

IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-597 of 2017

Present

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Muhammad Azeem Soomro and others

Petitioners

V E R S U S

Province of Sindh and others

Respondents

Date of hearing: 31.01.2017

Mr. Ghulam Nabi Shar, Advocate for Petitioners

ORDER

ADNAN-UL-KARIM MEMON-J:

Through this Constitutional

Petition, the Petitioners seek following relief:-

- i. To direct the Respondents to maintain proper seniority list in all over the Province of Sindh in Excise, Taxation and Narcotics Department and promote the employees/Petitioners according to their seniority.
- ii. To direct the Respondents to reverse/undo the illegal promotions of employees, who bypass the seniors and been promoted bypassing the seniors and depriving the rights of the seniors including the promotion of Senior Clerks to the Inspectors, in the said Department.
- iii. To restrain the Respondents from issuing any notice, letter of promotion and/or performing any employee of the Excise, Taxation and Narcotics Department till maintaining the proper seniority list by the Respondents.

- iv. That grant of any other relief which this Hon'ble Court deem fit and approximately in the circumstances.

Prayer for grant of Petition in the interest of justice.

The case of the Petitioner is that they are serving as Constables and performing their duties according to law, but they have not been promoted, their seniority have not been maintained properly by the Respondents and Juniors/favourites persons/employees have been accommodated/promoted in violation of the Rules and Regulations. The Petitioners being aggrieved and dissatisfied with the inaction, they approached the Respondents for promotion as per seniority rules as Dafedar (BPS-6), which is the legal right of the Petitioners and the Petitioners are seeking promotion in accordance with their seniority, but the Respondents did not entertain genuine grievances of the Petitioners.

It is, inter-alia, contended by the learned counsel for the Petitioners that the Seniority List issued by the Respondents in a secret manner without circulation in accordance with Rules. Per learned counsel, the Petitioners approached the Respondents for proper assignment of seniority and promotion, but the Respondents illegally promoted the juniors to the posts of Inspectors. Per learned counsel, many other employees, who were not eligible to be promoted, they had been accommodated by the Respondents, in violation of Rules and Regulations and the Petitioners have been ignored. Learned counsel for the Petitioners further submitted that inspite of completion of all legal, procedural and codal formalities the Respondents did not consider the promotion of the Petitioners and the Respondents took unjustified decision, as juniors to the Petitioners were promoted without due process

of law. Per learned counsel, most of the Petitioners are at the verge of retirement from service and if they are not promoted as per their seniority, they shall not only suffer the monetary loss, but will lose the dignity and self-respect amongst the juniors officers.

We have heard the learned counsel for the Petitioners and gone through the entire material available on record.

Admittedly, the Petitioners are Civil Servants as defined under Section 2 (b) of Sindh Civil Servants Act, 1973. The Petitioners have approached this Court for seniority and promotion.

We have scanned the Petition and gone through the Sindh Civil Servants Act, 1973 and the Rules framed thereunder.

The matter of seniority and eligibility for promotion squarely fall within the expression the “terms and conditions” of service, which includes seniority and eligibility to the promotion and as such this Court has no jurisdiction to entertain the Constitutional Petition under Article 212 of the Constitution. The Sindh Services Tribunal has exclusive jurisdiction in respect of matters relating to “terms and conditions” of service of Civil Servants, which includes seniority matters. Reference is usefully made in the case of *Ali Azhar Khan Balouch and others vs. Province of Sindh and others* (2015 SCMR 456).

We are of the view that under Article 199 of the Constitution Civil Servants cannot claim vested right for promotion and in seniority and this Court has no jurisdiction to entertain Constitutional Petition pertaining to seniority matters.

We are also fortified with the principle enunciated by the Honourable Apex Court in the case of Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others vs. Hayat Hussain and others (2016 SCMR 1021).

In the light of the above facts and circumstances of the case, this Petition cannot be entertained by this Court under Article 199 of the Constitution as there is clear bar of jurisdiction under Article 212 of the Constitution. This Petition being misconceived, is dismissed in limine alongwith listed applications.

However, the Petitioners are at liberty to avail the proper remedy in accordance with law.

JUDGE

JUDGE