

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –3502 of 2021

Syed Babar Hashmi

Versus

PPO/Secretary to Government of Sindh and 05 others

Date of hearing

& order

: 03.06.2021

Mr. Qamar Iqbal, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through the instant petition, the petitioner has called in question major punishment of compulsory retirement from service vide office order dated 14.10.2020 issued by the Superintendent of Police, HQ West Zone, Karachi.

2. At the outset, we asked the learned counsel for the petitioner as to how this petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, in the light of Article 212(2) of the Constitution.

3. Mr. Qamar Iqbal, learned counsel for the petitioner, has only put forward the reason to approach this Court that there is no alternate, adequate and efficacious remedy available to the petitioner (Police Constable) except this petition. He asserted that he has suffered a lot at the hands of terrorist organizations, as such this is a case of hardship, which can be heard and decided by this Court on merit, irrespective of his remedy before the learned Sindh Service Tribunal. He has further submitted that the impugned order dated 14.10.2020 is suffering from various legal defects, thus could not be termed as the order passed within the terms and conditions of service of the petitioner, therefore, the bar of Article 212(2) of the Constitution will not come in the way of the Petitioner, more particularly, compulsory retirement order is based on malafide intention by the incompetent authority; that the petitioner is fully entitled to be treated in accordance with law. He lastly prayed for allowing the instant Petition.

4. We do not agree with the statement of the learned counsel for the Petitioner on the aforesaid assertions for the simple reason that compulsory

retirement from service is a major penalty under service jurisprudence and falls within the ambit of expression terms and condition of service of the civil servant, therefore, the jurisdiction of all other courts is barred by the provision of Sindh Service Tribunals Act, 1973 read with Article 212(2) of the Constitution. 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 SCMR 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, the jurisdiction 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 Servant 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 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."

5. In the light of the foregoing authoritative judgment of the Hon'ble Supreme Court of Pakistan, this petition fails and is accordingly dismissed in *limine* along with all the pending application(s), leaving the petitioner at liberty to avail his remedy as provided under the law.

JUDGE

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