

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.D-1303 of 2025

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner: Abdul Sattar,
Through Mr. Muhammad Haseeb Jamali, Advocate

Date of hearing: 19.08.2025

Date of decision: 19.08.2025

O R D E R

Nisar Ahmed Bhanbhro, J: Through instant Petition, the Petitioner has challenged the Order dated 06.03.2024 and 20.06.2025 (impugned orders) issued by District Health Officer Khairpur, through which the Petitioner was reverted from the post of Junior Clerk (BPS-11) to the post of Sanitary Worker (BPS-1).

2. When confronted about the maintainability of the instant Petition, as the petitioner was a civil servant and the impugned orders related to the terms and conditions of service. Learned counsel for the petitioner contended that the petition was maintainable as the authority had passed the impugned orders with *mala fide* intentions and ulterior motives and penalty of reversion was imposed upon the Petitioner without holding any inquiry and affording the right of hearing. He contended that the petitioner filed Representation against the impugned order before the Appellate Authority of department on 17.04.2024, the same was not decided as yet. He contended that the petitioner was condemned unheard. Fundamental rights of the petitioner as to fair trial were violated. He argued that for the aforementioned reasons the instant Petition was maintainable.

3. Heard Learned Counsel. Perused the material available on record. Admittedly, the petitioner was appointed as Sanitary Worker in the Health Department vide Order dated 10.09.2007 issued by the Executive District Officer, Health Khairpur. The petitioner has not placed on record any material to elicit that he was ever promoted to the post of Junior Clerk by the Departmental Promotion Committee (DPC). Perusal of the impugned order dated 06.03.2024 reflected that the petitioner was reverted to Grade-1 as Sanitary Worker on the recommendations of the Inquiry Committee, and during the inquiry, the right of hearing was given to the Petitioner. The contention of the petitioner that he was

condemned unheard was not sustained from the record. Petitioner was a Civil Servant, the disciplinary proceedings were initiated and concluded against him under the provisions of Sindh Civil Servants (Efficiency and Disciplinary) Rules, 1973 (E&D Rules). The Competent Authority can impose penalty upon a civil servant on any of the grounds provided under Rule 3 of E&D Rules which reads as under:

3. Grounds for penalty.-Where a Government servant, in the opinion of the authority-

(a) is inefficient or has ceased to be efficient; or

(b) is guilty of misconduct; or

(c) is corrupt, or may reasonably be considered corrupt because- (i) he is, or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources or of property disproportionate to his known sources of income; or (ii) he has assumed a style of living beyond his ostensible means; or (iii) he has persistent reputation of being corrupt; or

(d) is engaged , or is reasonably suspected of being engaged, in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person and his retention in service is, therefore, prejudicial to national security, the authority may impose on him one or more penalties.

4. The Competent Authority based upon the result of proceedings initiated against a civil servant was empowered to take any action against the civil servant including reversion to lower rank or grade, termination and removal from service or any other minor penalty as provided under Rule 4 of the E&D Rules, which reads as under:

4. Penalties.-(1) The following are the minor and major penalties, namely

(a) Minor Penalties:

censure; (i) withholding, for a specific period, promotion or increment, otherwise than for unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post;

(ii) stoppage, for a specific period, at an efficiency bar in the time scale, otherwise than for unfitness to cross such bar;

(iii) recovery from pay of the whole or any part of any pecuniary loss cause to Government by negligence or breach of orders;

(b) Major Penalties:

(i) reduction to a lower post or time-scale, or to a lower stage in a time

scale;

(ii) compulsory retirement;

(iii) removal from service; and

(iv) dismissal from service.

(2) Removal from service does not, but dismissal from service does, disqualify for future employment.

(3) In this rule removal or dismissal from service does not include the discharge of a person- (a) appointed on probation, during the period of probation, or in accordance with the probation or training rules applicable to him; or (b) appointed, otherwise than under a contract, to hold a temporary appointment, on the expiration of the period of appointment; or (c) engaged under a contract in accordance with the terms of the contract.

5. When the Civil servant is proceeded by the Competent Authority for the charges of misconduct and consequently any final action is taken by way of imposing Penalty under Rule 4 of E&D Rules, the right course available under the law for such Civil Servant is to assail upon the adverse final order before the forum created under the law for dealing with the matters relating to the terms and conditions of the service. The petitioner after reversion had the remedy to file departmental appeal in terms of Rule 3 of the Sindh Civil Servants (Appeal) Rules 1980, which provided for filing of an appeal within 30 days of an order passed by the Competent Authority. Rule 3 reads as under:

3.-(1) A civil servant aggrieved by an order of the competent authority relating to the terms and conditions of his service may, within 30 days from the date of the order, prefer an appeal to the appellate authority: Provided that where the order is made by the Government there shall be no appeal by the civil servant but he may apply for review of the order: Provided further that the appellate authority or as the case may be, Government may condone the delay in preferring appeal or review petition, if it satisfied that the delay was for reasons beyond the control of the appellant or for the reasons that the earlier appeal or review petition was not addressed to the proper forum.

(2) Where the order of the competent authority affects more than one civil servants every affected civil servant shall prefer appeal separately.

(3) Where the civil servant has died, the appeal may be filed or pursued if it has already been filed, by any of his legal heirs entitled to inherit his property; provided that the benefit likely to accrue in the appeal is heritable.

6. Perusal of the record revealed that the Petitioner filed Departmental Appeal through District Health Officer, Khairpur on 29.03.2024 which was forwarded to the Competent Authority on 17.04.2024, which per the contention of the Learned Counsel for the Petitioner was not yet decided. If the Competent Authority failed to decide the Appeal within a reasonable time, the Petitioner again had a proper forum in the shape of Service Tribunal available under the law to file a service appeal. The Service Tribunal has been established under Sindh Service Tribunal Act, 1973 (SST Act). Section 3 of the SST Act excluded the jurisdiction of any other forum or Court to adjudicate the matters relating to the terms and conditions of the service. If the Competent Authority failed to decide the appeal within 120 days' time, the Petitioner could have filed Service Appeal by invoking section 4 of the SST Act, which reads as under:

4. Appeals to Tribunals.- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within twelve months of the establishment of a tribunal whichever is latter prefer an appeal to the Tribunal having jurisdiction in the matter.

Provided that (a) where an appeal, review or representation to a departmental authority is provided under the Sindh Civil Servants Act, 1973, or any rules, against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was so preferred; and

(b) no appeal shall lie to a Tribunal against an order or a decision of a departmental authority determining the fitness or otherwise of a person, to be appointed to or hold a particular post or, to be promoted to a higher post or grade; and (c) subject to the provisions of section 6, no appeal shall lie to a Tribunal against an order or decision of a departmental authority made at any time before the 1st July, 1969.

Explanation. – In this section, “departmental authority” means any authority, other than a Tribunal, which is competent to make an order in respect of any of the terms and conditions of civil servants.

7. It was within the competence and jurisdiction of Service Tribunal to pass orders to confirm, set aside, vary or modify the order appealed against and was conferred the powers of a Civil Court codified the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of enforcing the attendance of any person and examining him on

oath; compelling the production of documents; issuing commission for the examination of witnesses and documents; and execution of its decisions. In presence of such a forum for adjudication of the right of the civil servants if aggrieved by the adverse final orders, the writ jurisdiction of this Court was not available.

8. The intent of the legislature for setting up of a Tribunal the SST Act was to provide an expeditious and fastmoving remedy for settling the disputes relating to the terms and conditions of service of the civil servants working under the umbrella of Sindh Government. Undoubtedly, as, and when, any issue in respect of the terms and conditions of the service of the employees arose and any final order was passed by the authority under Rule 4 of the E&D Rules or any other Rule applicable to the civil service in Sindh which may include the grievance against the reversion, dismissal from service, compulsory retirement, wrong fixation of seniority, or grievance against any minor or major penalty, then adequate remedy provided under the law was to take recourse to Tribunal which is an ultimate fact-finding forum available.

9. Under the constitutional command, in the presence of specific bar contained under Article 212(2) of the Constitution of Islamic Republic of Pakistan of 1973, the very institution of the Constitutional petitions was against the spirit of law. 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 based upon mala fide, ultra vires or coram non judice. Article 212(2) of the Constitution, 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."

10. The word 'entertain' used in Article 212(2) of the Constitution is of great significance and 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.

11. This view is fortified by the judgment of Honorable Supreme Court of Pakistan in the case of MUHAMMAD HASSANULLAH (OMG/B-18), ACTING ADDITIONAL SECRETARY, HEALTH DEPARTMENT, BALOCHISTAN Versus CHIEF SECRETARY, GOVERNMENT OF BALOCHISTAN, QUETTA and another reported as 2025 S C M R 134, wherein it has been held that:

6. In the case before us, the respondents were asserting a right which fell within their terms and conditions of service. They were admittedly civil servants within the meaning of the said expression as defined under the Act of 1974. It was mandatory for them to have agitated the grievance in the manner prescribed under the scheme of law applicable to a civil servant under the Act of 1974 and the Tribunals Act. Moreover, they had explicitly stated in the memorandum of the petition that the same matter was challenged and it was pending before the Tribunal. The objection regarding maintainability of the petition and its adjudication under Article 199 of the Constitution was raised by the Government but it was not adverted to by the High Court. The respondents were attempting to achieve an object which was not justiciable before the High Court while exercising jurisdiction under Article 199 of the Constitution. The bar under Article 212 had ousted the jurisdiction of the High Court. The declaration made by the High Court was, therefore, not sustainable. The matter was already pending before the Tribunal and thus the latter had the exclusive jurisdiction to adjudicate upon it.

12. The Honorable Apex Court in the case of Ali Azhar Khan Baloch versus Province of Sindh reported as 2015 SCMR 456 in para No 149 while dealing with the issue of entertaining the petitions by this Court under article 199 of the Constitution in the matters

relating to the terms and conditions of the Civil Servants observed that the article 212 did not confer a concurrent jurisdiction to this Court. It was held that:

"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."

13. In the case of Asadullah Rashid versus Muhammad Muneer reported as 1998 SCMR 2129, Honorable Apex 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 Art. 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 Art. 212 of the Constitution."

14. Yet in another case of National Assembly Secretariat versus Manzoor Ahmed reported as 2015 SCMR 253 Honorable Supreme Court of Pakistan was pleased to hold that.

"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.

15. In presence of an appropriate and adequate available under the law, civil servant cannot be allowed to bypass the forum of Service Tribunal, which for all purposes was an adequate remedy under the law. Even the mala fides and ulterior motives. The constitution petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot be entertained in lieu of the bar contained under article 212(2) of the constitution.

16. For the foregoing reasons, this petition being misconceived, devoid of merits and not maintainable, is accordingly dismissed in *limine* with listed applications with no order as to the costs. The petitioner however is at liberty to avail the remedy under the relevant service laws, if so advised.

Judge

Judge

Sukkur
19.08.2025
Approved for reporting
ARBROHI/PS