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Jurisdiction of High Court And Federal Service Tribunal in Service Matters of Pakistan: A Critical Analyses

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Abstract

This research paper critically discusses the overlapping jurisdiction of High Courts and the Federal Service Tribunal in service matters in Pakistan. Even though the Civil Servants Act 1973 and Article 212 of the Constitution give power to the Service Tribunals to adjudicate on disputes involving terms and conditions of the civil servants, the High Courts still have a role to play under Article 199, especially when there is a question of fundamental rights, illegality, mala fide actions, or lack of jurisdiction. This duality has led to multiplicity of proceedings, conflicting judicial interpretation and delay in dispensation of justice. This research is an analytical examination of constitutional provisions, statutory frameworks and current leading judicial precedents of the Supreme Court and High Courts to highlight inconsistencies in application of the principles of jurisdiction. It discloses that although the Service Tribunals are meant to offer exclusive and specialized forums in which service disputes are addressed, the High Courts come in to provide exceptional services in situations where it is alleged that actions of constitutional violations or irregularities in the procedures are alleged. This has eroded the boundary of jurisdiction and posed confusion to litigants. Moreover, there are main problems mentioned in the research, which could affect successful adjudication: lack of uniformity in judicial decisions, lack of enforcement powers within Service Tribunals, and procedural complexities that could impede successful adjudication. The theoretical framework of the study is based on the principles of rule of law, discrimination, and vested rights, which explain the minimal role of High Courts in the service matters. The article also finds that there is urgent need to reform legislative and procedural approaches that will clearly define jurisdictional boundaries, enhance the institutional capacity of Service Tribunals and expedite justice. It suggests

reforms of the pertinent provisions and laws of the constitution and enhanced education of tribunal members and adoption of up-to-date judicial practices to reduce the occurrence of jurisdictional conflicts and enhance the performance of service law adjudication in Pakistan.

Keywords:

High Court jurisdiction, Federal Service Tribunal, civil servants, Article 199, Article 212, service law, constitutional law, Pakistan judiciary, multiplicity of jurisdiction, fundamental rights, judicial review, administrative justice, legal reforms, rule of law, service disputes

1. INTRODUCTION:

Despite the fact that civil servant act 1973 empowers the Federal Services Tribunal to entertain matters pertaining to services; however, the High Courts also extend their jurisdictions in such matters which creates multiplicity of jurisdictions . Hence, there is an immense need to critically evaluate this issue in the light of jurisprudence- developed by the apex court of Pakistan.

The high court and service tribunal both derived their powers from the constitution and the relevant laws. Owing to all, jurisdiction is any way is the subject to law. The question of jurisdiction can only be settled by the provided laws, relevant articles of the constitution of Pakistan, 1973 and the interpretation of the Supreme Court of Pakistan. Moreover, the question of jurisdiction can also be settled it's self by High Courts and Services Tribunal¹. Jurisdiction is also a procedural concept that has been explained through any statute. But collectively its effects the substantive right if such procedural aspects did not follow by the Court or Tribunal.

This analytical study of jurisdiction of High Court and Federal Service Tribunal in service matters of Pakistan with a view to bringing these laws in accord with the changing needs and emerging realities of Pakistan of the time. The purpose was to suggest, inter alia, ways and means of improving the terms and conditions of service of the civil servants, strength then the services tribunals so as to giving them more service security ,more powers . I also sought to examine, in particular, service laws, namely, the Federal Civil Service, Provincial Civil Service and Services of Autonomous Bodies and Corporations. This involved an in-depth examination of various statutes, rules and regulations, particularly, the Federal/Provincial Civil Servants Acts, Service Tribunals Acts, Public Service Commission Statutes³ and other relevant statutes of the autonomous bodies/corporations.

The services tribunals have a jurisdiction to hear the appeals of civil servants. But at the same time the high court of the country entertain such grievances under the umbrella of article 199 on the bases of articles related to fundamental rights and principles of policy on the question of rule of law as well as question of discrimination.

That probably the interference in the jurisdiction of tribunals that work under article 212 of constitution and other laws made under there at least three statutes, viz Section 22 of the Civil Servants Act 1973⁵, Section 4(1)(b) of the Federal Service Tribunals Act 1973⁶ and Rule 4(1) of the

Civil Service (Appeal) Rules 1977⁷.

Section 22 of the Civil Servants Act 1973 stipulates the period within which the civil servant may avail of his right to make an appeal, review or representation against an order⁸. A proviso to this Section further bars the right to representation in matters relating to the determination of terms and condition of civil servant⁹.

A civil servant having been denied any term & condition of service must be enabled to challenge the order of denial in the Service Tribunal. Accordingly, this study suggested appropriate amendments to Articles 90, 97, 121, 129, 137, 199, 212¹⁰ and Section 22(2)¹¹ of the Civil Servants Act 1973, Section 4(1)(b) of the Service Tribunals Act 1973¹² and Rule 4(1) of Civil Servants (Appeal) Rules 1977 for administrative freedom¹³.

I have read many article, books and also met with the renowned services as well as constitutional lawyers of Pakistan but fail to find even a single research paper on the topic. In spite of hundreds of judgment of apex court as well as high court regarding jurisdiction of high court and services tribunal but the issue is still not resolve. The word "Jurisdiction" "prudence" basically a jurisprudential concept that has been derived from the statute, acts, rules, regulation and also defined by the different jurists.

Mr Justice Syed Zahid Hussain, Lahore High Court, Lahore passed a judgment, allowed the writ in the case of civil servant against his stoppage of pay. It was held that article 212 of the Constitution¹⁴ does not apply in this case because the departmental authority can be passed any adverse order in such kind of service matter. The Honorable Judge also ordered that in the matter of stoppage of pay of any civil servant can be agitated through section 4 of civil servant Act 1973 which is related the right of appeal before service tribunal can also be override. The apex court also maintains this judgment and further added that it is not necessary that a departmental authority will be a competent authority and competent authority should be notified according to the relevant laws and statutes.

But in contra, the Lahore High Court, Lahore ordered to the petitioner who was also civil servant and has an identical case that he may approach the service tribunal as service tribunal have exclusive jurisdiction over the matter of stoppage of pay as stoppage of pay is a part of terms & conditions of the civil servants according to civil servant Act 1973¹⁵.

The honorable Division Bench of Balochistan High Court, Quetta vide its judgment "2010 PLC CS 1046" written by honorable Justice MRS. SYEDA TAHIRA SAFDAR held that "undoubtedly the service tribunal have exclusive jurisdiction under article 212 of the constitution¹⁶ but at the same time in matter of practice that MNAs, MPAs & Ministers exercise extra departmental authority in the matter of posting and transfer. The honorable court further held that the transfer order may also be agitated before the departmental authority then before the services tribunal but it has been observed that such codal formalities do not fulfill in many cases. Such kind of order always issued

by the in competent authority. In the circumstances, a civil servant can avail the constitutional jurisdiction of high court. Because such orders are not legal orders.

Arguably, the honorable court had held that in the matter of jurisdiction is only depend upon the facts of the case, legal reasoning of the case and philosophy of the Judge on the matter. The Judge better knows, it may be a single Judge is Division of bench keeping in view the circumstance of the case, it decides that what would be the fate of the case. Similarly, the superior Court many times held that the clauses which related to the bar of jurisdiction have a very narrow and limited scope. The court further held in the same judgment has mentioned above that its depend upon on the adversity of the order issued by the competent authority and after examining the relevant terms & conditions of the civil servants. Its further maintained that High Court may intervene and services tribunal could not exercise its extra ordinary jurisdiction in the name of serious damage to the terms and condition of a civil servant.

This judgment is very lengthy judgment of the apex court, the court further ordered that high court direct to the authority under the writ jurisdiction even where the vested write of the civil servant have been effect through any law, rule, regulation are any departmental authority.

Furthermore, the Honorable Sindh High Court, Karachi that the high court cannot be restrained to issue the direction to the departmental authority as article 199 has unlimited powers to pass order / direction to the executives / departments. In the mentioned judgment a civil servant of Sindh Government was removed from service under Sindh Police (Efficiency and Discipline) Rules, 1988 and filed a writ petition in the Sindh High Court against his removal orders. The Sindh High Court not entertained the case of the civil servant on the ground that on the ground that high court cannot intervene in the matter of terms & conditions of civil servant as high court has barred by the article 212 of Constitution. The high court further held that service tribunals has basically a quasi-judicial powers¹⁷.

This judgment is related with the inter-se-seniority of a civil servant. A civil servant approach to High Court but again the Honorable Court dismissed the petition and held that the service tribunal a power of civil court for the purpose to decide the appeal regarding terms & condition of the civil servant. It is further held being a civil court, service tribunal have also a power to examine, whether any clause of law and statue has been violated by the Departmental authority. The service tribunal can also check that the order passed by the departmental authority is malafied are not. It is further held in the same judgment, being civil servant service tribunal can also examine the conflict related with provision of fundamental rights¹⁸.

A civil servant filed a writ petition under article 199 of the Constitution wherein he was challenged the service regulations. The same was expected by the High court on the grounds that there is no terms & conditions of the civil servant is involved in the instant case.

The Honorable Supreme Court of Pakistan has held where by it was declared to challenge a terms & conditions of civil servant is the vested write of Civil Servant so the high court take up such matter under writ jurisdiction. But the Honorable Supreme Court in another similar / identical case's judgment reported and ordered to petitioner for filling and appeal before service tribunal under article 212 of the Constitution of Pakistan. The council of the petitioner also rely upon the judgment cited whereby the case of civil servant who was removed from service on the ground that the civil servant cannot be terminated during the probation period. The Honorable Supreme Court held that it's a vested right of a civil servant to approach high court.

In contradiction, the Honorable Supreme Court held its judgment published, that if there is any violation of law has been made, the High Court can intervene under the writ jurisdiction and services tribunal can only be confined to examine the question of illegality of final order as passed by the departmental authority. The said case was related with fitness for promotion of a civil servant. It was held that the promotion of the respondent has been made under the promotion policy. So violation of policy is illegality. It is not a violation of any law.

Being violation of policy, service tribunal has an exclusive jurisdiction over the issue¹⁹.

In 1993, hundreds of school teachers in the Province of Punjab were terminated. The school teachers filed a writ in Lahore high court and then civil petition for leave to appeal (CPLA) in the Honorable Supreme Court of Pakistan. The case titled was Muhammad Iqbal and others vs The Government of the Punjab and others cited. The Punjab Government challenged the jurisdiction of High Court in service matters. The government also challenged the jurisdiction in writ petition, intra court appeal and even the instant CPLA in the Honorable Supreme Court of Pakistan and prayed to the apex court that the matter may be remanded to service tribunal. The apex court accepts the appeal and matter was remanded to the services tribunal. The same was maintained in the cases cited as Muhammad Anis and others vs Abdul Haseeb and others.

As contra view, whereby a disable employed submitted a writ petition in the High Court against his termination order. His prayer that it is violation of constitutional provision of fundamental rights. The Honorable Court accepted the appeal and held that the provision of the civil servant acts are self-explanatory and it's include all the aspects that is related to carrier of civil servant. But if the order passed by the departmental authority is arbitrary and also violation of any constitution provisions the high court can intervene.

Similarly, the high court under Article 199 ordered department to pay the salary to the civil servants. The department challenged it in the Honorable Supreme Court²⁰. But Honorable Supreme Court dismissed the ply of departmental authority. As a result, the judgment of the high court attained finality. But in the same year, by the same bench of the Honorable Supreme Court reported, wherein it was held that salary of civil servants is purely related with the terms &

condition of the civil servants so that the High Court has no jurisdiction over it. The case was decided on technical basis. It was further held that such matter is totally under the jurisdiction of civil tribunal.

But in the matter of Annual Confidential Report of the Civil Servant, the apex court allowed the petition and accepted the jurisdiction of High Court as Annual Confidential Report of the Civil Servant are not part of terms & condition of the civil servants.

A detailed order passed by the Sindh High Court reported, wherein a civil servant filed a civil suit in the civil Court as he was not recommended for promotion. The Honorable court dismissed the case on the ground that the matter related to article 212 of the constitution. The same was challenged before the honorable high Court, wherein his lordship Mr Justice SABIHUDDIN AHMED passed an order that a civil servant / petitioner is not recommended to selection board for promotion under the promotion policy. Promotion policy does not come under the terms & condition of the civil servant so it would not be sufficient to refer the case to Service Tribunal. Another judgment of a similar nature cited as wherein it had held that recommendation are not binding on the department so the recommendation are also not part of the terms & condition of the civil servants.

In the judgment reported it has been held that in fact, service tribunal has no power to implement its own judgment. In the same judgment Mr Justice M M Aqil Awan, Division bench of High Court Sindh at Karachi held that as service tribunal has not been empowered for implementation of its own judgment. On that ground a civil servant can approach to the High Court.

Similarly, Mr Justice Khalil ur Rehman Khan passed an order vide PLD 1997 SC 351 wherein he wrote that service tribunal has no power of contempt of court, being reason of that an aggrieved party can approach the Honorable High Court.

The judgment clearly explained that the matter of jurisdiction of civil services matter between Honorable High Court under article 199 and services tribunal under article 212 of the constitution of Islamic Republic of Pakistan, 1973 always remain important. It was further added that like Honorable High Court cannot exercise power of judicial review. Similarly Honorable High court also barred by Article 212 of the Constitution of Pakistan.

1. Theoretical Framework:

While considering the theoretical frame work for the purpose of this research it is important to know that there are various theories such as doctrine of discrimination, theory of rule of law and terms of vested right which support the jurisdiction of high court to entertain the service matter and at the same time there are other theories which are against the said concept.

The extension of jurisdiction of the service tribunals to provide relief to the civil servants controlled by the Federal or Provincial Governments. The services tribunal under Article 212 of the Constitution and the Services Tribunal Act 1973 empower to resolve the grievances of the civil servants. But, at the same time the honorable High courts entertained the civil services matters under Article 199 of the Constitution on the basis of element of discrimination, non- existence of vested right, equality of citizens and principles of master and servant²².

Briefly, section 22 of the Act stipulates the period within which the civil servant may avail of his right to make an appeal, review or representation against an order. Consequently an aggrieved civil servant may complain against discrimination or injustice, in matters for regulating his terms and conditions. The issue of fitness for a job can be objectively determined by evaluating the record of a civil servant. There are many rules & regulations, which regulate the terms and conditions of civil servants and provide for right of appeal. It means that while elements which constitute fitness are justiciable or not. This is obviously an anomaly in laws / rules and needs to be eliminated. Besides, the proposals / synopses as presently drafted allow too much discretion and there are many allegations of the misuse of power.

The issue of terms and conditions is crucial for a civil servant. The services tribunal have a jurisdiction to hear the appeals of civil servants. But at the same time the High Court of the country entertain such grievances under the umbrella of article 199 on the bases of articles related to fundamental rights and principles of policy on the question of rule of law as well as question of discrimination. That probably the interference in the jurisdiction of tribunals that work under article 212 of constitutions and other laws made under there²².

2. OBJECTIVES:

- a. The main objective of this is to a comparison of civil service, archaic and faulty service laws in respect of jurisdiction to regulate terms conditions of civil servants;
- b. To identify manifold jurisdictional problems with reference to expeditious pursuit of justice and back log of cases regarding civil service matters.
- c. To ensure the service tribunal jurisdiction under article 212 of Constitution of Pakistan for the civil servants.
- d. To improve the function of service tribunal in accordance with constitution, act of parliaments, rules and regulations.
- e. To focus the observance of International standards for processing the service laws.
- f. To review the issue of powers /jurisdiction of high courts as well as service tribunals in line with the constitution arrangements.
- g. To recommend some suggestions and reforms for betterment which required for deciding matters relating to civil services of Pakistan.

Similarly the following questions needs more deliberations:

- i. What are the barriers for civil servant as an appellant due to multiplicity of jurisdiction?
- ii. What is the various control mechanism for manifold jurisdiction?
- iii. What is the genesis and evolutionary perspective of matter of jurisdiction?
- iv. What are the procedural requirements for service laws in Pakistan?
- v. What is significance of jurisdictional issue with in contours of theory of rule of law?
- vi. What are the impacts of constitutional amendments in articles 199&212 of constitution of Pakistan-1973?

CONCLUSION

This research article is basically a little effort to high light the regulatory framework of the working and functioning of high courts and service tribunals of Pakistan and. takes into account the role of Supreme Court of Pakistan particularly the interpretation of service related matters. To avoid the two-fold jurisdiction over terms and conditions of civil sernants,it needs better training,merit based recruitment, performance evaluation,accountability,transparency,public service orientation,e-justice,specialization and particularly simplify the procedure etc,Similarly,members of service tribunals with service law expertise can give more accurate and relevant decisions.

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