

CP No. D 5450 of 2023

Zulfiqar Ali & others

Vs

Province of Sindh & others

HIGH COURT OF SINDH

Composition of Bench.

D.B.

Mr. Justice Muhammad Karim Khan Agha  
Mr. Justice Adnan-ul-Karim Memon

Dates of hearing: 12<sup>th</sup> December 2024

Decided on: 17<sup>th</sup> December 2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment \*/Order is based upon or enunciates a principle of law  
\*/decides a question of law which is of first impression/distinguishes/. Over-rules/  
reverses/explains a previous decision.

\* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first  
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the  
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

## IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. D-1450 of 2023

06-11-2023  
[Signature]

1. **ZULFIQAR ALI**  
S/o Nabi Bux  
Muslim, Adult,  
Sub-Inspector
2. **NEK MUHAMMAD KHOSO**  
S/o Ghulam Mustufa  
Muslim, Adult,  
Sub-Inspector
3. **FAROOQ RAHPOTO**  
S/o Muhammad Hashir  
Muslim, Adult,  
Sub-Inspector
4. **ABDUL JALEEL ABBASI**  
S/o Abdul Rehman  
Muslim, Adult,  
Sub-Inspector
5. **JAMSHED ALI SOOMRO**  
S/o Wazir Ali Soomro  
Muslim, Adult,  
Sub-Inspector
6. **MUHAMMAD AMIN CHANNA**  
S/o Noor Muhammad Channa  
Muslim, Adult,  
Sub-Inspector
7. **ABDUL QAYOOM BURIRO**  
S/o Dur Muhammad Khan  
Muslim, Adult,  
Sub-Inspector
8. **KHAIR MUHAMMAD MALAH**  
S/o Allah Dino  
Muslim, Adult,  
Sub-Inspector
9. **KARIM BUX**  
S/o Muhammad Moosa  
Muslim, Adult,  
Sub-Inspector
10. **MUKHTIAR AHMED**  
S/o Ghulam Nabi  
Muslim, Adult,  
Sub-Inspector

11. **BASHEER AHMED**  
S/o Ali Morda Shah  
Muslim, Adult,  
Sub-Inspector
12. **JAHANGIR CHANDIO**  
S/o Ali Anwar Khan  
Muslim, Adult,  
Sub-Inspector
13. **MAZHAR ALI**  
S/o Muhammad Hassan  
Muslim, Adult,  
Sub-Inspector
14. **IMTIAZ ALI LARIHAK**  
S/o Abdul Rehman  
Muslim, Adult,  
Sub-Inspector
15. **ABDUL QAYOOM**  
S/o Dur Muhammad  
Muslim, Adult,  
Sub-Inspector
16. **MUZAFAR PANHWAR**  
S/o Muhammad Hussain  
Muslim, Adult,  
Sub-Inspector
17. **ABDUL JABBAR MALIK**  
S/o Faiz Muhammad Malik  
Muslim, Adult,  
Sub-Inspector
18. **SIKANDAR RODNANI**  
S/o Haji Eido Khan  
Muslim, Adult,  
Sub-Inspector
19. **MEHBOOB ALI**  
S/o Ghulam Qadir  
Muslim, Adult,  
Sub-Inspector
20. **HAMMADULLAH**  
S/o Rehmatullah  
Muslim, Adult,  
Sub-Inspector ..... PETITIONERS

### VERSUS

1. **PROVINCE OF SINDH**  
Through Secretary Home Department,  
Government of Sindh,  
Sindh Secretariat, Karachi.

- 5 264
2. **INSPECTOR GENERAL OF POLICE SINDH**  
Central Police Office,  
I.I. Chundrigarh Road, Karachi
  3. **ASSISTANT INSPECTOR GENERAL POLICE/ESTABLISHMENT-I**  
Central Police Office  
I.I. Chundrigarh Road, Karachi
  4. **DEPUTY INSPECTOR GENERAL POLICE**  
Hyderabad Range,  
Hyderabad .....RESPONDENTS

**CONSTITUTIONAL PETITION UNDER ARTICLE 199**  
**OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF**  
**PAKISTAN, 1973**

*It is respectfully submitted on behalf of the Petitioners as follows: -*

1. That the Petitioners are Sub-Inspector (BS-14) Sindh Police. That the Petitioners have impeccable and unblemished career spanned over a considerable period. Needless to say, that the Petitioners served their employer with honesty, zeal and dedication. The Petitioners are aggrieved with change of their date of appointment in violation of settled principles of law relegating them to a position much below their batch-mates and this is affecting their promotion prospects. This petition is being filed by the petitioners through their lawfully constituted attorney.

**Copy of Power of Attorney is attached and  
marked as annexure "A"**

2. That the Respondent is the Secretary Home Department, Government of Sindh and is administrative head of all provincial law enforcement agencies including Sindh Police. The Respondent No.2 is Inspector General Police Sindh and is organizational head of Sindh Police. The Respondent No.2 and 3 senior officials of Sindh Police and have carried on the orders of Respondent No.2 impugned in this petition as such have been arrayed as respondents. Being public functionaries are bound to follow law and exercise discretion in a structured way rather than on their whims and wishes.
3. That the Petitioners were appointed as Assistant Sub-Inspector (BS-09) Sindh Police pursuant to recommendations of Sindh Public Service Commission submitted to the Home Department on 29<sup>th</sup> April, 2002. The said recommendations were ultimately forwarded



**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Adnan-ul-Karim Memon*

**C.P No. D-5450 of 2023**

Petitioners: Zulfiqar Ali S/o Nabi Bux and others  
through Mr. Malik Naeem Iqbal,  
Advocate

Respondent: The State through Mr. Ali Safdar Depar,  
Assistant Advocate General, Sindh

Date of Hearing: 12.12.2024

Date of Judgment: 17.12.2024

**J U D G M E N T**

**Mohammad Karim Khan Agha, J.** The relief sought by the petitioner as per the Prayer in his petition is set out as under for ease of reference.

1. Declare that the impugned letter dated 30.05.2023 and all orders issued in compliance of impugned letter are illegal, malafide, without jurisdiction, discriminatory and in violation of principles of natural justice, equity and fairness and set aside the same.
2. Direct the Respondent No.2 to treat the date of recommendations of SPSC as the date of appointment of the petitioners.
3. Restrain the Respondents No.2 and 3 from convening meeting of DPC for promotion of Sub-Inspectors (BS-16) from Assistant Sub-Inspectors (BS-14) of Hyderabad Range till final disposal of captioned petition.
4. Any other relief this Honorable court may deem appropriate and proper in the circumstances of the case.
5. Grant cost of this petition.

2. The brief facts of the case are that in essence the Sind Public Service Commission (SPSC) vide its letter dated 29.04.2002 addressed to the Secretary Home Department Government of Sindh (GOS) after carrying out all necessary codal formalities recommended the petitioners and others via a list for appointment against the posts of Assistant Sub Inspectors (ASI's) police (BPS 9) in Sindh. The GOS then sent a letter dated 01.06.2002 to the Inspector General of Police (IGP) Sindh containing the list for appointment to the respective posts as recommended by the SPSC.

3. Accordingly by Order (Appointment ) dated 11.07.2002 the petitioners and others were appointed as ASI's in the Sindh police in various districts

throughout Sindh. When however the seniority list was issued the petitioners were dissatisfied with the same because despite all the petitioners being selected and recommended on the same day by the SPSC a number of the petitioners had been given different dates of appointment which effected their inter se seniority and hence the petitioners moved the Sindh Service Tribunal for redressal of their grievances.

4. In the meantime the IGP Sindh vide order dated 06.01.2017 after examining the grievances of the petitioners which related to their inter se seniority ordered that the date of appointment of all such petitioners/ASI's who were all part of the same batch have their date of appointment as the same as the date that they were recommended by the SPSC. Being satisfied with the IGP's order the petitioners withdrew their case from the Sindh Service Tribunal.

5. The issue of Inter se seniority between the petitioners again reared its ugly head when the letter dated 30.05.2023 reproduced below for ease of reference was issued which set the earlier IGP's order at naught. Hence the petitioners have approached this court to set aside the aforesaid letter;

"Government of Sindh  
Police Department

No. 8787/E-II/Insp  
Karachi, dated 30-05-2023

To,

The Deputy Inspector General of Police,  
Hyderabad Range.

SUBJECT: JUDGMENT/ORDER DATED OF SINDH SERVICE TRIBUNAL IN SERVICE APPEALS NOS. 455, 456, 457 & 462 OF 2019 FILED BY INSPECTOR NOORULLAH KHOSO & OTHERS.

*Please refer to your office letter No.Estt-II/10470 dated 26.4.2023, on the above subject.*

2- *I am directed to state that a tentative seniority list of Inspectors (BPS-16) of Sindh Police, was circulated vide this office letter No. 7299-320/E-II/Insp dated 25.05.2018, for filing objections and claims, if any. The Inspector General of Police Sindh constituted a departmental committee vide CPO's order No. 8401-10/E-II/Insp dated 30.06.2018 under the Chairmanship of Adtl. IGP/Establishment & Training Sindh to decide the claims/objections filed by the appellant Inspectors.*

3- *The committee called the appellant Inspectors, heard them in person from 19.02.2019 to 22.02.2019 and also given them sufficient time to explain their objections on the basis of documentary evidences. The committee perused all the relevant rules, legal aspects and service record of the appellant Inspectors and unanimously decided to withdraw/cancel all ante-dated/modified date of appointment which were granted on the basis of approval/offer letters issued by any authority i.e. SPSC and any other authority, as under at para-II which was communicated to all Ranges of Sindh Police including DIGP Hyderabad Range vide letter No. 4949-5000/E/E-II/Insp dated 12.04.2019.*

Para-II

*There is no provision in Police Rule for modification of date of appointment. The claims for modification of appointment dates on the basis of approval / offer letters issued by any authority are not maintainable. Hence, all appeals for modification of*

*appointment dates are rejected and if any order issued by any authority in this regard are treated as cancelled.*

4- According to above directives of CPO Sindh, Karachi vide letter No. 4949, 5000 E-II/Insp dated 12.04.2019 as well as another directives of CPO Sindh, Karachi contained in letter No. 1761-1820/E-II/Insp dated 08.02.2023 which has been issued in compliance of the orders dated 20.12.2021 & dated 30.06.2022 of the Hon'able Supreme Court of Pakistan passed in C.P No. 1307-K, 1308-K, 1318-K & 1319-K of 2020 and judgment dated 14.11.2022 of the Hon'able Sindh Service Tribunal passed in Service Appeals No. 455, 456, 457 & 462 of 2019, all ante-dated appointment with benefit of seniority retrospectively irrespective of original date of appointment allowed time to time by Sindh Service Tribunal, High Court of Sindh or any other authority i.e. CPO Sindh, SPSC, Ranges, District etc. have already been cancelled / withdrawn

5- In view of the above directives of CPO Sindh, Karachi, it is requested to please cancel / withdraw all ante-dated / modified date of appointment granted to ASIs who were appointed through Sindh Public Service Commission (SPSC) as well as others, and place their seniority according to their regular / actual date of appointments instead of retrospective / modified date of appointments. (bold added)

(SUIHA AZIZ) QPM PSP,  
AIGP/ESTABLISHMENT-I  
FOR INSPECTOR GENERAL OF POLICE  
SECRETARY TO GOVERNMENT OF SINDH"

6. The first issue to be determined by this court is whether the petition is maintainable keeping in view Article 212 of the Constitution.

7. Learned counsel for the petitioner contended that the petition was maintainable and relied on the following authorities in support of this contention; **Dr. Sayyid A. S. Pirzada V The Chief Secretary, Services and Administration Department and others** (2023 SCMR 1087), **Ghulam Hussain Baluch V Liaquat Ali Baloch** (1999 SCMR 483) and **Abdul Hameed Anjum and others V Federation of Pakistan and others** (PLD 2010 Supreme Court 857).

8. On the other hand learned APG contended that the petition was not maintainable and relied on the following authorities in support of his contention; **Khalilullah Kakar V Provincial Police Chief of Balochistan** (2021 SCMR 1168), **Syed Asghar Ali Shah V Kaleem Arshad** (2024 SCMR 563), **Syed Muddasar Shah Termizi V Peshawar High Court, Peshawar through Registrar, Peshawar and others** (2021 SCMR 116)

9. We have considered the contentions of the parties and examined the record as well as the case law relied upon by the parties.

10. The first point to note is that the petitioners have all been appointed as ASI's in the Sindh police pursuant to the recommendations of the SPSC; that the background to the dispute and the impugned letter reproduced above undoubtedly point to the fact that the issue in hand relates to inter se seniority of the petitioners/ASI's who were all recommended by the SPSC on the same date for appointment. Hence we conclude that the issue at hand relates to the terms {

and conditions service of civil servants as is further evidenced by the fact that at first instance before the IGP's order the petitioners/ASI's had already approached the Sindh Service Tribunal for redressal of their grievances.

11. Thus we find the petitioners to be civil servants whose case relates to inter se seniority and find that the petition is not maintainable keeping in view Article 212 of the Constitution. We are fortified in this respect by the case of **Khalilullah Kakar V Provincial Police Chief of Balochistan** (2021 SCMR 1168) which is of a similar nature which held as under in material part;

"8. As far as the first question which could hit the very roots of this case is the assumption of jurisdiction by the learned High Court of Balochistan under Article 199 of the Constitution in the presence of specific bar provided under Article 212(2) of the Constitution is concerned, there is no denial to this fact that the respondents being employees of Balochistan Police Force are civil servants and the matter pertaining to issuance of joint seniority lists specifically relates to their terms and conditions of service, which particularly rests within the jurisdiction of Balochistan Service Tribunal. The learned High Court mainly assumed jurisdiction on the ground that at the time of passing of the impugned judgment, the Balochistan Service Tribunal was not functional. The Service Tribunal was not non-functional for an indefinite period. It has been brought to our notice that the earlier Chairman of the Balochistan Service Tribunal remained performing his duties with effect from 06.12.2016 to 05.12.2019 and thereafter the incumbent Chairman was appointed on 05.05.2020 whereas Constitutional Petition No. 334/2019 was filed on 01.04.2019 when the Tribunal was operational. Similarly, Constitutional Petition No. 246/2008 was initially filed on 11.05.2008 and after the judgment of this Court dated 06.11.2018 the amended petition was filed on 24.09.2019. On these dates also, the Tribunal was functional. Therefore, it can be safely said that the very institution of the Constitutional petitions was against the Constitutional mandate. It is an established principle of law that the courts assume their jurisdiction through particular law conferring a particular jurisdiction. Article 212(2) of the Constitution specifically places an embargo on all other courts except Service Tribunal to grant an injunction, make any order or 'entertain' any proceedings in respect of any matter relating to the terms and conditions of service even if they are mala fide, ultra vires or coram non judice. It would be in order to reproduce the said Article 212(2) of the Constitution, which reads as under:-

(2) Notwithstanding anything hereinbefore contained where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal; other than an appeal pending before the Supreme Court, shall abate on such establishment:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal."

9. The word 'entertain' used in Article 212(2) of the Constitution is of significant importance. This means that any petition or proceeding relating to the terms and conditions of service even should not be entertained by the High Court in its constitutional jurisdiction under Article 199 of the Constitution. In view of the facts and circumstances of this case, entertaining and then proceeding with the constitutional petitions amounts to defeating the express Constitutional mandate under which Tribunal is vested with jurisdiction to deal with the matters of civil servants. This Court in the case

269

of Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) has held as under:-

"149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals."

10. In Asadullah Rashid v. Muhammad Muneer (1998 SCMR 2129), this Court held as under:-

"Constitutional petition under Art. 199 of the Constitution is not maintainable by a civil servant in relation to any matter connected with the terms and conditions of service in respect whereof the Service Tribunal has jurisdiction, in view of Article 212 of the Constitution of Pakistan. Orders, even if mala fide, ultra vires or coram non judice, fell within the ambit of Service Tribunal and jurisdiction of Civil Courts including High Court is ipso facto ousted as result of barring provision of Article 212 of the Constitution."

11. The same was the view of this Court in National Assembly Secretariat v. Manzoor Ahmed (2015 SCMR 253). The writ jurisdiction is extraordinary in its scope, it has to be exercised sparingly. The jurisdiction conferred on the High Courts under Article 199 of the Constitution is an extraordinary relief and the same has to be exercised in aid of justice and not to interfere in jurisdictions of other statutory forums. When the law has provided an adequate remedy, constitutional jurisdiction under Article 199 of the Constitution cannot be exercised as the same has to be exercised in exceptional circumstances, which could justify invoking the said jurisdiction. It has time and again been said by this Court that tendency to bypass remedy provided under relevant statute by resorting to constitutional jurisdiction is to be discouraged so that legislative intent is not defeated. The same is meant to be exercised in extraordinary circumstances and not in run of the mill cases. Even otherwise, we have noted that the respondents had not approached the learned High Court after exhausting the remedy of filing departmental appeal. Therefore, we are compelled to observe that the very constitutional petitions were not maintainable before the learned High Court".

12. As such the petition is dismissed as being not maintainable however by way of complete fairness we hereby direct the IGP Sindh to once again consider the inter se seniority of the petitioners through a speaking order within 6 months of the date of this petition in terms of the findings set out below in material part in the case of Syed Hammad Nabi etc V Inspector General Police Punjab (2023 SCMR 584).

"4. We have heard the learned counsel for the parties and Mr. Kamran Adil, DIG (Legal) at some length and have carefully gone through the case law cited at the bar, as well as, the Police Rules, 1934 ("Police Rules") and Police Order, 2002. The question before us is the mode of determination of seniority of a police officer holding the post of Inspector in the Punjab Police under the Police Rules. The answer to the said question is clearly provided under Rule 12.2(3) of the Police Rules, which is reproduced hereunder for convenience:

**12.2. Seniority and probation.** - (1) The seniority of Assistant Superintendents of Police is regulated by the orders passed from time to time by the Secretary of State and the Central Government.

No Probationary Assistant Superintendent of Police shall be permanently appointed as an Assistant Superintendent of Police until he has passed the prescribed departmental examinations.

A Probationary Assistant Superintendent of Police who does not qualify by passing these examinations within two years, or at the first examination after two years, from the date of his joining the service, will be removed from Government service; provided that the Provincial Government shall have power to relax this rule in special cases, when the Probationary Assistant Superintendent of Police is likely to make a good police officer.

(2) The rules governing the probation and seniority of Deputy Superintendents of Police are contained in Appendix 12.1.

(3) All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

*Seniority in the case of upper subordinates, will be reckoned in the first instance from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation, the seniority inter se of several officers confirmed on the same date being that allotted to them on first appointment. Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside his range or district shall, on being promoted or confirmed, regain the seniority which he originally held vis-à-vis any officers promoted or confirmed before him during his deputation.*

*The seniority of lower subordinates shall be reckoned from dates of appointment, subject to the conditions of rule 12-24 and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date.*

*(emphasis supplied)*

Rule 12.2(3) provides that in the first instance the seniority of the upper subordinates shall be reckoned from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. The sub-Rule further provides that seniority shall be finally settled by dates of confirmation, the seniority inter se of several officers confirmed on the same date being that allotted to them on first appointment. Rule 12.2(3) provides for two stages for determining the seniority, one is prior to the probationary period and is to be reckoned from the first appointment and the final seniority is settled from the date of confirmation which is once the period of probation is successfully completed. Period of probation is important as the officers have to undergo various courses (A,B,C & D)10 and qualify the same. Once police officer has successfully undergone the said courses he stands confirmed at the end of the probationary period. The seniority is once again settled, this being the final seniority from the date of confirmation. The above rule is, therefore, very clear that final seniority list of Inspectors will be reckoned from the date of confirmation of the officers and not from the date of appointment".(bold added)

13. The petition is disposed of in the above terms.