

ORDER SHEET  
**IN THE HIGH COURT OF SINDH KARACHI**

Constitutional Petition No. D –2844 of 2021  
Constitutional Petition No. D –147 of 2022

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Date \_\_\_\_\_ order with signature of Judge(s) \_\_\_\_\_

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**Constitutional Petition No. D –147 of 2022**

For Direction:

1. For order on CMA No.5794/22 (u/a)
2. For order on CMA No.5796/22 (151)
3. For order on CMA No.5795/22 (rule10)
4. For order on CMA No.5258/22 (exempt)
5. For order on CMA No.2988/22 (stay)
6. For order on CMA No.6143/22 (stay)
7. For order on maintainability of CMA No.1588/2022

**Constitutional Petition No. D –2844 of 2021**

D/o matter

1. For order on CMA No.1550/2022
2. For orders as to maintainability of CMA No.676/2022

**08.03.2022**

Mr. Abdul Salam Memon, advocate for the petitioners  
Mr. Zaheer Hussain, advocate for the petitioner in CP No.D-2844 of 2021  
Mr. Achar Khan Gabol, advocate for Intervener  
Mr. Ali Safdar Depar, AAG along with Riaz Ahmed Jakhrani, Deputy Secretary, Health Department, and Dr. Sikandar Memon, Focal Person, Health Department.

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Both the petitions have already been disposed of vide orders dated 08.12.2021 and 17.1.2022 alongwith CMA No.28845/2020 in CP No.D-2844/2021. For convenience sake, both the orders are reproduced as under:-

*“08.12.2021.*

*.....In the light of above discussion the instant petition merits no consideration and the same is accordingly dismissed in limine along with the pending application(s). However, it is made clear that if the salary of the petitioners is stopped on account of pendency of disciplinary proceedings, the same shall be disbursed to them during the intervening period. The Competent Authority shall take into consideration the defence of the petitioners and after providing the meaningful hearing to them, conclude the matter within the stipulated period and report compliance through MIT-II of this Court for our perusal.”*

*“17.1.2022.*

*Learned counsel for the petitioners does not press this petition and submits that this petition may be disposed of in terms of the ratio of the order dated 10.1.2022. Petition stands disposed of along with pending application(s) in terms that the respondents shall consider the points of law raised in the order mentioned above.”*

Mr. Abdul Salam Memon has refuted the allegations of the Health Department and submitted that the image of the petitioners has been tarnished by

twisting the facts by the respondents. He further submitted that major penalty cannot be awarded without conducting regular inquiry and the impugned order dated 27.1.2022 passed by the respondents is in violation of Article 10A of the Constitution. Per learned counsel, the petitioners on the similar set of allegations had already been exonerated by the competent authority i.e. Minister concerned and now after about four years the same disciplinary proceedings have been initiated against the petitioners and awarded major penalty of removal from service by the incompetent authority under the service law. The Secretary Health and the Minister Health are not competent to impose major penalty simultaneously upon the petitioners under the law. He prayed for setting aside of the impugned order dated 27.1.2022

The nub of the arguments of the learned counsel for the petitioners is that no regular inquiry was conducted against the petitioners before knocking them out from the subject posts as observed by this court in the aforesaid orders. Learned counsel for the petitioners further pointed out that the major punishment awarded to the petitioners, without following the procedure as provided under the law. Per learned counsel, there is a difference between the competent authority and authorized officer and both the powers have been exercised by the Secretary of Health which is against the law.

The learned AAG supported the impugned orders passed by the competent authority whereby the services of the petitioners have been dispensed with; and, argued that the guilt of the petitioners was proved during inquiry proceedings and they were rightly awarded a penalty by the department under the law and both these orders could be assailed before the learned Sindh Services Tribunal and jurisdiction of this court is barred under Article 212 of the Constitution.

Mr. Achar Khan Gabol learned counsel representing the intervenor has supported the stance of the learned AAG and prayed for dismissal of the applications filed by the petitioners on the ground that the Honourable Supreme Court directed the Sindh Government to take disciplinary actions against the petitioners based on the report of learned sessions judge Ghotki, herefore no further indulgence of this court, is required when the matter finally decided by the competent authority in compliance with the judgment of Honourable Supreme Court. An excerpt of the order dated 15.5.2017 passed by Honourable Supreme Court is reproduced as under:-

*"15.5.2017.*

*Pursuant to the successive orders passed by this Court in the matter, the Secretary, Health Department, Government of Sindh has submitted report dated 24.3.2017 being CMA No.1756/2017 in which the Secretary has dilated and specified the measures taken by the Health Department, Govt. of Sindh on report dated 14.2.2017 submitted by the District and Sessions Judges, Ghotki and Jacobabad.*

2. *The Deputy Secretary Health Department, Govt. of Sindh is in attendance. He states that the persons who were responsible in the commission of unlawful activities i.e. of illegal adjustments, promotions, reappointments to higher post will be taken to task and appropriate proceedings against them will be initiated by the Government of Sindh and they will be dealt with in accordance with law. Report in this respect will be made available by the Secretary, Health Department, Govt. of Sindh to this Court through the Registrar for our perusal in chambers within a period of one moth.*

3. *The report as submitted by the Secretary, Health Department, Govt. of Sindh is taken on record pursuant to which we are of the considered opinion that the purpose of Suo Motu Case has been achieved. The individual employees who may have any grievance of any nature they may avail remedy in accordance with law before the appropriate forum provided under the law.*

4. *The Suo Motu Case No.01/2016 along with listed C.M.As are disposed of accordingly.”*

At this stage, learned counsel for the parties attempted to reopen and reargue the cases on merits through the listed applications, after disposal of the petitions, which cannot be allowed.

We are of the considered view that disciplinary action against a civil servant is a part of his terms and conditions of service and the jurisdiction of this Court is expressly barred in respect thereof.

In this case, we have been informed that petitioners have been removed from service, by the direction of the Honorable Supreme Court, therefore their matter cannot be reopened through the listed applications in a disposed of the matter; and, for redressal of their grievance, Sindh Service Tribunal is available, which is meant for dealing and deciding the matters relating to the terms and conditions of service of the petitioners. And that forum has exclusive jurisdiction to look into the guilt or innocence of the petitioners as to whether due process of law or right to a fair trial was followed or ignored. On the aforesaid proposition, we are fortified with the decision rendered by the Hon'ble Supreme court in the case of Ali Azhar Khan Baloch vs. Province of Sindh [2015 3CMR 456]. The Hon'ble Supreme Court in paragraphs 146 to 150 has held as under:-

“146. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including the disciplinary matters. In other words, jurisdiction 3 of all other Courts is barred by the provisions of the Sindh Service Tribunals Act, 1973, read with Article 212 of the Constitution.

147. Section 4 of the Service Tribunals Act provides Civil Servants with the right of filing an Appeal before the Tribunal, subject to the qualifications provided therein.

148. In this background, all the Civil Courts, including a Judge (in Chambers) of the High Court of Sindh, exercising jurisdiction on the original side as a civil court under C.P.C. cannot entertain a civil suit of a civil Servant relating to the terms and conditions of his service. The exercise of jurisdiction by

the High Courts is conferred under Article 175(2) which reads as under: --  
"175(2) No Court shall have any jurisdiction save as is or may be conferred on it  
by the Constitution or by or under any law."

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.

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."

Considering the case of the Petitioners in the above perspective, we find no  
merits in the listed applications, which are dismissed accordingly. However, Petitioners  
may seek appropriate remedy as provided under the law.

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