the said Regulations in their very term are ***"non-statutory"*** hence, they are not amenable to the Constitutional jurisdiction of this Court; that the Regulations of 2021 are also, for all intents and purposes, are *"non-statutory"* and therefore, this writ petition is not maintainable on this score alone; that this Court in writ petition No.1476 of 2019 has already held the relationship between PEMRA and its employees is that of **"master"** and **"servant";** that it is well settled that where the Regulations governing the terms and conditions of an employee's service are 'non-statutory' in nature, the said Regulations cannot be enforced; that the Hon'ble Lahore High Court in writ petition No.7539 of 2013 has inter-alia held that where the Rules of a department are 'non-statutory', the relationship between the employees and the employer is that of "master" and "servant"; that the writ petition at hand warrants outright dismissal since on the

basis of the Regulations, through which the petitioner has sought his promotion, are *"non-statutory"* in nature; that the Hon'ble Supreme Court in Civil Appeal No.749/2021 has held that the principle of "master" and "servant" cannot be invoked before a Court of Constitutional causes.

05. Furthermore, it was contended by the learned counsel for PEMRA that the petitioner has not shown any plausible reason (s) as how he is aggrieved by the promotion order, which has been issued by PEMRA strictly in accordance with the Regulations of 2021; that under Section 11 of the PEMRA Ordinance, PEMRA is vested with the power to appoint its staff, experts, advisers and allied staff on such terms and conditions as would fit for the purposes of the said Ordinance; that in terms of Regulation 20 of the 2021 Regulations, the posts in PS-08 and above are **"Selection Posts",** which are required to be filled on the basis of merit; that the petitioner has not proved the allegation of discrimination against PEMRA; that no violation whatsoever of the applicable Regulations has been pointed out by the petitioner towards PEMRA in issuing the impugned order. Learned counsel for PEMRA prayed that the writ petition be dismissed with costs. In support of his contentions, he placed reliance on the judgments reported as ***"2021 PLC (CS) 140, 2021 SCMR 998, as well as unreported judgments dated 16.06.2014 passed by the Hon'ble Lahore High Court in W.P. No.10534/2014, titled Sumsam Ahmed Vs. Federation of Pakistan and 5 others, 27.02.2020, passed by this Court in W.P. No.1476/2019, titled Sajjad Ahmed Vs. Federation of Pakistan through its Secretary, Ministry of Information and Broadcasting, Islamabad and 04 others, 12.04.2021 passed by this***

Court in ICA No.78/2020, 18.02.2022 passed by this Court in W.P. No.4425/2021.

06. Likewise, Hafiz Arfat Ahmed Ch., advocate, learned counsel appearing for respondents No. 5 to 11 while adopting the arguments advanced by learned counsel for PEMRA regarding the maintainability of the present writ petition, has contended that the instant writ petition has been filed on the basis of misconception as regards the applicability of the Regulations of 2021 inasmuch as the said Regulations have been structured in a way that the chance of misuse of discretion/power by PEMRA has been dispelled; that there are catena of case laws to the effect that the Service Regulations of PEMRA governing the terms and conditions of its employees are *"non-statutory"* in nature and therefore, a writ petition is not maintainable on the said score alone; that the Regulations of 2021 provide for a comprehensive mechanism to adjudge the suitability of an employee for consideration to a higher post; that the Board selected the individuals on the touchstone of the Regulations of 2021; that no violation of the Regulations of 2021 has been pointed out by the petitioner; that the petitioner has not come to the Court with clean hands; and that the petitioner has no ***"locus-standi"*** to file the present writ petition, concluded the learned counsel for respondents No.5 to 11. He prayed that the present writ petition be dismissed with costs.

07. Heard the learned counsel for the parties and have perused the record with their valuable assistance.

08. The primary grievance voiced by the petitioner in the writ petition at hand is to the effect that he has been

discriminated against by PEMRA inasmuch as his juniors were promoted from Deputy Director (PS-08) to Director (PS-09) whereas the said benefit has been denied to him.

09. It is well settled proposition that the Court, before dilating upon the merits of the case, should first decide the question regarding the exercise of its jurisdiction and then to consider the merits of the case. Reference may be made to the law laid down in the case titled ***Shabbir Jan Sarhandi Vs. Province of Sindh through Chief Secretary and three others (2006 PLC (C.S) 955)***, wherein it was held as follows:-

> *"We have carefully considered the contentions raised by the learned Advocates for the parties.* ***At the very outset we would like to observe that we agree with all the propositions of law canvassed by Mr. Manzoor Ali Khan, that, first, whenever any objection to the jurisdiction of the Court is raised, it is the duty of the Court, first to decide, the question pertaining to its own jurisdiction and thereafter consider the merits of the case..."***
> **(Underlining is mine for emphasis.)**

10. Similarly, in the case titled ***Aamir Khurshid Mirza Vs. The State (2006 CLD 568),*** it was held as follows:-

> *"****It is now. a settled proposition that jurisdiction of a Court is always the core question, therefore, this question has got to be dealt with immediately to the exclusion of all other business because this is what decides the competence or otherwise of a Court or Tribunal to proceed further in the matter****. Reference can be made with some advantage to the case,* ***Town Committee, Gakhar Mandi v. Authority Under the Payment of Wages Act, Gujranwala and 57 others PLD 2002 SC 452*** *and* ***Muslim Commercial Bank Limited v. Tahir Edible Oil (Pvt.) Ltd. and others 2003 CLC 416.****"*
> **(Underlining is mine for emphasis.)**

11. This Court, therefore, at the first instance, would address the objections raised by the learned counsel for PEMRA as well as by learned counsel for respondents No.5 to 11 regarding the maintainability of the present writ petition on the ground that the Regulations of 2021 governing the terms and conditions of the petitioner's service have no statutory backing.

12. Admittedly, the petitioner is an employee of PEMRA and seeks the enforcement of the terms and conditions relating to his service. The terms and conditions of the petitioner's service are governed by the Regulations of 2021. Vide S.R.O.1722(I)/2021 dated 31.12.2021, the said Regulations were framed in exercise of the powers conferred under Sub-Section (3) of Section 4, 11 and 13 read with all other enabling Sections of PEMRA Ordinance, 2002 as amended by PEMRA (Amendment) Act, 2007, by making necessary amendments in PEMRA (Employees Service) Regulations, 2008 as amended by Regulations, 2011, which were further amended by the Regulations of 2021. The Regulations of 2021 were inter alia for the purposes to regulate the appointment, promotion, termination and other terms and conditions of PEMRA's employees including experts, consultants and advisers, etc. etc. Indeed, PEMRA is the regulatory body, which performs the functions of sovereign by way of licensing electronic media and regulating it. Furthermore, it provides for the development of electronic media in order to improve the standards of information, education and entertainment and ensures accountability, transparency and good governance by optimizing the free flow of

information. PEMRA being a Regulator has to keep check and balance.

13. As discussed above, the Regulations of 2021 are framed by PEMRA in exercise of the powers conferred by Section 4(3) of the PEMRA Ordinance, 2002 as amended by PEMRA (Amendment) Act, 2007. It goes without saying that PEMRA is an autonomous and an independent entity. The Regulations of 2021 are framed by PEMRA itself and not by the Federal Government. The role of the Federal Government in PEMRA is only to the extent of appointing its Chairman and Members. The Regulations of 2021 are neither approved by the Federal Government nor are they framed by it. Therefore, the said Regulations have no ***"statutory force".*** It is trite law that any Rules/Regulations, which have not been approved and/or framed by the Federal Government, cannot be termed as ***"statutory Rules/Regulations."*** There appears a force in the argument of the learned counsel for PEMRA that the relationship between PEMRA and its employees is that of a "master" and "servant" and it is well settled that where the Regulations governing the terms and conditions of an employee's service are *"non-statutory"*, the said Regulations cannot be enforced. Since the Regulations of 2021 have neither been approved nor framed by the Federal Government, hence, they are *"non-statutory"* in nature. It is well settled that a Constitutional petition seeking the enforcement of the *"non-statutory"* Regulations is not competent. In holding so, I am guided by the law laid down by the Hon'ble Supreme Court in the case of ***Pakistan Telecommunication Company Limited Vs. Muhammad Samiullah (2021 SCMR 998)***, whereby it was held as follows:-

*"…**Any violation of non-statutory rules is not amenable to the jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan**…"*
(Underlining is mine for emphasis.)

14. Furthermore, it was held as follows:-

*"In this regard, it is essential to draw a distinction between departmental employees of the T&T Department whose terms and conditions of service on their transfer to the Corporation and Company were protected by law and those who were employed by the Company on contract or work-charge basis whose terms and conditions of service were governed by the rules of the Company that are clearly non-statutory. **The case of the Respondent falls squarely in the latter category. Therefore, any alleged violation of non-statutory rules was not amenable to writ jurisdiction of the High Court.** In this regard reference must be made to the case of Pakistan Telecommunication Company Ltd. through Chairman v. Iqbal Nasir and others (PLD 2011 SC 132) wherein it was categorically held that **employees of Pakistan Telecommunication Corporation Limited were governed by principle of "Master and servant" and in the absence of statutory rules, constitutional petitions filed by employees were not maintainable.***
(Underlining is mine for emphasis).

15. Similarly in the case titled ***Syed Nazir Gillani Vs. Pakistan Red Crescent Society (2014 SCMR 982),*** it was held by the Hon'ble Supreme Court as under:-

*---Constitutional petition filed before High Court by an employee of Pakistan Red Crescent Society challenging his removal from service---Maintainability---(Service) **Rules framed by Pakistan Red Crescent Society were non-statutory and on such count constitutional petition filed by its employee before the High Court challenging his removal from service would not be maintainable**---Review petition was dismissed accordingly."*
(Underlining is mine for emphasis).

16. In the case titled ***Pakistan Defence Officers' Housing Authority Vs. Lt. Col. Syed Jawaid Ahmad (2013 SCMR 1707),*** it has been held as follows:-

> *"**Where conditions of service of employees of the statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'."***
> **(Underlining is mine for emphasis).**

17. Likewise in the case titled ***"Abdul Rashid Khan v. Registrar Baha ud Din Zikrya University" (2011 SCMR 944)*** the Hon'ble Supreme Court has inter alia held as under: -

> *"**Learned counsel, however, did not dispute that respondent No.5 University has no statutory rules and, thus, in view of the dictum laid down in Muhammad Mubeen-us-Salam and others v. Federation of Pakistan and others (PLD 2006 SC 602), the petitioner had no remedy before the High Court under Article 199 of Constitution.**"*
> **(Underlining is mine for emphasis).**

18. Further, while dealing with such question in the case of Pakistan International Airlines Corporation and others (Supra), the Hon'ble Supreme Court has declared law to the following effect: -

> *"25. Thus, in view of discussion made hereinabove, we are persuaded to hold that although the appellant-Corporation is performing functions in connection with the affairs of the Federation **but since the services of the respondent-employees are governed by the contract executed between both the parties, as is evident from the facts narrated hereinabove, and not by the statutory rules framed under section***

> ***30 of the Act, 1956 with the prior approval of the Federal Government, therefore, they will be governed by the principle of Master and Servant.***
> **(Underlining is mine for emphasis).**

19. The Hon'ble Lahore High Court in an unreported judgment dated 16.06.2014 passed in ***W.P. No.10534/2014 titled Sumsam Ahmed Vs. Federation of Pakistan and 5 others*** has inter alia held as follows:-

> *"…In short, the petitioner is seeking enforcement of terms and conditions of his service prescribed under the Regulations. The perusal of Regulations shows that same are framed by the Authority in exercise of its powers under sub section 3 of section 4 of the PEMRA Ordinance. The Regulations are neither framed by the Federal Government nor any approval of the Federal Government is assigned to these Regulations. It is settled law that unless the Regulations are framed or approved by the Federal Government, it cannot be treated as statutory regulations and therefore, the same cannot be enforceable through constitutional jurisdiction."*

20. This Court in unreported judgment dated 27.02.2020 passed in W.P. No.2060 of 2018 has held that ***"it is an admitted position that the service Regulations of Pakistan Electronic Media Regulatory Authority (PEMRA) are non-statutory".*** Similarly, while in unreported judgment dated 12.04.2021 passed in ICA No.78/2020 titled ***Sajjad Ahmed Vs. Federation of Pakistan etc.***, this Court has held as under:-

> *"While going through these provisions there is no cavil to the proposition that PEMRA is an independent regulator and dependent upon Federal Government, therefore, this Court is in agreement with the view rendered by the learned Single Judge in Chambers that relations of employees of PEMRA with PEMRA being authority is one of master and servant"*

21. Likewise in unreported judgment dated 18.02.2022 passed in W.P. No.4425 of 2021 has held as follows:-

> ***"This Court has also settled the question of invoking the constitutional jurisdiction by the employees in cases of PEMRA, who are not governed by the statutory service rules, therefore, they are not permitted to file any writ petition in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, even this is the stance of PEMRA itself in another reported case of this Court, whereby the present petitioner being the then Director General (Admin) PEMRA appeared before this Court and narrated this stance in unequivocal terms, referred in Para-5 of 2021 PLC CS 140 Islamabad (Nisar Khan Khattak V. Haji Adam Director General (Admin) PEMRA."***
> **(Underlining is mine for emphasis).**

22. From bare perusal of the afore-quoted extracts from the judgments of the Hon'ble superior Courts, it has been established by now that the employees of an Institution, being governed by *"non-statutory rules/regulations"*, are not competent to file Constitutional petition before a High Court regarding redressal of their grievance *qua* terms and conditions of their service. Insofar as the case-law cited by learned counsel for the petitioner is concerned, I am of the view that the same run contrary to the facts and circumstances of this case since the law point involved in the judgment reported as 2010 SCMR 1301 (supra) was with respect to the question that arbitrariness in any manner is to be avoided so as to ensure that action based on discretion is fair and transparent.

23. It is not disputed that there are no statutory rules and/or regulations governing the petitioner's relationship with PEMRA. This fact has made the relationship between

the petitioner and PEMRA as that of “master” and “servant”.

24. In view of what has been discussed above, I am of the view since the Regulations of 2021 governing the petitioner's employment at PEMRA have no statutory backing, therefore, the petitioner could not invoke the Constitutional jurisdiction of this High Court under Article 199 of the Constitution for redressal of his grievance relating to the terms and conditions of his service. Therefore, the writ petition at hand stands **dismissed** being not maintainable. As the writ petition is held to be non-maintainable, there is left no need to go into the merits of this case.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on **13. 09.2022.**

JUDGE

ISLAMABAD | 13.09.2022
APPROVED FOR REPORTING

//Kamran//*