

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

(Appellate/Original Jurisdiction)

Present:

Justice Aamer Farooq

Justice Ali Baqar Najafi

C.P.L.A. No.4687/2025

(Against order dated 17.09.2025,
passed by the High Court of Sindh, Circuit Court Larkana
in C.P.No.D-899/2025)

The Chief Executive Officer,
SEPCO, Sukkar and Another

...Petitioner(s)

Versus

Riaz Hussain and Others

...Respondent(s)

For the Petitioner(s) : Malik Naeem Iqbal, ASC
Abdus Sattar, Director, Admn

For the Respondent(s) : Mr. Hussain Bux Baloch, ASC
(for respondents No.1&2)

Date of Hearing : 10.09.2026

JUDGMENT

AAMER FAROOQ, J: This petition for leave to appeal is directed against the judgment dated 17.09.2025 passed by the High Court of Sindh in CP No.D-899/2025, whereby the learned High Court, while holding constitutional petition to be not maintainable, with respect to the employment issues of the petitioners, nevertheless proceeded to examine the controversy on merit and observed that penalty of censure could not operate as an impediment to the promotion of respondents.

2. The facts, in brief, are that respondents are employees of the petitioner company, namely Sukkur Electric Power Company (**SEPCO**). During the course of service, minor penalties in the nature of censure were imposed upon them by the competent authority. Respondents claimed that the said penalties were being treated by the Department as an impediment to their consideration for promotion. They, therefore, invoked constitutional jurisdiction of the learned High Court, seeking inter alia, a declaration that penalties of censure, in light of the

judgments of the Supreme Court, could not adversely affect their promotions.

3. During the course of proceedings before learned High Court, SEPCO, the petitioner company, raised a preliminary objection that the constitutional petition was not maintainable. This objection was founded principally upon the status of SEPCO and the absence of statutory service rules governing terms and conditions of service of its employees. The learned High Court accepted the objection and held that the writ petition was not maintainable. Having so concluded, however, learned High Court proceeded to examine the controversy on its merits. Relying upon the judgments of the Supreme Court, it held, in substance, that the penalty of censure could not constitute an impediment to the promotion of the respondents. The petitioner company has assailed this part of the impugned judgment, whereby learned High Court, after declining to exercise constitutional jurisdiction, proceeded to adjudicate upon merits of the controversy.

4. Learned counsel for the petitioner company contended that two conclusions of the learned High Court are legally incompatible. Once the learned High Court has held that constitutional petition was not maintainable, there remained no *lis* before it upon which an adjudication on merits could validly be made. It is further submitted that respondents' service is governed by the service policy applicable to the petitioner company; under the said policy, censure is a minor penalty which results only in reduction of three marks while determining comparative merit for promotion. Thus, according to the learned counsel, learned High Court could neither substitute its view for the applicable service policy nor issue a declaration concerning the effect of censure after holding the petition to be incompetent.

5. Learned counsel, appearing for the respondents, while defending the impugned judgment, submitted that the observations regarding the

effect of a censure were made only with a view to give effect to the law declared by this Court/Supreme Court in the judgments relied upon before learned High Court. It was argued that once the learned High Court was seized of the matter, it could give effect to the binding principles laid down by the Supreme Court and this Court by way of implementation of the same. Learned counsel, however, fairly conceded that in view of legal status of the petitioner company and the absence of separate service rules governing its employees, a constitutional petition filed by the respondents, was not maintainable.

6. We have heard learned counsel for the parties and examined the record.

7. The first and fundamental question requiring determination is whether a constitutional petition filed by the respondents was maintainable before learned High Court. The answer to this question must necessarily precede any examination of the merits of the dispute.

8. It is an established principle of constitutional jurisdiction that extraordinary jurisdiction of the High Court under Article 199 of the Constitution is not available as a matter of course in respect of every dispute arising out of employment. Where the relationship between an employer and its employees is essentially contractual and the employees are not governed by statutory rules or a statutory service regime, the matters relating to appointment, promotion, disciplinary proceedings and other terms and conditions of service ordinarily fall within the domain of the contract and the applicable service policy. Such disputes cannot, merely because the employer happens to be a public sector company or operates and performs functions of public importance, be converted into proceedings under the constitutional jurisdiction of the High Court.

9. SEPCO is an electric distribution company incorporated and functions under the applicable company laws and legal framework. The

respondents have not demonstrated that their terms and conditions of service are regulated by statutory service rules having the force of law so as to confer upon them enforceable statutory rights, which could be examined in constitutional jurisdiction. Indeed, as noted above, learned counsel for the respondents has fairly conceded that writ petition was not maintainable. The concession made by learned counsel is consistent with the legal position. The constitutional jurisdiction of the High Court cannot be invoked merely by asserting that an action of an employer is arbitrary or contrary to service policy, where underlined relationship remains non-statutory. The distinction between an employee governed by the statutory service rules and an employee governed by a contract or non-statutory service policy is material and cannot be overlooked. We, therefore, affirm the conclusion of the learned High Court that the constitutional/writ petition filed by the respondents, was not maintainable.

10. Having reached that conclusion, however, learned High Court was required to stop there. The subsequent exercise of examining the merit of the controversy and declaring that censure could not affect promotion of the respondents was, with respect, legally unwarranted. Jurisdiction is the foundation, upon which, judicial determination rests. Where the court concludes that it lacks jurisdiction to entertain any proceedings, it cannot, as a matter of judicial necessity, proceed to pronounce upon substantial rights of the parties in those very proceedings. The findings on merit in the proceedings, which the court itself has declared to be incompetent, does not acquire legitimacy, merely because the court considers such finding desirable, useful or consistent with the earlier judgments of this Court as well as Supreme Court. The submissions that the learned High Court was entitled to make findings on merit for the purpose of implementing the judgments of this Court/Supreme Court cannot be accepted. The binding

judgment of this Court, undoubtedly, requires to be respected and applied by all the courts and authorities within the constitutional scheme, but the obligation to follow binding precedents, does not enlarge jurisdiction of the High Court. The precedent determining the law applicable to a controversy, does not confer jurisdiction where none exists. In other words, a court cannot enlarge jurisdiction by relying upon binding precedents nor a binding nature of precedent justify adjudication of a dispute which a court has already held to be outside its jurisdiction. If the High Court is of the view that service policy or the action of the employer was inconsistent with the law declared by this Court/Supreme Court, such question can only be examined in the proceedings which were competent before it. The distinction is particularly important in this case. The respondents' grievance essentially concerns the manner, in which, their employer has applied its own service policy while determining their eligibility or comparative merit for promotion. The learned High Court has held that the respondents could not invoke its constitutional jurisdiction in respect of such grievance; it was not open to it to proceed to interpret the policy, determine the legal effect of censure upon promotion and give issue-wise findings, which in substance, amounted to adjudication of the very dispute, which it has declared to be non-maintainable due to lack of jurisdiction. We may also observe that the question, whether censure would result in non-consideration for promotion or deduction in marks while considering promotion or compiling merit needs, in the first instance, to be determined in accordance with applicable service rules/policy governing employees concerned. The petitioner company has stated in its applicable policy that censure is a minor penalty and it entails deduction of three marks in process of determination for promotion. Whether such policy is correctly applied in a particular case

is a matter which cannot be examined in a constitutional jurisdiction, when the petition itself is not maintainable.

11. The learned High Court, therefore, fell in error by traveling beyond jurisdictional scope after correctly holding that writ petition was not maintainable. The observations made by it regarding the effect of censure upon promotion though apparently intended to give effect to the law declared by this Court/Supreme Court, yet it was rendered without jurisdiction and are consequently liable to be set aside.

12. There is another important aspect of the matter: a finding recorded by a court after it has declared that it has no jurisdiction may create uncertainty and may effectively impose an obligation on a person or entity, which was not subject to the court's adjudication or jurisdiction. In the first place, the courts are expected to confine their decision to a question properly arising before them and within their jurisdiction. This principle applies with equal force whether or not the courts seek to give effect to an otherwise binding precedent.

13. For the foregoing reasons, we hold that **a)** that the respondents, being employees of petitioner company, whose service conditions are not governed by statutory service rules having the force of law, could not maintain constitutional/writ petition in respect of their grievance concerning promotion or the effect of minor penalty of censure; **b)** Having correctly held that constitutional petition was not maintainable' the learned High Court was not competent to proceed to adjudicate the merit of the respondents' claim; **c)** the binding effect of the judgments of this Court/Supreme Court does not authorize a High Court to decide merits of the dispute in a proceeding where it itself held the writ petition to be non-maintainable; and the observations/findings of the High Court concerning the effect of censure upon promotion of respondents, therefore, cannot be sustained.

14. In view of above, instant petition is allowed and is converted into appeal, which is accepted and the impugned judgment dated 17.09.2025 is modified to the extent that finding recorded by learned High Court on the merits of respondent's claim concerning effect of censure upon their promotion, are set aside and treated to be of no legal effect. The conclusion of learned High Court that the constitutional petition was not maintainable is affirmed.

Judge

Judge

Islamabad
10.09.2026
Zawar/

APPROVED FOR REPORTING