

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

**C.P. No. D- 365 of 2019**

**Present:**

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

Petitioner : Khadim Hussain  
through Mr. Wajid Ali Khaskheli Advocate

Respondents : None present for respondents

Date of hearing: 04.3.2019

Date of decision: 04.3.2019

**ORDER**

**ADNAN-UL-KARIM MEMON,J:-** Through the captioned Constitution petition, the petitioner has prayed as under:-

- a. That this Honourable Court may be pleased to direct the respondents to compliance the Civil Petition No.12-K of 2003 Judgment/order dated 12.09.2003 that reinstate the petitioner in the service with immediate effect and not entitled for any back benefits.
- b. That this Honourable Court may further be pleased to call the record from the office of Directorate of Excise and Taxation and Narcotic Hyderabad Division and Accounts Office Hyderabad and to take stern action against the involved officials in mega corruption, mismanagement and failure of compliance the order.
- c. That this Honourable Court may be pleased to direct the respondents to maintain proper seniority list according to decision of Honourable Supreme Court of Pakistan and not indulge the reinstated constables 1991-1992 accordingly to law.
- d. That this Honourable Court may further be pleased to initiate the departmental enquiry against the involved respondents No.4, 5, 8, 9 and 10 in respect of corruption, illegal promotions, transaction illegally and misappropriation in official capacity.
- e. This Honourable Court may be pleased to declare that respondents 3, 4 and 5 have violated the fundamental rights under the Constitution of Pakistan.

- f. That this Honourable Court may be pleased to direct respondent No.7 to inquire into the matter of mega corruption, illegality, misconduct and losses of state treasure.
- g. That this Honourable Court may further be pleased to direct the respondent No.1 to recover the intervening period claim amount from the 70 and more employees which is purely government treasure.
- h. That this Honourable Court may be pleased to direct to respondents No.4, 9 and 10 do not harass to the petitioner in any manner.

2. The basic grievance of the petitioner is that he is working as Excise Constable in BPS-5 in the Department of Excise, Taxation Narcotics in Hyderabad Division, since 1995; that the seniority list of Constables was issued by the respondent Department on 31.01.2019, whereby he has been deprived of his basic right of seniority due to reinstatement of excise constables and other staff members appointed in the year 1991-92 as per the order dated 12.09.2003 passed by Honorable Supreme Court of Pakistan in Civil Petition No.12-K of 2003; that their reinstatement was without back benefits, which means they cannot be given seniority retrospectively with effect from 1991-92 but from the date of their reinstatement in service i.e. 2003; that the respondent Department constituted a screening committee, which cleared those officials and reinstated the remaining terminated excise constables, without back benefits; that now the respondents have issued a seniority list by providing seniority to the aforesaid employees with retrospective effect as discussed supra with certain benefits, in violation of the aforesaid judgment of Honorable Supreme Court of Pakistan. Per Petitioner this has happened due to mega corruption, therefore the departmental enquiry into the conduct of the officials of the excise department, with regard to awarding illegal seniority and promotion etc. may be ordered so that they may be exposed, who have caused colossal loss to public exchequer; that proper seniority of the excise constables in the excise department is not being maintained under the law. Petitioner being aggrieved by the aforesaid illegal decisions of the respondents has filed the instant petition on 16.2.2019.

3. Mr. Wajid Ali Khaskheli, the learned counsel for the petitioner has contended that due to mega corruption in the office of the excise department, Government of Sindh, in awarding retrospective seniority and promotion to the officials who were reinstated in the year 2003, without back benefits, the petitioner has suffered as his due promotion in the next rank was not taken place; that

departmental enquiry/probe into the allegations may be ordered so that the Respondents may be exposed; that proper seniority of the excise constables in the excise department is not being maintained under the law. He next contended that the respondents have initiated recovery proceedings against the reinstated employees i.e. Excise and Taxation Inspectors, junior clerks /excise constables, who were terminated from service during the year 1995 with the reason that their appointments were illegal and without observing the codal formalities; that many of them were reinstated with the orders of learned Sindh Service Tribunal; that their intervening period was to be decided as per judgment of Sindh Service Tribunal; that they have been reinstated in service with retrospective seniority and have been allowed to draw their salaries for intervening period, which is unlawful act on the part of official respondents; that there is mega corruption in the respondent-Department which is being highlighted here; that excise constables appointed in the year 1991-92 subsequently terminated and reinstated in service, their names have been illegally incorporated in the seniority list showing them senior to the petitioner, with malafide intention, while depriving the petitioner of his due seniority; that from last three years no DPC has been conducted and no concrete step has been taken against the mega corruption in the Department; that corruption in the Department is rampant, which needs to be curbed. He lastly prayed for allowing the instant petition.

4. During the course of arguments we asked from learned counsel for the petitioner to satisfy this Court regarding maintainability of instant petition on the principle that the issue of seniority in the Excise and Taxation Department is to be looked into by the learned Sindh Service Tribunal as provided under section 4 of the Sindh Service Tribunal Act, 1973 as the petitioner is civil servant, and probe with regard to the allegations of corruption and corrupt practices in the respondent department, he has the remedy before the relevant forum to avail first. He in reply to the query has submitted that he has come to this Court for implementation of the order passed by Honourable Supreme Court of Pakistan as discussed supra, therefore this petition is maintainable.

5. We have gone through the judgment dated 24.11.2003 passed by Honourable Supreme Court of Pakistan in CP No.12-K of 2003, which does not support the case of the petitioner on the pleas he has taken in the instant petition. The relevant portion of the judgment is reproduced as under:-

“Learned Tribunal in pursuance of the order of this Court again heard the matter and at that time learned Assistant A.G had no objection if the appeal of the respondent was allowed. Consequently, the appeal of the respondent was allowed mainly on the ground that his case was identical to those 26 appellants, whose appeals were already accepted.

The only grievance of learned counsel for petitioner is that the second appeal of the respondent before the Tribunal was time barred. When this attention was drawn to the fact that this Court allowed the petition of respondent and directed Tribunal to decide the matter afresh on merits, he has nothing to argue further. The Tribunal has decided the matter on merits after it was remanded by this Court. This, however, is an admitted position that the case of the respondent is identical to those appeals, which were already allowed by the Tribunal and the judgment of Tribunal was upheld by this Court. Under circumstances impugned judgment is not open to any exception.

In consequence, leave to appeal is refused and the petition is dismissed.

6. Primary question in the present proceedings is whether the Civil Servant can file a Writ Petition by invoking Constitutional Jurisdiction of this Court in respect of the terms and conditions of his service. We are of the considered view that the jurisdiction of this Court in respect of the matters pertaining to terms and conditions of Civil Servants is ousted under Article 212 of the Constitution on the subject which squarely falls within the exclusive domain of Administrative Service Tribunal. The expression “terms and conditions” includes seniority, we are fortified on this point by the decision of the Hon’ble Supreme Court in the case of *Ali Azhar Khan Balouch and others v. Province of Sindh and others* (2015 SCMR 456). On this point, this Court has no jurisdiction to interfere by means of Writ. Our view is further strengthened by the decisions rendered by the Hon’ble Supreme Court in the case of *Government of Khyber Pakhtunkhwa and others v. Hayat Hussain and others* (2016 SCMR 1021).

7. We have noted that the basic principle of seniority as enunciated under Rule 9 and 10 of the *Sind Civil Servants (Probation, Confirmation and Seniority) Rules, 1975* is that the seniority of a civil servant is to be reckoned from the date of his regular appointment. And no appointment made on adhoc basis is to be regularized retrospectively. Section 8 of *Sindh Civil Servant Act, 1973* explicitly provides that for proper administration of a service, cadre or post the appointing authority is required to cause a seniority list of the members for the time being of such service, cadre or post to be prepared, but nothing herein contained shall be

construed to confer any vested right to a particular seniority in such service, cadre or post as the case may be. The inter-se-seniority of civil servants appointed in a batch or on the same date is being determined in the following manner: -

- a) In the case of persons appointed by initial recruitment, in the order of merit assigned by the selection authority, and if such authority is either not competent to assign such order of merit or has omitted to do so and is unable to overcome the omission for reasons beyond its control, the seniority shall be determined by the appointing authority: Provided further that a person selected in earlier selection shall rank senior to a person selected in a later selection;
- b) In the case of persons, appointed by promotion on the basis of their inter-se-seniority in the lower (post).
- c) In the case of persons appointed by initial recruitment vis-à-vis persons appointed by promotion, on the basis that the persons appointed by promotion shall rank senior to be persons appointed by initial recruitment;
- d) In the case of persons not covered by clauses (a) to (c) on the basis that persons older in age shall rank senior to persons younger in age.

8. Keeping in view the above mentioned facts and circumstances of the case, we do not see any infringement of right of the Petitioner which could be called in question by way of Writ Petition.

9. Much emphasis has been laid on the issue of corruption in the respondent department, and this court to order for probe in the matter by issuing writ of mandamus. We are cognizant of the fact that the basic object of issue of writ of mandamus is to compel performance of a legal duty. A mandamus will be issued to a person aggrieved who approaches the Court, if he makes out (i) existence of a legal right in him and a corresponding obligation on the respondent to perform a legal duty and (ii) refusal, either express or implied, by the respondent to perform such duty, in spite of a demand. Where a petition seeking mandamus is not preceded by demand for performance of a legal duty, the Court cannot entertain such a petition. In our view no mandamus can be issued when the petitioner has made a distinct demand before the appropriate authorities for the very reliefs which he seeks to enforce by mandamus and that had been refused. We are here to administer justice in accordance with law and principle of equity, justice and good conscience.

10. Prima facie the issue with regard to seniority of civil servant, in our view this Court has no jurisdiction to entertain the grievance of the petitioner under Article 199 of the Constitution and the questions which have been raised in this

petition can be entertained by the learned Sindh Service Tribunal as the matter pertains to the terms and conditions of service of the petitioner. The petitioner has not furnished any valid explanation whatever for the inordinate delay on his part in approaching the Court to challenge the seniority on the principles laid down in the aforesaid rules. We would accordingly hold that the challenge raised by the petitioner against the seniority principles laid down ought to have been agitated before the Sindh Service Tribunal. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the Services Tribunal constituted under Article 212 of the Constitution.

11. In the light of above facts and circumstances of the case, we do not find any reasoning to entertain the grievance of the petitioner as agitated by him under Article 199 of the Constitution. This petition is not maintainable, which is accordingly dismissed in limine along with listed applications.

JUDGE

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