

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P. No.D-7998 of 2018

Zainal-Abdin Morio & 02 othersPetitioners

Vs.

Province of Sindh & anotherRespondents

Dates of hearing: 16.05.2019

Date of Order: 16.05.2019

Mr. Muhammad Arshad Khan Tanoli, Advocate for the Petitioners.
Mr. Abdul Jalil Zubedi, AAG alongwith Mr. Ghulam Mohiyuddin,
Section Officer-II, Works & Services Department & Qamaruddin,
Section Officer (Appeal-I), SGA&CD.

ORDER

ADNAN-UL-KARIM MEMON, J:- Basically, the Petitioners have filed the instant Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan,1973 seeking direction to the Respondent-Works and Services Department to issue Final Seniority List of Assistant Engineers [Graduate-Civil] BPS-17.

2. We asked from the learned Counsel to satisfy this Court with regard to maintainability of the instant Petition on the premise that issuance of seniority or otherwise is part of terms and condition of service and no vested right can be claimed through Writ Petition as Sections 8 and 9 of the Sindh Civil Servants Act, 1973 read together with section 4(1) proviso (b) of the Sindh Service Tribunals Act, 1973 are very clear on that proposition of law. Mr. Muhammad Arshad Khan Tanoli, learned Counsel for the Petitioners, in reply, has argued that it is the vested right of the Petitioners to ask for issuance of Final Seniority List, in view of

Section 8(1) of the Sindh Civil Servants Act, 1973 and Rule-9(1) and (2) of Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975. He, however, stated that he will be satisfied if the directions are issued to the Respondent-Department to issue Final Seniority List, mentioning the proper seniority of the Petitioners in accordance with law.

3. Conversely, Mr. Abdul Jalil Zubedi, learned AAG tried to convince this Court, by pleading the case of Respondents that Works & Services Department is maintaining category wise seniority lists of Sub-Engineer Engineers/ Assistant Engineers from the date of regular appointment as per the provision contained in Rule-II of Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975. Subsequently, diploma holder Sub-Engineers were allowed to switch over from one seniority list to another seniority list on acquiring higher qualification and assigned seniority from the date of declaration of result as per policy; that subsequently, diploma holders, Sub-Engineers acquiring higher qualification i.e. B.E (Civil) who were allowed seniority from the date of passing B.E (Civil) in the seniority list of Graduate Sub-Engineers, but they preferred appeals for reconsideration of their cases regarding assignment of their seniority in Graduate Civil Sub-Engineers from the date of seniority wherein Graduate Civil Sub-Engineers were allowed seniority from the date of regular appointment instead of date of passing of B.E (Civil) as allowed by this Court vide order dated 28.08.2012 in C.P.No.D-219/2011; that the Petitioners and other Graduate Sub-Engineers, who were initially appointed as Graduate Sub-Engineers, were allowed promotion as Graduate Assistant Engineer (BPS-17) vide Notification dated 09.4.2013 and were allowed seniority over and above the Petitioners and their names were placed at Sr. No.133 & 134, whereas the name of Petitioners

(Mr. Zain Abdin Morio) placed at Sr. 137, in the seniority list of Graduate Assistant Engineers (BPS-17) as stood on 01.9.2014; that since the issuance of the seniority list the dispute took place as to whether seniority is liable to be determined from the date of passing of higher qualification i.e. B.E (Civil)/B.Tech or from the date of regular appointments, therefore the seniority list has not yet been finalized. He lastly prayed for dismissal of the instant Petition.

4. We have heard learned counsel for the parties and considered their submissions on the issue of maintainability of the instant petition and have perused the material available on record.

5. The precise question involved in the instant Writ Petition is issuance of final seniority list and determination and placement of names of the Petitioners on the seniority list. Learned counsel for the Petitioners in order to plead maintainability of the Writ petition, referred the earlier consent order of this Court dated 19.11.2018 passed in Writ Petition No.D-201 of 2017 and contended that since in the said writ petition a direction with regard to preparation of a Final Seniority list had been passed by this Court therefore, no discrimination can be meted out to the present Petitioners and this Writ petition is maintainable.

6. We have gone through the aforesaid order and are of the view that the consent order cannot be cited as precedent to claim similar treatment, for the simple reason that the Petitioners have to cross the basic hurdle of the preliminary objection regarding maintainability of the present petition, therefore, we are not impressed by the proposition put forwarded by the learned counsel. Even the stance of the Petitioners that, they have been discriminated, could not be decided by this Court as the seniority is covered by the terms and conditions of service. Even if an

employee while fixing seniority is discriminated or any of his fundamental right has been violated, he would have two remedies, firstly, if provided, he could file appeal/representation before the departmental hierarchy and then Appeal before the Service Tribunal. Even otherwise, the Hon'ble Supreme Court of Pakistan in the case of I.A. SHARWANI and others versus GOVERNMENT OF PAKISTANA through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041) with reference to Article 212 of the Constitution of Islamic Republic of Pakistan, in clear terms has held that:-

“However, we may clarify that a civil servant cannot bypass the jurisdiction of the Service Tribunal by adding a ground of violation of the Fundamental Rights. The Service Tribunal will have jurisdiction in a case which is founded on the terms and conditions of the service even if it involves the question of violation of the Fundamental Rights.”

7. In our view, on the point that seniority of a civil servant necessarily entails terms and conditions of service of civil servants and the question about seniority of civil servants can be settled by the Sindh Service Tribunal established under the Constitution.

8. The present matter is relating to terms and conditions of civil servants fall in the exclusive jurisdiction of Sindh Service Tribunal in terms of Article 212(2) of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 3(2) of Sindh Service Tribunal Act, 1973, therefore, the Petitioners cannot invoke the jurisdiction of this Court. Our view is supported by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of *Ali Azhar Khan Baloch vs. Province of Sindh [2015 SCMR 456]*. The Hon'ble Supreme Court has held at Paragraph No.150 as under:-

“150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the civil servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority and eligibility to promotion but excludes 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 as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has

been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of civil servants.” **[Emphasis Added]**

9. In our view, in the seniority cases no vested right/fundamental right can be claimed. This view finds support from the case of Chairman, FBR through Member Administration Vs. Muhammad Asfandyar Junjua and others **[2019 SCMR 349]**, Secretary, Govt. of Punjab and other vs. Dr. Abida Iqbal and others **[2009 PLC C.S. 431]**, Government of Khyber Pakhtunkhawa and others vs. Hayat Hussain and others **[2016 SCMR 1021]** & Khan M. Muti Rahman and others **[2006 PLC (C.S) 564]**.

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

11. 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 along with pending Application[s].

Nadir/PA

JUDGE

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