

*Judgment Sheet*

**IN THE PESHAWAR HIGH  
COURT, PESHAWAR**

*(Judicial Department)*

**WP No. 2734-P/2017.**

**Abdul Wadood**

**Vs**

**Additional Secretary FATA etc.**

**JUDGMENT**

**Date of hearing. 11.01.2018**

**Petitioner(s) by: Sardar Ali Raza  
Advocate.**

**Respondent(s) by: Mr. Waqar Ahmad  
AAG.**

**SHAKEEL AHMAD, J:-** Through this single order, we intend to dispose of instant petition (Writ Petition No.2734-P/2017) alongwith connected Writ Petitions bearing Nos.2959-P/2017 and 3157-P/2017, as identical question of law and facts are involved therein.

**2.** Brief facts of Writ Petition No.2734-P/2017 is that the petitioner was appointed as Junior Clerk (BPS-5) in the year 1995 by Agency

Surgeon Mohmand Agency. He was lastly promoted to BPS-11 after serving for 22 years. Lateron vide office order dated 20.6.2017, petitioner was repatriated by respondent No.1 to Health Department Khyber Pakhtunkhwa with immediate effect.

**3.** The precise facts of Writ Petition No.3157-P/2017 are that initially petitioner was appointed as *Junior Clerk* in BPS-5 by the Divisional Director Health Services Kohat vide office order dated 3.3.1993. He was transferred to the Directorate of Health Services FATA in the year 2004 and lateron transferred to Agency Surgeon FR Peshawar vide office order dated 3.7.2014. He was lastly promoted to BPS-11 after serving for 24 years however, he was repatriated to the Health Department Khyber Pakhtunkhwa vide office order dated 25.7.2017.

**4.** The background of Writ Petition No.2959-P/2017 are that petitioner was appointed as *Junior Clerk(BPS-5)* by the Agency Surgeon Bajaur Agency vide office order dated 27.9.1992.

He was promoted to BPS-11 after serving for 27 years but later on he was repatriated to the Health Department Khyber Pakhtunkhwa vide office order dated 20.6.2017, hence all the above referred Constitutional petitions.

5. It was mainly argued by learned counsel for petitioners that the respondent No.1 has no authority to pass the impugned order whereby the petitioners were repatriated to the Health Department of KPK. So, according to him the impugned orders are illegal and unlawful and it should be declared as such therefore, the same are liable to be recalled.

6. Learned AAG appearing on behalf of the respondents strongly/ vehemently opposed the contention of learned counsel for petitioners by filing comments and stating through arguments that this Court has got no jurisdiction to entertain this writ petition being barred by the express provisions of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, because the question relates to the terms and condition of

service of petitioners. In support of his point of view, he placed reliance on the cases **“Khalid Mahmood Watto Vs Government of Punjab” (1998 SCMR 2280), Government of Punjab Vs Muhammad Zafar Bhatti & others” (PLD 2004 SC 317), “Fauzia Siddique Qureshi Vs Secretary, Ministry of Education, Islamabad” (2004 SCMR 521).**

He has also urged that petitioners have got another alternate adequate remedy before the Services Tribunal, so they could not be granted any relief in Writ jurisdiction. Reliance is placed on the case of **“Syed Imran Raza Zaidi Vs Government of Punjab & others” (PLJ 1996 SC 601).**

7. In reply to the above submission, learned counsel for petitioners argued that if an order, which is based on mala fide and coram non iudice, the same can be set aside by this Court.

8. We have considered the lengthy arguments of both the learned counsel for the parties and scanned the record of above cases minutely.

9. This essential fact cannot be denied that all the petitioners are Government servants and the service regulations, terms & conditions are applicable to them, which comes within the domain of Service Tribunal. The Constitutional jurisdiction of the High Court, in such like matters, is ousted by explicit provisions of Article 212 of the Constitution. Even if, the transfer order is passed on the basis of mala fide or coram non iudice or is in violation of any rules, the same could only be challenged before the Service Tribunal. It has been settled by the Apex court time and again that the matter regarding transfer of a civil servants is one of the incident of terms and conditions of service, which could not be agitated before the High Courts, through Constitutional petition under Article 199 of the Constitution. Article 212 of the Constitution, explicitly bars the jurisdiction of the High Courts in the matters exclusively triable by the Service Tribunal. Reliance is placed on the cases **“Muhammad Yaseen Vs Chairman, Pakistan Telecommunication etc” (NLR 2003 civil 321)**.

**Miss Rukhsana Ijaz Vs. Secretary Education, Punjab and others (1997 SCMR 167), Secretary Education NWFP Peshawar and two others vs. Mustamir Khan and another (2005 SCMR 17) and Pir Muhammad Vs. Government of Baluchistan through Chief Secretary and others (2007 SCMR 54).**

In this respect reliance can also be placed on the case “**Ali Azhar Khan Baloch & others Vs Province of Sindh & others” (2015 SCMR 456)**, wherein it was held as under:-

*“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.*

*150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional*

*provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the civil servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of civil servants.*

*151. We, for the aforesaid reasons, conclude 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 and the law.*

*152. During the present proceedings, we were informed by the learned Additional Advocate General Sindh and other petitioners that the Civil Servants*

*have filed suits and petitions before the High Court of Sindh on the subject, which was conclusively determined by this Court in its judgment under review. We called for the list of the Constitution Petitions as well as of the suits which were filed before the High Court of Sindh, and we are shocked to notice that numerous petitions and suits filed by the Civil Servants were pending and in some cases even restraining orders had been passed in the matters strictly falling outside the ambit of the suit or writ petition and the only and proper forum available in such cases was the Tribunal.*

*153. More alarmingly, we also observed that some of the suits and petitions were clearly in violation of the principles set by this Court in the judgment under review. The admission of these 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.”*

10. For what has been discussed above, we do not deem it appropriate to pass any order in these writ petitions, in view of the express bar envisaged by Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. The petitioners have got an alternate adequate, efficacious remedy before the Service Tribunal for redressal of their

grievance, so all the Writ petitions referred above are not maintainable, hence dismissed with no order as to costs.

***Announced:  
11.01.2018.***

***CHIEF JUSTICE***

***JUDGE***

***“A.Qayum PA”***

***(DB) Hon'ble Mr. Justice Yahya Afridi H CJ  
&  
Hon'ble Mr. Justice Shakeel Ahmad***