

Non-Statutory Service Disputes: A High Court Cannot Decide Merits After Holding a Writ Not Maintainable

The Federal Constitutional Court held that employees governed by non-statutory service policy cannot invoke Article 199 for promotion disputes, and a High Court that declines jurisdiction must not then decide the merits.

Federal Constitutional Court service-law and jurisdiction analysis
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Case: C.P.L.A. No. 4687 of 2025

Court and date: Federal Constitutional Court of Pakistan | 10 September 2026

Bench: Justice Aamer Farooq and Justice Ali Baqar Najafi

Result: Appeal allowed; non-maintainability affirmed; merits findings set aside

The ruling in one sentence

The Federal Constitutional Court held that employees whose service conditions are governed by a contract or non-statutory service policy cannot ordinarily invoke Article 199 for promotion-related disputes, and once a High Court holds the writ petition not maintainable it has no jurisdiction to determine the merits or declare the legal effect of a censure penalty.

The reported judgment is Chief Executive Officer, SEPCO, Sukkur and another v Riaz Hussain and others, C.P.L.A. No. 4687 of 2025. Justice Aamer Farooq authored the judgment for a bench comprising Justice Aamer Farooq and Justice Ali Baqar Najafi. It was decided on 10 September 2026 and approved for reporting.

The promotion dispute before the Sindh High Court

Riaz Hussain and another respondent were employees of Sukkur Electric Power Company. Minor penalties of censure had been imposed on them during service. They claimed that SEPCO was treating those penalties as an obstacle to their promotion.

They filed a constitutional petition before the Sindh High Court, Circuit Court Larkana, seeking a declaration that censure could not adversely affect promotion in view of earlier superior-court judgments.

SEPCO objected that the petition was not maintainable because it is a company and the employees' terms and conditions were not governed by statutory service rules. The High Court accepted that objection and held the writ petition not maintainable.

Despite that conclusion, the High Court went on to examine the merits and observed that the censure penalties could not operate as an impediment to promotion. SEPCO challenged those merits findings before the Federal Constitutional Court.

Public ownership does not make every service dispute constitutional

The Federal Constitutional Court reaffirmed the distinction between employment governed by statutory rules having the force of law and employment governed by contract or an internal, non-statutory service policy.

A public-sector company may perform functions of public importance, but that fact does not automatically transform every disagreement with its employees into a constitutional case. Appointment, promotion, discipline and other service conditions remain contractual where no statutory service regime creates enforceable public-law rights.

The respondents did not establish that SEPCO's service rules had statutory force. Their counsel also conceded that the constitutional petition was not maintainable. The Court therefore affirmed the High Court's jurisdictional conclusion.

Maintainability must be decided before the merits

The Court treated jurisdiction as the foundation of judicial adjudication. Before deciding whether an employer's policy was correctly applied, the court must first have lawful authority to entertain the dispute.

Where the writ is not maintainable, there is no competent constitutional list in which the High Court may determine the parties' substantive service rights. The court must stop at the jurisdictional conclusion.

This is not a matter of drafting form. Merits findings can affect promotions, impose obligations and create uncertainty. If made without jurisdiction, they cannot acquire legitimacy merely because they appear useful or equitable.

Binding precedent does not create jurisdiction

The employees argued that the High Court could apply earlier superior-court judgments concerning censure and promotion. The Federal Constitutional Court rejected that route.

Binding precedent tells a competent court what law to apply to a dispute. It does not give jurisdiction where the Constitution and governing legal relationship provide none. A court cannot enlarge Article 199 by invoking a correct legal proposition from another case.

The obligation to follow precedent and the authority to hear a case are separate questions. Both must exist. A binding judgment cannot convert an incompetent proceeding into a competent one.

Why the censure question remained open

SEPCO stated that under its service policy, censure is a minor penalty resulting in deduction of three marks when comparative merit for promotion is determined. The respondents contended that censure should not adversely affect their promotion.

The Federal Constitutional Court did not decide which interpretation was correct. That issue depended first on the applicable service policy and its lawful forum.

The narrow holding was that the Sindh High Court could not interpret the policy, decide the effect of censure and give issue-wise findings after declaring that the employees could not invoke its constitutional jurisdiction.

Setting aside the merits observations therefore did not amount to approving SEPCO's policy or rejecting the employees' substantive position. It restored the boundary between jurisdiction and merits.

The danger of advisory findings after declining jurisdiction

A merits observation by a court carries institutional weight even when placed after dismissal for non-maintainability. It may be treated by an employer, employee or later forum as a legal command.

The judgment warns that this can effectively impose an obligation on a person or entity that was not properly subject to adjudication. Courts must therefore confine their decisions to questions properly

before them.

Constitutional jurisdiction is extraordinary. Its discipline requires a court to resist deciding an attractive legal issue merely because the issue has been argued or because guidance might be useful.

The final order

The Federal Constitutional Court allowed the petition, converted it into an appeal and accepted it.

The Sindh High Court judgment was modified. Its conclusion that the constitutional petition was not maintainable remained intact. Its observations and findings on the effect of censure upon promotion were set aside and declared to have no legal effect.

The result left the substantive promotion dispute to be dealt with, if otherwise maintainable, under the applicable service policy and before a legally competent forum.

What the judgment does not hold

The judgment does not decide that every employee of a public-sector company is excluded from constitutional jurisdiction. Maintainability depends on the employer's legal status, the nature of the function, the source of the right and whether the service rules have statutory force.

It does not decide that censure must reduce promotion marks or that censure can never be ignored. The merits of SEPCO's policy were deliberately left undecided.

It does not weaken the binding effect of superior-court precedent. It clarifies that precedent operates within jurisdiction; it does not manufacture jurisdiction.

It does not leave non-statutory employees without any remedy. Contractual, statutory, labour or other remedies may be available depending on the governing relationship and forum. The decision is confined to Article 199 maintainability and the impermissibility of merits findings after jurisdiction is declined.

Practical guidance for service-law litigation

Before filing a writ, counsel should identify the precise instrument governing service: legislation, delegated statutory rules, regulations, standing orders, contract, policy or administrative instructions. The source and force of that instrument are central to maintainability.

The petition should separately address why the employer or challenged action falls within public law and why the right asserted is enforceable under Article 199. Public ownership, government shareholding or performance of an important service may not be sufficient by itself.

For the employer, a maintainability objection should place the incorporation documents, governing statute, service rules and relevant policy before the court. For the employee, alternative forums and limitation periods should be considered before an adverse jurisdictional decision consumes time.

Courts deciding a preliminary objection should keep the order internally consistent. If jurisdiction is absent, merits should ordinarily remain untouched so the competent forum can decide them without the shadow of an unauthorized finding.

Independent legal analysis; not legal advice.