ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.201 of 2018
Muhammad Shahbaz Ullah and others
Versus
Federation of Pakistan and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	29.04.2021	**M/s Ali Nawaz Kharal and Rana Rashid Javed Advocates for the petitioners** **Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General** **Mr. Suhail Aijaz, Deputy Director, for respondent No.2** **Syed Riaz Ahmed, Deputy Director (Legal) for respondents No.2 and 3** **Mr. Saif-ur-Rehman, Deputy Chief for respondent No.4** **Mr. Nadeem Arshad, Section Officer, Establishment Division**

Through this order, I propose to decide writ petitions No.201/2018 and 1237/2018 since they entail common questions of law and fact.

2. Through the said petitions, the petitioners impugn the letter dated 14.12.2017 from the Ministry of Federal Education and Professional Training only to the extent where they were reverted to a lower pay scale on the basis that their promotions were held to be illegal.

3. The petitioners were appointed several years ago on contract basis in the Basic Education Community Schools **("BECS")**, which are under the administrative control of the Ministry of Federal Education and Professional Training. While serving as contract employees, the petitioners had been promoted. Writ petition No.403/2014 was filed by one Bushra Parveen challenging *inter alia* the promotions made in the BECS. Her case was that since the contract employees in the BECS did not come within the meaning of civil servants, they

could not be promoted in accordance with the rules that were applicable to civil servants. Another writ petition numbered and registered as writ petition No.1346/2015 was filed by Abdur Rehman etc. seeking the same relief. Yet another writ petition numbered and registered as writ petition No.3398/2015 was filed by Nadia Khan challenging the appointment of Bushra Parveen who, as mentioned above, was the petitioner in writ petition No.403/2014. All these writ petitions were decided vide consolidated judgment dated 05.10.2016 by this Court. In the said judgment, the following directions were given by this Court:-

"i. To consider and implement the inquiry reports (Annexures J & K).
ii. To reverse the promotions illegally granted to the contract employees of BECS.
iii. If permissible under the law, benefits received by the employees during the period of promotions may not be taken back.
iv. To ensure that the cases of the regularization of the employees of BECS are dealt in accordance with transparent policy & the directions of this Court issued vide order dated 10.09.2014 in Writ Petition No.1703/2013.
v. To ensure that correct seniority list of regularized contract employees is prepared.
vi. To determine that whether the contract employees including petitioners of Writ Petition No.403/2014 and Writ Petition No.1346/2015 were recruited in accordance with the relevant provisions of the project and to proceed against the persons recruiting and recruited, if it finds that any appointment is illegal."

4. The said judgment dated 05.10.2016 was assailed in intra Court appeal No.557/2016 which was disposed of by this Court, vide order dated 13.02.2017, with the consent of the parties. The matter was referred to the competent authority to afford an opportunity of a hearing to the employees before passing any adverse order against them and to decide the matter without being influenced by the observations and directions made in the said

judgment dated 05.10.2016. Subsequently, in the clarificatory order dated 04.04.2017, it was observed that in the event if disciplinary proceedings are initiated, the competent authority shall ensure that the same are conducted in accordance with the applicable Rules and Regulations.

5. Vide office order dated 12.07.2017, the Establishment Division constituted a Fact-Finding Committee **("the Committee")** with the mandate to probe into the legitimacy of promotions made in the BECS Project and to make suitable recommendations. The said Committee, in its report dated 29.11.2017, recommended the reversion of all employees to the posts and pay scales against which they had been initially recruited. It was also recommended that the seniority of all employees of the BECS, if regularized, shall be determined strictly in accordance with the Seniority Rules-1993.

6. It is an admitted position that vide office order dated 12.11.2013 issued by the Ministry of Education, Training and Standards in Higher Education, Islamabad, the services of 423 contract employees in the BECS were regularized with effect from 01.07.2013 pursuant to the decision taken by the Cabinet Sub-Committee on the regularization of contract employees etc. in its meeting held on 27.02.2013. Apparently, the said decision had not been implemented due to the disputes between the employees. After the Fact-Finding Committee gave its report, the services of 58 employees in the BECS were regularized vide notification dated 12.12.2017 whereas the services of 20 other employees (including the petitioners) were regularized by a separate notification dated 12.12.2017. In the latter

notification dated 12.12.2017, it was specifically mentioned that the employees would stand reverted and regularized with effect from 01.07.2013. Two days later, the Ministry of Federal Education and Professional Training issued the impugned letter dated 14.12.2017 which also provided that the 20 illegally promoted employees shall stand reverted to the posts against which they were initially appointed.

7. Learned counsel for the petitioners submitted that there was no material before the Committee on the basis of which it could have drawn the conclusion that the petitioners' promotions were liable to be recalled; that in the inquiry report, it is clearly mentioned that the Management of the BECS and the Administrative Ministry could not produce the relevant record regarding the career elevation of officers in the BECS through promotion, adjustment or upgradation; that the Committee had based its report on the earlier inquiry reports; and that the petitioners had not been afforded an adequate opportunity of a hearing. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

8. The learned Assistant Attorney-General raised an objection to the maintainability of the petition due to bar contained in Article 212 of the Constitution. He further submitted that perusal of the report of the Committee shows that the petitioners had been afforded an opportunity of a hearing; that it is explicitly written in paragraph 6 of the inquiry report that the concerned parties had been called for personal hearing on 26.07.2017; that the view point of the petitioners was taken into consideration by the Committee; that since the petitioners'

promotions had suffered from material irregularities, the impugned action of recalling such promotions does not suffer from any legal infirmity; that the petitioners' promotions were not in accordance with the Literacy and Mass Education Commission Employees Service Rules, 1984; and that the BECS did not have its own promotion rules. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

9. I have heard the contentions of the learned counsel for the petitioners and the learned Assistant Attorney-General and have perused the record with their able assistance.

10. I deem it appropriate in the first instance to deal with the objection taken by the learned Assistant Attorney-General to the maintainability of this petition.

11. As mentioned above, the petitioners were regularized vide notification dated 12.12.2017 issued by the Ministry of Federal Education and Professional Training. This regularization was with effect from 01.07.2013. The said notification also provides for the petitioners' reversion. In the impugned letter dated 14.12.2017, it is clarified that the petitioners were being reverted to the posts against which they were initially recruited.

12. Now upon the issuance of the notification dated 12.12.2017, the petitioners admittedly attained the status of civil servants. The matter regarding their reversion to the posts against which they were initially appointed is a matter pertaining to the terms and conditions of the petitioners' service. When this petition was filed, the petitioners were civil servants and were challenging a decision taken by the Ministry of Federal Education and

Professional Training pertaining to the terms and conditions of their service.

13. Article 212(1)(a) of the Constitution empowers the Legislature to make a law providing for establishment of Tribunals to exercise exclusive jurisdiction in respect of matters relating to terms and conditions of persons who are or have been in the service of Pakistan including disciplinary matters. Under Article 212(2) of the Constitution, the jurisdiction of this Court is barred in respect of any matter to which the jurisdiction of such a Tribunal extends.

14. In the case at hand the question whether the petitioners' promotions are liable to be recalled on account of procedural irregularities is a matter concerning the terms and conditions of their services. This matter falls within the jurisdictional domain of the Service Tribunal. Therefore, the instant petition is liable to be dismissed as 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."***

15. In view of the above, writ petitions No.201/2018 and 1237/2018 are 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. There is a catena of case law in support of the view that where a Court holds a petition not to be maintainable, it ought not to delve into or give findings or even observations on the merits of the case. Reference in this regard

may be made to the judgments in the cases of S.M. Waseem Ashraf Vs. Federation of Pakistan through Secretary, Ministry of Housing & Works and others (2013 SCMR 338), Messrs Voyage de Air, General Sales Agent, Shaheen Air International Vs. Shaheen Air International Pvt. Ltd. (2006 CLC 173) and Yousuf A. Haroon Vs. Custodian of the Karachi Hotel Project (2004 CLC 1967). No Costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*