

**JUDGMENT SHEET**  
**HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**  
**C.P No. D-150 of 2025**

*[Dr. Tariq Hassan Memon vs. Federation of Pakistan and others]*

**Before:**

**Justice Arbab Ali Hakro-J**  
**Justice Riazat Ali Sahar-J**

Petitioner by : Syed Muhammad Saulat Rizvi, Advocate

Respondents No.1 to 5 : Mr.Amanullah Durrani, Advocate

Ms.Shamim Mughal, Asst. Attorney General

Date of hearing : **15.5.2025**

Date of decision : **30.5.2025**

**JUDGMENT**

**ARBAB ALI HAKRO, J:** Through this Constitutional Petition, the Petitioner seeks to set aside the Office Order dated 22.01.2025 (“**impugned order**”), issued by the Director (CM) P&F, Pakistan Water & Power Development Authority (WAPDA), concerning the administrative transfer and posting. By virtue of the impugned order, the Petitioner, who holds the position of Principal Medical Officer at WAPDA, Hyderabad, has been transferred and posted as Principal Medical Officer at WAPDA Fort Dispensary, Thor (Chilas).

2. Briefly stated, the Petitioner was appointed as a Medical Officer (BPS-17) on a contractual basis through an Order dated 16.07.2003 in WAPDA. The said appointment explicitly falls within the purview of WAPDA Rules, which are statutory in nature and impose certain restrictions, particularly stipulating that the Petitioner's service is non-transferable. Any transfer request would result in immediate termination. Subsequently, the Petitioner was regularized vide Office Order dated 07.06.2006 pursuant to approval granted by the Regularization Board. It is further averred that the process of contractual employment and its subsequent regularization was an evolutionary exercise within WAPDA, primarily concerning posts of a

permanent nature. However, in its implementation phase, various anomalies and administrative bottlenecks emerged. The Petitioner was promoted to BPS-18 as Senior Medical Officer and later to BPS-19 as Principal Medical Officer vide Office Order dated 06.02.2023. While discharging his duties efficiently at WAPDA, Hospital Hyderabad, a 70-bed facility, the Petitioner submitted a request to Respondent No.4, seeking permission to serve as a Medical Specialist since the post had remained vacant for an extended period. The Petitioner, holding a Doctor of Medicine degree equivalent to a Ph.D. and FCPS, aimed to utilize his expertise to benefit the general public and WAPDA employees. The Medical Superintendent duly forwarded the request through letters dated 30.10.2024 and 16.01.2025, along with a recommendation that the Petitioner be permitted to function as a Medical Specialist until the appointment of a permanent Physician. However, instead of approving the aforementioned recommendation, the Petitioner was transferred through the impugned order and posted at WAPDA Fort Dispensary, Thor (Chilas), Gilgit Baltistan, necessitating the present petition.

3. The notices were issued to the respondents. In response, respondents No. 1 to 5 submitted their comments, explicitly challenging the maintainability of the petition, contending that the Petitioner has no legal cause to file the instant petition as it pertains to the terms and conditions of service; therefore, it is barred under Article 212 of the Constitution of Pakistan. Thus, the Petitioner has to approach the Federal Service Tribunal.

4. At the very outset, learned counsel for the Petitioner contended that the Petitioner's service is not transferable under the terms and conditions of his employment, which have never been altered by any subsequent clarification. He further submits that as per Section 17 of the West Pakistan Water and Power Development Authority Act, 1958 ("**WAPDA Act, 1958**"), the terms and conditions of employment cannot be varied to the disadvantage of an employee. He asserts that this principle forms the bedrock of service law jurisprudence and has been repeatedly upheld by the Apex Court. Learned counsel also contended that the benefit of the Wedlock Policy, framed by the Federal Government and subsequently

adopted and followed by WAPDA, has not been extended to the Petitioner. He argues that the Petitioner's spouse, who is serving as an Assistant Professor of Obstetrics & Gynaecology (Regular BPS-19) at Liaquat University of Medical & Health Sciences, Jamshoro, Sindh, holds a non-transferable post, as she is employed by an autonomous body constituted through an Act passed by the Sindh Assembly. Furthermore, he contends that Chilas, Gilgit-Baltistan, only has a dispensary; five of 19 employees are doctors. Thus, transferring the Petitioner would serve no public utility. On the contrary, a 70-bed hospital already facing a shortage of doctors and physicians would be further strained. He also submits that while transferring a doctor of BPS-18 from Chilas, the Petitioner, who is serving in BPS-19, has been relocated, which amounts to a placement in violation of the orders of the Supreme Court of Pakistan. Lastly, learned counsel prayed for the setting aside of the impugned order. He relied upon case law, as reported in **2014 PLC 1032 and 2018 SCMR 1411, to support his contentions.**

5. Conversely, learned counsel for Respondents No.1 to 5 contended that the petition is barred under Article 212 of the Constitution regarding service-related disputes, which fall within the exclusive jurisdiction of the Federal Service Tribunal. He argued that the Petitioner's grievance concerns terms and conditions of employment, including transfer and posting, and does not justify constitutional intervention under Article 199. He further asserted that established legal precedents dictate that where a specialized statutory forum exists, it must be approached rather than invoking writ jurisdiction. Additionally, he contended that the Federal Service Tribunal Act, 1973 provides the proper mechanism for addressing service matters and that the Petitioner has failed to establish any constitutional violation warranting extraordinary relief. He maintained that the impugned transfer order falls within the domain of administrative discretion and lacks elements of illegality, mala fide, or jurisdictional defect.

6. Learned Assistant Attorney General endorsed and supported the arguments advanced by learned counsel for Respondents No.1 to 5, contending that the instant petition is barred under Article 212 of the Constitution, as it pertains to service-related disputes exclusively triable by the Federal Service Tribunal.

7. Having meticulously heard the learned counsel for the respective parties in extenso and upon a scrupulous examination of the record, we proceed to adjudicate the matter in accordance with the settled principles of law.

8. The core question for determination in the present matter is whether the instant petition is maintainable before this Court in light of Article 212 of the Constitution of Pakistan, the Service Tribunals Act, 1973, and Section 17(1-B) of the WAPDA Act, 1958, which unequivocally declares the service under WAPDA to be service of Pakistan and deems WAPDA employees, not on deputation, to be civil servants for the Service Tribunals Act, 1973. It is pertinent to reproduce Section 17(1-B) of the WAPDA Act, 1958, which states:

*"Service under the Authority is hereby declared to be service of Pakistan and every person holding a post under the Authority, not being a person who is on deputation to the Authority from any Province, shall be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1973."*

9. This provision explicitly brings WAPDA employees within the ambit of civil servants, thereby subjecting them to the exclusive jurisdiction of the Federal Service Tribunal in matters relating to terms and conditions of service.

10. Article 212 of the Constitution of Pakistan categorically ousts the jurisdiction of constitutional courts in matters related to the terms and conditions of employment of persons in the service of Pakistan. It mandates adjudication by Administrative Courts and Tribunals. In the case of **WAPDA & another**<sup>1</sup>, the Supreme Court of Pakistan has held as follows:

*"It is clear from these provisions that the employment in the Authority was declared to be service of Pakistan and remedy provided under Service Tribunals Act, 1973 was made available to such employees by deeming them to be civil servants under that Act. The two explanations subsequently added and "deemed always to have been so added" had the effect of bringing under purview of subsection (1-A) even the Provincial Civil Servants serving the Authority under provisos to subsection (1). All employees, except those on deputation, were, without qualification or limitation, declared to be civil servants for the purposes of Service Tribunals*

---

<sup>1</sup> WAPDA & another vs. Muhammad Arshad Qureshi (1986 SCMR 18)

*Act. All the terms and conditions of their service, be it statutory or contractual, was made the subject-matter of reference to Service Tribunal. Subsection (1-A) of the Act, as will be shown contained overriding terms and conditions of employment and provisions thereof could like any other terms and conditions of service be brought before the Service Tribunal for adjudication. Article 212(2) of the Constitution ousting the jurisdiction of all other Courts came into play, and so did section 6 of the Service Tribunals Act, abating all suits, appeals or applications regarding any matter within the jurisdiction of a Tribunal pending in any Court immediately before."*

11. This judgment provides authoritative clarity that all service-related disputes pertaining to WAPDA employees must be referred to the Federal Service Tribunal, and constitutional courts lack jurisdiction in such matters.

12. In light of the foregoing discussion, this Court is constrained from entertaining the present petition, as Article 212 of the Constitution, read with Section 17(1-B) of the WAPDA Act, 1958, unequivocally ousts constitutional jurisdiction in matters concerning the terms and conditions of service of WAPDA employees. The established jurisprudence of the Supreme Court mandates that such disputes be addressed exclusively by the Federal Service Tribunal, thereby rendering this petition not maintainable.

13. Accordingly, this petition is **dismissed** for lack of maintainability, and the Petitioner is at liberty to avail the statutory remedy before the Federal Service Tribunal if so advised.

**JUDGE**

**JUDGE**

AHSAN K. ABRO