

[Supreme Court of Pakistan]

Present: Sajjad Ali Shah and Syed Mansoor Ali Shah, JJ

CHIEF SECRETARY, GOVERNMENT OF PUNJAB, LAHORE and others---Petitioners

Versus

Ms. SHAMIM USMAN---Respondent

Civil Petition No. 1097-L of 2020, decided on 1st July, 2021.

(Against the order of Lahore High Court, Lahore dated 19.02.2020, passed in W.P. No. 231042 of 2018)

Constitution of Pakistan---

----Arts. 212 & 199---Punjab Service Tribunals Act (IX of 1974), S. 4(1)(b)---Service matters---Terms and conditions of service of a civil servant---Bar of jurisdiction of the High Court---Scope---High Court had no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which could be adjudicated upon by the Service Tribunal under the Punjab Service Tribunals Act, 1974.

Non-obstante clauses of Articles 212(1) and (2) of the Constitution began with "notwithstanding anything hereinbefore contained," thus overriding, inter alia, the constitutional jurisdiction of the High Court under Article 199, which was already "subject to the Constitution".

The High Court had no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which could be adjudicated upon by the Service Tribunal under the Punjab Service Tribunals Act, 1974 ('the Act'). High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of such constitutional limitation would render the order of the High Court void and illegal.

National Assembly Secretariat through Secretary v. Mansoor Ahmed and others 2015 SCMR 253 and Ali Azhar Khan Baloch and others v. Province of Sindh and others 2015 SCMR 456 ref.

It was only under section 4(1)(b) of the Act that no appeal could lie to a Tribunal against an order or decision determining the "fitness" of a person to be appointed or promoted and fell outside the purview of the jurisdiction of the Tribunal. In order to fall in the exception envisaged under section 4(1)(b) of the Act, the order must determine "fitness" of a civil servant to an appointment or promotion. Therefore, unless the jurisdiction of the Tribunal was ousted under section 4(1)(b) of the Act, assumption of jurisdiction by the High Court in respect of matters of terms and conditions of a civil servant was unconstitutional and impermissible.

Muhammad Arif Raja, Additional A.G. Punjab for Petitioners.

Mian Muhammad Nawaz, Advocate Supreme Court and Ms. Tasnim Amin, Advocate-on-Record for Respondent.

Date of hearing: 1st July, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---Brief facts of the case are that on the recommendations of the Provincial Selection Board in its meeting held on 31.10.2012, the Chief Minister/Competent Authority was pleased to decline the case of proforma promotion of the respondent vide letter dated 19.11.2012 issued by the Services and General Administration Department, Government of the Punjab. The respondent instead of challenging the said order before the Punjab Service Tribunal ("Tribunal") constituted under the Punjab Service Tribunals Act, 1974 ("Act"), invoked the constitutional jurisdiction of the High Court wherein through the impugned order dated 19.02.2020 direction was issued to the petitioner department "to grant proforma promotion to the petitioner to Grade-20 " This has been challenged before us, primarily on the ground that the High Court had no jurisdiction to entertain the said matter in the light of the constitutional bar contained in Article 212 of the Constitution.

2. There is more to this case. Before challenging the rejection of her proforma promotion by the competent authority in the recent writ petition impugned before us, the respondent had earlier approached High Court through a constitutional petition¹ wherein she prayed that the petitioner-department "be directed to finalize the promotion case promotion be made effective from 26.05.2012 along with other service benefits." This petition was entertained and allowed. The High Court vide order dated 18.09.2012 directed the competent authority "to immediately place the case of the respondent for promotion from grade 19 to grade-20 before the authority for its consideration in accordance with law, rules and regulations. The said exercise shall be completed within the period of a month from the receipt of order under intimation to this Court through its Deputy Registrar (Judicial)." As no material steps were taken in this regard by the department, the respondent filed a contempt petition² before the High Court. The contempt petition was disposed of vide order dated 21.05.2018 when the decision of the competent authority rejecting the claim of the respondent to proforma promotion was placed before the Court. The Court left it open to the respondent to challenge the departmental order, if so advised. The respondent instead of challenging the order of the competent authority before the Tribunal under the Act, once again approached the High Court through a constitutional petition³ which is subject matter of this case. The High Court vide impugned order dated 19.02.2020 was pleased to direct the petitioner-department to grant proforma promotion to the respondent in grade-20, hence this petition.

3. Learned Additional Advocate General, Punjab representing the petitioner-department at the very outset points out that the interference by the High Court in service matters is clearly barred under Article 212 of the Constitution and therefore the impugned order is without jurisdiction and thus not sustainable.

4. Learned counsel for the respondent, when asked how such direction could have been issued by the High Court in the light of bar contained in Article 212 of the Constitution, had no explanation to render and kept referring to the interference by the High Court in the matter in the earlier constitutional petition. It is regrettable that inspite of clear constitutional bar under Article 212 of the Constitution, the matter was not only earlier entertained by the High Court but then dealt through a contempt petition and finally when the petitioner-department declined the proforma promotion of the respondent, the High Court directed the department to promote the respondent. It is important to revisit the relevant portion of Article 212 of the Constitution, which states as follows:

212. Administrative Courts and Tribunals. (1) Notwith-standing anything hereinbefore contained, the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of-

- (a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;
- (b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or
- (c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal other than an appeal pending before the Supreme Court, shall abate on such establishment:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal⁴.

5. We cannot lose sight of the fact that non-obstante clauses of Articles 212(1) and (2) begin with "notwithstanding anything hereinbefore contained," thus overriding, inter alia, the constitutional jurisdiction of the High Court under Article 199, which is already "subject to the Constitution." Article 212(1)(a) provides that a Tribunal established under the law will enjoy exclusive jurisdiction in the matters relating to terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters. The term "terms and conditions" is clearly spelt out in Chapter II of the Punjab Civil Servants Act, 1974 and the rules thereunder. Article 212(2) in unambiguous terms states that no other Court can grant injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends. Scope of jurisdiction and powers of the Tribunal are provided in sections 4 and 5 of the Act. The High Court, therefore, has no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which can be adjudicated upon by the Tribunal under the Act. It is only under section 4(1)(b) of the Act that no appeal can lie to a Tribunal against an order or decision determining the "fitness" of a person to be appointed or promoted and falls outside the purview of the jurisdiction of the Tribunal. In order to fall in the exception envisaged under section 4(1)(b) of the Act, the order must determine "fitness" of a civil servant to an appointment or promotion. In the instant case, the order under challenge before the High Court pertained to the eligibility of the petitioner to be even considered for proforma promotion due to the seniority of a large number of officers awaiting promotion before her and in no manner determined the "fitness" of the respondent. High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of this constitutional limitation will render the order of the High Court void and illegal.⁵ Therefore, unless the jurisdiction of the Tribunal is ousted under section 4(1)(b) of the Act, as described above, assumption of jurisdiction by the High Court in respect of matters of terms and conditions of a civil servant is unconstitutional and impermissible. Even the direction passed in the earlier constitutional petition, in this case, was impermissible under the Constitution.

6. For the above reasons, this petition is converted into appeal and allowed. The impugned order dated 10.02.2020 is, therefore, set aside and the constitutional petition of the respondent is dismissed. The respondent is free to challenge order dated 19.11.2012 before appropriate forum, in accordance with law, if so advised.

MWA/C-15/SC Appeal allowed.