JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. NO. 2829 OF 2017

MUHAMMAD ISMAIL

VS

FEDERATION OF PAKISTAN, THROUGH SECRETARY ESTABLISHMENT DIVISION, PAKISTAN SECRETARIAT, ISLAMABAD ETC

Petitioner by	**:**	**Ms. Shahina Shahab-Ud-Din, Advocate.**
Respondents by	**:**	**Raja Zamir ud Din, AAG.** **Mr. Muhammad Waqas Haral, Section Officer Litigation, Establishment Division.**
Date of hearing	**:**	**07.03.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**"Constitution"**), Muhammad Ismail **("Petitioner")** has challenged Letter dated 16.01.2017 **("Impugned Letter")** issued by the Respondent No.1 whereby the Petitioner's Application dated 30.8.2016 regarding grant of pension and gratuity etc. has been declined and he has been held not entitled to any pensionary benefits.

2. The brief facts of the case as per the Memo of Petition are that the Petitioner was appointed as OG II in United Bank Limited **("UBL")** in January 1994, when it was owned by the Government. The Petitioner was later relieved under the Forced Golden Handshake Scheme in October 1997. The UBL was privatized on 19.10.2002. Pursuant to the Sacked Employees Re-instatement Act, 2010 **("SERA, 2010")**, the Government of Pakistan reinstated the Petitioner as a regular employee (Officer Grade-II, BS-17) in the Establishment Division on 8.12.2010, after reimbursement of Rs. 573,862/- received during retrenchment. The Petitioner was then upgraded to Officer Grade-II (BS-18) in the year 2015. The Petitioner seeks recognition of the period from 13.10.1997, to 8.12.2010, as regular service. After reinstatement, the Petitioner was retired vide Establishment Division's Notification dated 5.7.2013 and applied for service pension on

7.2.2014. After significant delay, the Impugned Letter from the Establishment Division informed the Petitioner that he is not entitled to pensionary benefits. Dissatisfied with this decision, the Petitioner has filed this Writ Petition.

3. The learned counsel for the Petitioner argued that the Ministry of Law and Justice clarified in a memorandum issued in the year 2013 that employees reinstated under the SERA, 2010 are entitled to pension upon reaching retirement age. The SERA, 2010 overrides other laws and ensures reinstated employees receive benefits equal to regular employees. The Petitioner is lawfully entitled to pension under this Act, as confirmed by further communications from the Law & Justice Division in the year 2016. Although the Petitioner appealed to the President and Prime Minister, the Respondent rejected the request for a pension vide Impugner Letter. The Petitioner asserts that this denial is unlawful, discriminatory, arbitrary, and violates his constitutional rights, including the right to equality, dignity, and fair treatment. The counsel emphasizes that public functionaries must act in a fair and just manner, and the denial of pension is an unjust action against the Petitioner. The counsel requests that the Impugned Letter be canceled, and the Respondents be directed to grant the Petitioner all pensionary benefits as per law.

4. On behalf of the Respondent No.1, it is argued that the Petitioner Ex-OG-II UBL officer was re-instated into service under SERA, 2010 on 08.12.2010 and retired from government service on attaining the age of superannuation on 31.12.2010; that the request of the Petitioner for grant of pension / gratuity was considered at length in consultation with Law & Justice Division and Finance Division; that Finance Division vide O.M dated 28.10.2016 informed that the Petitioner is not entitled to any pensionary benefits in the light of President's Secretariat directions conveyed to the Establishment Division vide Letter dated 08.6.2016; that with the approval of Secretary, Establishment Division, the officer was accordingly informed vide the Impugned Letter; that the Supreme Court of Pakistan vide its Judgment dated 17.08.2021 passed in C.A. No 491/2012 filed by Mr. Muhammad Afzal and others has declared SERA, 2010 as *ultra vires* of the Constitution and ceased all the benefits accrued from the said Act with immediate effect; that instant Writ Petition is not based on the facts in the light of Finance Division's O.M dated 28.10.2016 wherein it was informed

that the Petitioner is not entitled to any pensionary benefits in the light of President's Secretariat directions conveyed to the Establishment Division and in pursuance of the august Supreme Court of Pakistan Judgments dated 17.08.2021 and 17.12.2021. Lastly, it is prayed that the instant Writ Petition may be dismissed being devoid of any merits.

5. On behalf of Respondent No.2, it is contended that in light of Finance Division's clarification dated 02.03.2015, the intervening period not being countable towards pension, the pensionary benefits are not admissible in this case. It was lastly contended that the role of the Respondent No. 2 is to be a proforma respondent and the matter is misconceived, therefore, liable to be disposed of.

6. It is asserted on behalf of the Respondent No. 3 that the main grievance of the Petitioner pertains to the Impugned Letter issued by the Establishment Division; that the Petitioner has neither impugned any document issued by the Finance Division nor sought any relief thereof, hence, the Finance Division may be excluded from array of Respondents.

7. I have heard the learned counsel for the Parties and perused the record with their able assistance.

8. The Petitioner has served for about 23 days after he has been reinstated on 08.12.2010 under SERA, 2010 and on his superannuation, he was retired on 31.12.2010, vide Establishment Division's Notification dated 5.7.2013. The august Supreme Court of Pakistan vide its Judgment dated 17.08.2021 passed in C.A. No. 491/2012 filed by Mr. Muhammad Afzal and others has declared SERA, 2010 as *ultra vires* of the Constitution and ceased all the benefits accrued from SERA, 2010 with immediate effect. The apex Court in its Review Petitions of 2021 against the Judgment dated 17.08.2021, held that: -

> *"i. Following the principle set out in Muhammad Akram Vs. Registrar, Islamabad High Court (PLD 2016 SC 961) at para 79 [we note that this judgment was subsequently overruled in Gul Taiz Khan Marwat Vs. Registrar, Peshawar High Court (PLD 2021 SC 391), however, that declaration was only to the extent that the administrative orders of a Chief Justice of a High Court are not amenable to writ jurisdiction], we hold that the beneficiary employees who were holding posts for which no aptitude, scholastic or skill*

test was required at the time of initial termination (01.11.1996 to 12.10.1999) shall be restored to the same posts they were holding when they were terminated by the judgment under review;

ii. All other beneficiary employees who were holding posts on their initial termination (01.11.1996 to 12.10.1999) which required the passing of an aptitude, scholastic or skill test shall be restored to the posts, on the same terms and conditions, they were occupying on the date of their initial termination. However, to remain appointed on these posts and to uphold the cherished principles of merit, non-discrimination, transparency and fairness expected in the process of appointment to public institutions these beneficiary employees shall have to undergo the relevant test, applicable to their posts, conducted by the Federal Public Service Commission within 3 months from the date of receipt of this judgment;

iii. The improvement in the terms and conditions of service of all the beneficiary employees shall be granted strictly in accordance with the applicable laws, rules and regulations; and

iv. The relief granted in sub-paragraphs (i) and (ii) shall not be granted to those beneficiary employees whose initial termination of service (01.11.1996 to 12.10.1999) was on grounds of absence from duty, misconduct, corruption, misappropriation of money/stock or unfitness on medical grounds if such termination was not set aside finally by a court of law."

9. The SERA, 2010 was declared ultra vires, and even in the Review Petition, the relaxation granted will not benefit the petitioner, as his case does not fall under any of the exceptions. Even otherwise under Article 212 of the Constitution there is a bar regarding invoking the jurisdiction of this Court under Article 199 of the Constitution. In a recent Judgment of the august Supreme Court of Pakistan passed in *Ahmad Ullah and others versus District Education Officer (Male), Buner and others,* reported as 2024 PLC (C.S) 1530 it is held that: -

"The exclusive jurisdiction conferred upon the Tribunal pursuant to the clear constitutional command under Article 212, ousts the jurisdiction of a High Court while exercising jurisdiction under Article 199 of the Constitution to decide, entertain or adjudicate upon any matter relating to the terms and conditions of service. The bar under Article 212 extends even when an order passed by the departmental authority is without jurisdiction, mala fide, coram non judice, or in breach of the fundamental rights guaranteed under the Constitution. Article 199 explicitly declares the jurisdiction of the High Court to be subject to the Constitution and, therefore, the bar under Article 212 of the Constitution, besides being a constitutional command, is absolute to the extent of all those matters that fall within the exclusive domain and jurisdiction of a Tribunal established under the Act of 1974. This Court has

consistently observed that before taking any decision regarding admission of a constitutional petition brought by a civil servant, the High Court is expected to first decide the question of jurisdiction, having regard to the bar contained under Article 212 of the Constitution. It is further noted that a plea taken by an aggrieved civil servant regarding violation of fundamental rights guaranteed under the Constitution also does not confer jurisdiction on a High Court under Article 199 of the Constitution."

10. "The Petitioner is seeking pensionary benefits from this Court. However, a civil servant's pension falls under the terms and conditions of service. In light of the principles established by the Honorable Supreme Court of Pakistan in the aforementioned judgment, the Petitioner's claim for pension cannot be raised in the writ jurisdiction of this Court under Article 199 of the Constitution, as there is a bar under Article 212 of the Constitution. Further reliance is placed on judgment of the apex Court passed in *Muhammad Hasan Ullah versus Chief Secretary, Government of Balochistan, Quetta and another* reported as 2025 SCMR 134, the relevant portion of which is reproduced as under:-

"5. Article 212 starts with a non obstante clause and provides that the appropriate legislature may, by the Act, provide for establishment of one or more administrative courts or tribunals, inter alia, to exercise jurisdiction in respect of matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters. Sub-Article (2) of Article 212 also begins with a non obstante clause and expressly provides that no court other than an administrative court or tribunal shall grant an injunction, make any order or entertain any proceedings in respect of any matter of which the jurisdiction of such administrative court or tribunal extends. The Constitution has, therefore, expressly declared that the administrative court or tribunal established pursuant to the command under Article 212 shall exercise exclusive jurisdiction in relation to the matters within its jurisdiction. The non obstante clause in Article 212 gives it an overriding effect and thus bars the jurisdiction of a High Court vested under Article 199 of the Constitution. The ouster curtails the jurisdiction of a High Court in respect of matters which fall within the ambit of the exclusive jurisdiction of an administrative court or tribunal. It is noted that in order to make a matter exclusively within the domain of the service tribunal under the Tribunals Act, and thus create a bar contemplated under Article 212, it must be shown that the grievance has been agitated by a civil servant and relates to the terms and conditions of service and does not attract the exceptions set out in clause (b) of section 4 of the Tribunals Act. The Act of 1974 and the Tribunals Act provide for a comprehensive mechanism for agitating a grievance by a civil servant and specific forums have been provided for seeking remedies. The exclusive jurisdiction of the service tribunal and the

bar contained under Article 212 are of such a nature that they are attracted even if the grievance arises from an order which may involve questions of mala fide, corum non judice or having been passed without jurisdiction. In I.A. Sherwani's case, a larger Bench of this Court has held and observed that a civil servant cannot bypass the jurisdiction of the service tribunal by adding a ground of violation of fundamental right(s). The service tribunal will have exclusive jurisdiction in a case founded on the terms and conditions of service even if it involves the question of violation of fundamental rights. It has been further held that the service tribunal will be vested with jurisdiction even where the case involves the vires of a statutory rule or notification. It was held that if a statutory rule or notification adversely affects the terms and conditions of a civil servant the same will be treated as a final order for the purposes of the jurisdiction of a service tribunal. The questions and grievances relating to transfer and postings of a civil servant fall within the ambit of the terms and conditions of service of a civil servant and thus are within the exclusive domain of an administrative tribunal established under the command of Article 212. The bar under Article 212 is complete in respect of the cases in which the Tribunal has jurisdiction under the Tribunals Act".

11. In the present case, the Petitioner is seeking relief under an Act that has already been declared *ultra vires* of the Constitution. Therefore, the present Writ Petition is not only devoid of any merits but also misconceived which is **dismissed** accordingly.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of March, 2025.

JUDGE

//Sajid//*