

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

C. P No. D-645 of 2022

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Before:

Mr. Justice Adnan-ul-Karim Memon,
Mr. Justice Abdul Mobeen Lakho,

The petitioner
(in CP No. D-645/2022)

Fahad Ali ,
None present

The petitioner
(in CP No. D-646/2022)

Ghulamuddin,
None present

Federation

Through Mr. Muhammad Imran Abbasi,
Assistant Attorney General

The State

Through Mr. Munwar Ali Abbasi, A.A.G.

Date of hearing & order: 28-07-2022

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ORDER

Adnan-ul-Karim Memon, J. Through instant petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, the petitioners have prayed that respondent No.1 has illegally shifted polling stations and replaced them with other polling stations respectively in violation of provisions of Election Rules. Today the petitioners and their counsel are called absent without assigning any reason, however, we intend to decide the instant matters with the assistance of the learned DAG and AAG on the premise that the question involved in these proceedings has already been set at naught by this Court in various petitions.

As the question has also been raised as to the propriety of interfering in Constitutional Petition under Article 199 of the Constitution with orders passed by the Election Authority as discussed supra as election process of Local Bodies Elections, 2022 (Phase-I) has already been concluded with the announcement of the result, now the vires of the process could be assailed before the Election Tribunal constituted by the Election Commission of Pakistan. On the aforesaid analogy, we express our opinion that the jurisdiction of this Court to issue writ, at this stage, against the order of the election authority, after the election process, is

liable to be assailed before the Election Tribunal for the simple reason that it is well settled that where there is another remedy provided, the Court may properly exercise its discretion in declining to interfere under Article 199 of the Constitution. However it should be remembered that under the election law as amended up to the day, the Constitution petition could be dismissed on the aforesaid preliminary ground; and, the correctness of the decision of the District/Returning officer could not be challenged before the Election Tribunal.

The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law as discussed supra.

In this view, it would be a proper exercise of discretion under Article 199 of the Constitution to decline to interfere with such an election process in terms of the provision of Appeal under the Sindh Local Bodies Elections, Rules 2015, against the declaration of result of the returned candidate. As it is well-settled law the Courts and Tribunals are constituted to decide the matters between the parties within the confines of statutory limitations and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted. Besides the above, the applicants and their counsel have chosen to remain absent, perhaps for the reasons stated that since the election process of Local Bodies Elections, 2022 (Phase-I) is over, this petition has become infructuous

We are, therefore, of the view that these do incur dismissal on the ground that the petitioners have to avail of their legal remedy before the Election Tribunal, by raising all their pleas as agitated in the instant petitions.

These petitions are dismissed.

Judge

Judge