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

W.P. No. 2647/2022

Sabino Sikandar Jalal

Versus

Federation of Pakistan, etc.

Petitioner by: Mr. Muhammad Asif, Advocate.

Respondents by: Barrister Munawwar Iqbal Duggal, Addl. Attorney General.
Mr. Azmat Bashir Tarar, AAG.
Khadija Awan, Section Officer (Litigation), Establishment Division.
Ejaz Ahmed, Section Officer (CP-IV), Establishment Division.
Shahid Pervez, Assistant Establishment Division.

Date of Decision: 26.02.2025.

KHADIM HUSSAIN SOOMRO, J: Through this writ petition, the petitioner seeks the following reliefs:-

> *"It is, therefore, prayed that instant writ petition may graciously be allowed by setting aside the above mentioned acts of the Establishment Division/Central Selection Board/Prime Minister leading to adversely affecting the rights of the petitioner through impugned orders communicated vide letters dated 10.01.2022, 02.09.2021, 08.04.2021 and 24.06.2020 may kindly be set aside by declaring them illegal and violative to Article 4,10-A,12,13,27 and 36 of the Constitution, 1973 and in consequence thereof, the petitioner may kindly be treated as a BS-21 Officer for all intents and purposes on the basis of notification dated 20.03.2020, to meet the ends of justice.*
>
> *Any other relief which this Hon'ble Court may deem fit and proper may also be awarded."*

2. At the very outset, learned counsel for the petitioner submits that the petitioner was selected in Civil Services on 31.10.1993, and he was promoted in BS-18 on 12.04.2000 based upon his outstanding performance. He further submits that the petitioner was promoted to Grade 19 on 14.02.2007, to Grade 20 on 15.03.2013 and lastly to Grade 21 on 20.03.2020. Learned counsel for the petitioner contends that the respondents, with malafide intention, called the petitioner for a personal hearing vide letter dated 24.06.2020; he further contends that after some time, the Central Selection Board considered the case of the petitioner for promotion to BS-21 afresh; however, the Board recommended deferment in line with Rule 7 (d) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 "**the Rules**". On 10.01.2022, the petitioner was communicated with the decision taken by the Central Selection Board (**CSB**) on 02.09.2021, whereby the petitioner was demoted on the grounds that he failed to fulfill the required criteria. Subsequently, the Board Minutes were approved by the competent authority in terms of Rule 6 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973. The petitioner, therefore, has impugned the orders/letters dated 10.01.2022, 02.09.2021, 08.04.2021 and 24.06.2020 and prayed for setting aside the same being illegal.

3. On the other hand, learned Addl. Attorney General contends that the instant petition is not maintainable on the ground that prior to filing the instant petition, the petitioner approached the Federal

Service Tribunal, Islamabad and the learned FST, Islamabad, has been pleased to set aside the order dated 02.09.2021. Hence, the petition has become infructuous and liable to be dismissed.

4. I have heard the arguments of learned counsels for the parties and meticulously perused the record with their able assistance.

5. The record reveals that the petitioner has sought four reliefs, as mentioned in the prayer clause. The order sheet of this Court dated 14.07.2022 reflects that the counsel for the petitioner was confronted with a point of maintainability in the light of the bar contained in Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. The counsel confined himself to the extent of deferment and supersession of the petitioner.

6. The record further indicates that the petitioner was promoted from Grade 20 to Grade 21 vide Notification dated 20.03.2020. However, this promotion was subsequently withdrawn on the grounds that the actual countersigning officer had not countersigned the Performance Evaluation Report (PER) for the period spanning 01.07.2017 to 10.11.2017. The withdrawal Notification, dated 02.09.2021, was challenged before the Federal Service Tribunal, Islamabad, in Appeal No. 639 (R) CS/2022. The Tribunal, in its judgment dated 11.12.2024, set aside the withdrawal Notification and restored the appellant/petitioner to his original position in BPS-21, effective from 20.03.2020. In light of this restoration, it is my humble view that the subsequent orders impugned in the present

constitutional petition are merely ancillary to the withdrawal Notification, which the Tribunal has already nullified. Since the petitioner's promotion has been reinstated, the legal foundation for the subsequent orders no longer exists. Consequently, these orders lack substantive force. Regarding the letter dated 24.06.2020, it is pertinent to note that it was issued solely for the purpose of granting the petitioner a personal hearing. This letter, in itself, does not carry any substantive legal weight and cannot be construed as the primary order through which the petitioner's promotion was revoked. Notably, the promotion of the petitioner has already been reinstated by the Federal Service Tribunal (FST), Islamabad, which has set aside the withdrawal of the promotion. Therefore, the letter dated 24.06.2020 holds no significance in the context of the petitioner's promotion.

7. It is an established fact, as reflected in the record, that the petitioner has already approached the Federal Service Tribunal (FST), Islamabad, seeking the implementation of its order dated 11.12.2024. The FST, being vested with the authority to execute its decisions in accordance with the law, possesses the requisite jurisdiction to ensure compliance with its decision. During the proceedings, when the petitioner's counsel was questioned on this matter, he acknowledged that the petitioner had indeed approached the FST' for implementation of its order. This admission further reinforces the fact that the petitioner is actively

pursuing the enforcement of the Tribunal's decision through the procedure provided by the Service Tribunals Act 1973.

8. The legal maxim '*Ubi jus ibi remedium*' (wherever there is a right, there is a remedy). The maxim, as enunciated above, establishes a fundamental legal principle, affirming that an individual has a lawful entitlement to a concomitant recourse to initiate legal proceedings in a court unless the court's jurisdiction is precluded. According to the rule of jurisdictive prudence, the courts usually show restraint with the directions to the parties to first take the recourse of an alternate and or equally effective mechanism and framework of remedy provided rather than to take departure to surpass or circumvent such remedy. In the instant matter legal recourse has already been taken by the petitioner by filing an application under section 5 sub clause (3) for the implementation of the order passed by the (FST). The principle of exhaustion of remedies imposes a restriction and prohibits the litigants from seeking a remedy in the constitutional jurisdiction. Reliance can be placed in the case of the Government of Punjab through the Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 SCMR 25).

9. The doctrine of exhaustion of remedies dictates that a litigant must not pursue a remedy in a different court or jurisdiction until the remedy prescribed by law has been fully exhausted. The writ jurisdiction of the High Court should not serve as the exclusive

recourse or remedy for rectifying the wrongs, distress, and sufferings endured by a party, especially when an equally efficacious, alternative, and adequate remedy is available under the law. This principle is grounded in the notion that the litigant should not be inclined to bypass or disregard the provisions enshrined in the pertinent statute, which delineate specific procedures for challenging the impugned action.

10. Foregoing in view, this petition is ***dismissed***, and the order dated 25-02-2025 is hereby ***recalled***. Notwithstanding, it is clarified here that this shall not affect the judgment dated 11.12.2024 passed by learned FST. The petitioner is at liberty to pursue the remedy in accordance with the law.

(KHADIM HUSSAIN SOOMRO)
JUDGE

Zahid