

When Can Employees Governed by Non-Statutory Service Rules File an Article 199 Writ? The SESSI and SEPCO Judgments Explained

The FCC allowed an Article 199 challenge to SESSI's seniority decision but rejected a SEPCO promotion writ. The employer, the source of the right and the challenged act explain the difference.

SESSI and SEPCO | Federal Constitutional Court | Service law

By Shahbaz Shah, Advocate High Court | Published 3 October 2026

Two decisions, one difficult question

An employee finds that the service rules were made by the employer, rather than by legislation. Does that end the possibility of a writ petition? Two Federal Constitutional Court decisions give different answers on their facts. The difference matters to anyone challenging a promotion, seniority list or disciplinary consequence in a public institution.

In Muhammad Qutub-ud-Din and others v Province of Sindh and others, Civil Appeal No. 103-K/2024, the FCC entertained a challenge to a seniority decision by the Sindh Employees' Social Security Institution (SESSI), although its 2006 service regulations were described as non-statutory. In Chief Executive Officer, SEPCO v Riaz Hussain and others, C.P.L.A. No. 4687/2025, the Court maintained the rejection of a writ concerning the effect of censure on promotion under a non-statutory service policy.

The tempting shortcut is to say that non-statutory rules always defeat a writ, or that any public employer can always be sued under Article 199. Neither shortcut survives these judgments. The petitioner must show who exercised the power, where that power came from, what right was affected and why the particular act belongs in public law.

Why the SESSI petition could be heard

SESSI was established under legislation and performs public functions. An employee had first served under a contract from 2002; his service was regularized with effect from 31 March 2007. In 2017, SESSI retrospectively treated him as regular from his original contract date and placed him above employees recruited regularly in 2004. Those employees challenged the decision.

The objection was direct: the 2006 regulations were non-statutory, so the employees supposedly had only a master-and-servant dispute. The FCC disagreed. At paragraphs 10 and 11, it affirmed the High Court's finding that an Article 199 petition could lie against this statutory body's allegedly arbitrary exercise of authority, even though the regulations themselves were non-statutory. The resulting decision affected the other employees' accrued seniority. The Court relied on Pakistan Defence Officers' Housing Authority v Lt Col Syed Jawaid Ahmed (2013 SCMR 1707) and Muhammad Rafi v Federation of Pakistan (2016 SCMR 2146).

Maintainability was only the first question. On the merits, the FCC held that contract service could not be counted as regular service for seniority without express legal authority. Regulation 9(3) reckoned seniority from regular appointment. A retrospective administrative order could not simply move the contractual period into the regular cadre and displace other employees.

SESSI also argued that the petitioners had another remedy. The FCC said the existence of an alternative remedy is a factor in the High Court's discretion, not an absolute bar. That does not excuse a petitioner from explaining why a departmental or other available route is inadequate in the circumstances.

Why the SEPCO writ failed

The SEPCO dispute concerned two employees who wanted the Sindh High Court to declare that censure penalties should not obstruct their promotion. SEPCO is a company, and the employees' terms were governed by a service policy that had not been shown to possess statutory force. Counsel for the employees conceded that their constitutional petition was not maintainable.

The High Court accepted the jurisdictional objection, but then expressed a view on the effect of censure. In its 10 September 2026 judgment, the FCC preserved the finding of non-maintainability and removed the merits observations. Once the court had declined jurisdiction, it could not settle the promotion question by way of an additional finding.

The FCC did not decide whether SEPCO's proposed treatment of censure was correct. Nor did it hold that every employee of every public-sector company is forever excluded from Article 199. The case establishes the limit on this record: an internal, non-statutory promotion policy, without an established public-law right to enforce, did not support this writ. A useful precedent on the merits cannot itself supply missing jurisdiction.

How the two rulings fit together

The legal form of the employer matters, but it is not the whole inquiry. In SESSI, the challenged act was a statutory institution's exercise of authority that rearranged accrued seniority. The FCC expressly allowed constitutional scrutiny despite the non-statutory character of its regulations. In SEPCO, the claim sought a ruling on a company's internal promotion policy, with no statutory service right established and a concession against maintainability.

There is a real boundary here that should not be hidden by a slogan. SESSI's broad statement about acts of statutory authorities does not turn every contractual grievance into a writ. SEPCO's refusal to entertain the particular petition does not erase SESSI's public-law route. A later case may require close attention to the institution's founding law, delegated powers, the instrument governing employment and the remedy sought.

One more distinction is easy to miss. The SESSI employees challenged a decision benefiting another officer that would reduce their existing rank. The SEPCO employees sought an advance ruling about how their own minor penalties should affect a promotion exercise. Those different acts and remedies help explain why the constitutional questions were framed differently; they are not, by themselves, a universal test.

Other decisions worth reading

The SESSI judgment expressly invokes the Supreme Court's decisions in *Pakistan Defence Officers' Housing Authority v Lt Col Syed Jawaid Ahmed*, 2013 SCMR 1707, and *Muhammad Rafi v Federation of Pakistan*, 2016 SCMR 2146, for the possibility of constitutional scrutiny where a statutory authority acts contrary to non-statutory service rules. It also cites *Airport Support Services v Airport Manager*, 1998 SCMR 2268, on alternative remedies. The cited passages are in the downloadable SESSI judgment; the original PDFs of those earlier decisions have not been independently verified for this page.

The Sindh High Court's *Muhammad Suleman Ghouri and others v Federation of Pakistan and others*, C.P. No. D-1622/2025, decided 29 May 2025, is another useful comparison. The petition challenged recruitment affecting Civil Aviation Authority employees under a statutory framework and regulations. The High Court examined the public-law setting and entertained the petition despite a non-statutory-rules objection. It is a High Court decision, decided before the FCC's SEPCO ruling, and

should be read with that later ruling rather than treated as a substitute for it. Its official court PDF is linked below.

Questions to answer before filing

- Identify the employer's legal character: statutory institution, incorporated company or another body. Produce the founding Act or incorporation material rather than relying on its public name.
- Identify the exact source of the claimed right: statute, delegated regulation, contract, service policy or an accrued right affected by an exercise of public power.
- Identify the act being challenged and its legal effect. A decision changing seniority or exercising statutory authority presents a different question from a request to interpret an internal promotion policy.
- Explain why Article 199 reaches this respondent and this act. Public ownership or the importance of the employer's work is not, on its own, the answer.
- Check an available service, labour or contractual remedy and its time limits. If asking the High Court to proceed despite another remedy, explain concretely why that route is inadequate or ineffective.
- Keep jurisdiction separate from merits. If the writ cannot be entertained, the court should not decide whether the employee would have won the underlying service dispute.

The answer is therefore fact-sensitive. The SESSI judgment supplies a real route against an arbitrary act of a statutory public authority, even where its service regulations are non-statutory. SEPCO shows why the same label cannot convert an ordinary company service-policy dispute into a constitutional petition. Read the full judgments before applying either result to a different employer.

Independent legal commentary for general information; the governing instruments and later treatment should be checked for any particular case.

Judgments and PDF downloads

[FCC: Muhammad Qutub-ud-Din v Province of Sindh \(SESSI\)](#)

[FCC: CEO SEPCO v Riaz Hussain](#)

[Sindh High Court: Muhammad Suleman Ghouri v Federation of Pakistan](#)