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2. Learned counsel for applicant while relying upon PLD 2011 Supreme Court 132 particularly its paragraph No.29, contends that writ petition is not maintainable. In contra learned counsel for respondent while relying upon 2016 SCMR 1362 contends that applicant is ex-employee of the department hence his case was within the terms and conditions regulated by the statutory rules and only his issue is amenable to writ jurisdiction, therefore impugned judgments are in accordance with law.

3. I have heard and considered the arguments advanced by the learned counsel for both the parties and perused the material available on record with their assistance in view of the dictum laid down by the Apex Court. In case of ***Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir and others (PLD 2011 Supreme Court 132)***, it was held by the Apex Court in Paragraph No.29 that: *“As to the case of the employees seeking the benefit of VSS, no relief could be granted to them by the High Court in view of the non-maintainability of their writ petitions on the ground that their services were not governed by any statutory rules and even the VSS was not offered under, or in terms of, any statutory provisions”*.

4. In case of **P.T.C.L. and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362)**, it was held by the Apex Court that: *“A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court”.*

5. Even if the terms and conditions of Applicant’s service provided by Sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and Sections 35(2) and 36(a) of the Act of 1996 are essentially statutory; violation of any of them would be amenable to the constitutional jurisdiction of the High Court, it does not mean that the jurisdiction of the Civil Court would be barred on this score alone. However, the contest between the parties in

matters of factual plane and controversy on the subject matter could only have been determined through a civil suit and not in constitutional jurisdiction of the High Court. Reference, if needed, may be made to case of **Messrs Ahmad Developers v. Muhammad Saleh and others (2010 SCMR 1057)**.

6. Needless to mention that petitioner has challenged the reduction of length of service on the basis of VSS accepted by him. Besides, impugned orders of the trial court and appellate court state that civil court has no jurisdiction hence plaint was returned. Since the Applicant has challenged the action of the Respondent/ authority in respect of length of his service reduced by the authorities because of his acceptance of VSS as illegal, which needs to be determined after framing of issues and recording evidence of the parties. In such circumstances, it appears that the orders passed by the learned trial Court as well as Appellate Court suffer from material irregularity within the meaning of Section 115 of the Code of Civil Procedure, 1908. In case of **Noor Hussain and others v. Mst. Hussain Bibi and others (2007 SCMR 378)**, it was held by the Apex Court that: *“It is a settled proposition of law that when the Appellate Court had decided the case in violation of law laid down by this Court, then it is termed as material irregularity or illegality within the meaning of section 115 of C.P.C. as law laid down by this Court in Shaukat Nawaz's case 1988 SCMR 851”*. Accordingly, impugned orders are set aside; case is remanded back for framing of the issues, recording evidence of both the parties and decision on merits.

Disposed of.

J U D G E