

In the Federal Constitutional Court of Pakistan

(Appellate Jurisdiction)

Present:

Justice Amin-ud-Din Khan, Chief Justice
Justice Syed Arshad Hussain Shah

F.C.P.L.A. No.300 of 2025

(On appeal from judgment of the Peshawar High Court, Peshawar
dated 10.9.2025 passed in Writ Petition No.2470-P of 2022)

Senior Member Board of Revenue, Khyber Pakhtunkhwa & others

Petitioners

Versus

Habib-ur-Rehman & others

Respondents

For the petitioners:

Mr. Muzammil Khan,
Additional Advocate General, KP
Mr. Sajid Saleem, ADLR

For respondents No.1-13:

Mr. Danial Khan Chamkani, ASC
Mr. Zafar Iqbal, ASC
Syed Rifaqat Hussain Shah, AOR

For respondents No.14-26:

Nemo.

Date of hearing:

3.7.2026

Judgement

Syed Arshad Hussain Shah, J – Through the instant F.C.P.L.A., the petitioners seek leave to appeal against the judgement dated 10.09.2025 passed by the Peshawar High Court, Peshawar allowing Writ Petition No.2470-P of 2022, instituted by respondents No.1 to 13 (hereinafter referred to as "the respondents").

2. Briefly stated facts leading to the instant controversy are that the respondents are working as Sub-Registrar and Head Registration Muharrirs while respondents No.14 to 26 are working as Tehsildar, Naib Tehsildars and Girdawars. In the years 2021/2022, the Inspector

General of Registration KP authorized certain Tehsildars/Naib Tehsildars and Kanungos to act as Sub-Registrars in addition to their own duties. The respondents challenged the legality and validity of the executive action whereby respondents No.14 to 26 were assigned the duties of Sub-Registrar on additional charge basis in different districts of the Province. The principal grievance raised by the respondents was that such assignment had been made in violation of the applicable rules. It was asserted that the impugned executive action not only bypassed the scheme governing appointments and promotions but also deprived the respondents of their lawful right to be considered for promotion in accordance with the relevant rules.

3. Learned Additional Advocate General vehemently contended that the impugned judgement suffers from misreading and non-reading inasmuch as Section 6 of the Registration Act 1908 authorizes the Government '*to appoint such person, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.*' He further argued that Article 212 of the Constitution bars the jurisdiction of the High Court in the instant matter, hence the impugned judgment is *void ab-initio* and liable to be set aside.

4. Conversely, the learned counsel for the respondents fully supported the impugned judgment and submitted that as per amendments made in the rules vide Notification No.LR-IV/DLR/SSRC/2020:17635 dated 23.1.2020, Sub-Registrar can only be appointed '*by promotion, on the basis of seniority-cum-fitness, from amongst the Head Registration Muharris with at least five years service as such or having ten years accumulative services as Head Registration Muharris and*

Registration Muharrirs'. Therefore, assignment of duties to Tehsildars, Naib Tehsildars and Kanungos is illegal and against the law.

5. We have heard the learned Additional Advocate General, Khyber Pakhtunkhwa, the learned counsel for the respondents at length and have carefully perused the record as well as the impugned judgment with their able assistance. Record reveals that in pursuance of Sub-Rule (2) of Rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, amendments were made in the rules regarding the appointment of Sub-Registrars vide Notification dated 3.4.1993, which stipulates that Sub-Registrar can also be appointed '*by temporary transfer from amongst Naib Tehsildars, if no suitable person is available for promotion.*'. Consequently, some Naib Tesildars/Kanungos were posted as Sub-Registrars. This arrangement led to submission of a "Note for the Revenue Minister" dated 05.05.2009 by the Senior Member, Board of Revenue pointing out that Sub-Registrars were awaiting posting while the positions were being unlawfully occupied by nine unqualified Naib Tehsildars/Kanungos. On perusal of this note, the then Minister for Revenue, KP, directed '*withdrawal of illegal and contrary-to-rules orders, termination of OPS (Own Pay and Scale) arrangements in this case and ordered postings strictly in accordance with the rules*'. It seems that this situation necessitated amendments in the rules with regard to appointments of Sub-Registrar vide Notification No.LR-IV/DLR/SSRC/2020:17635, dated 23.01.2020 stipulating that "*the post of Sub-Registrar can exclusively be filled "by promotion, on the basis of seniority-cum-fitness, from amongst Head Registration Muharrirs with at least five years of service in the cadre, or possessing ten years of accumulative service as Head Registration Muharrirs and Registration Muharrirs.*". Therefore,

there exists no lawful provision for the posting of Sub-Registrar from any cadre other than the Head Registration Muharrirs and Registration Muharrirs.

6. So far as the argument advanced by the learned Additional Advocate General regarding the powers of the Government to appoint a Sub-Registrar under Section 6 of the Registration Act is concerned, suffice it to observe that there is a distinction between an order passed by an authority/individual and a decision or order of a government. Legal parameters governing the exercise of executive authority performed by an individual or officeholder cannot be regarded as decision/action of the Government unless the same have approval by the Cabinet, as an action/order of the Government must have the backing of the Cabinet. In the present case, the appointments were made by the Inspector General of Registration without the approval of the Cabinet. Consequently, such appointments cannot be regarded as appointments made by the Government under Section 6 of the Registration Act and, therefore, do not fall within the ambit of the said provision. It is observed that the rules framed under an Act constitute subordinate legislation and have the force of law. Consequently, they are legally binding and cannot be disregarded or contravened. It is pertinent to note that, at the time of issuance of the disputed orders assigning the functions of Sub-Registrar to Tehsildars, Naib Tehsildars, and Kanungos, the Rules, as amended and notified vide Notification dated 23.01.2020 *ibid*, were in force. Consequently, any such appointment or assignment made in contravention thereof is illegal and not sustainable.

7. There is no cavil with the settled proposition of law that it falls within the exclusive domain of the Government/Executive to frame,

amend or repeal statutory rules and policies governing public service. However, once such rules are promulgated, the Government/authorities are under a corresponding legal obligation to adhere to and implement them in their true letter and spirit unless repealed. It cannot act in derogation of or contrary to the very rules framed by it. In the present case, upon issuance of the Notification dated 23.01.2020, the posts of Sub-Registrars became liable to be filled exclusively through promotion from amongst the Head Registration Muharrirs and Registration Muharrirs, in accordance with the amended service rules. Consequently, the assignment of additional charge of the posts of Sub-Registrars to Tehsildars, Naib Tehsildars, and Kanungos, who do not constitute the prescribed promotional feeder cadre, was clearly in violation of the applicable rules and, therefore, without lawful authority. The High Court correctly appreciating the legal position has rightly declared such assignments to be illegal and set them aside. As regards the objection founded upon Article 212 of the Constitution, the High Court has comprehensively considered and rightly repelled the same by holding that the controversy did not pertain to an individual service grievance but involved the enforcement of statutory rules and the legality of executive action undertaken in violation thereof. Consequently, the constitutional bar contained in Article 212 of the Constitution was held to be inapplicable to the facts and circumstances of the present case. It may be observed that where a dispute involves substantial questions relating to the enforcement of mandatory statutory rules or the legality and validity of executive action undertaken in disregard of such statutory provisions and in excess of or contrary to the powers conferred by law, the High Court is competent to exercise its constitutional jurisdiction

under Article 199 of the Constitution, and the bar contained in Article 212 of the Constitution is not attracted.

8. In view of the foregoing discussion, we find no illegality, infirmity, perversity, misreading or non-reading of the record or jurisdictional defect in the impugned judgement warranting interference by this Court. The judgement rendered by the High Court is well-reasoned, comprehensive and elaborately deals with all the factual and legal issues arising in the case. The conclusions recorded therein are fully supported by the applicable law and the material available on the record. Consequently, finding no merit or substance in the instant petition, the same is hereby dismissed. Leave to appeal is, accordingly, refused.

Chief Justice

Judge

Islamabad

3rd July, 2026

Approved for reporting

Riaz