

IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT SUKKUR

Const. Petition No.D-461 of 2023

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Zulfiqar Ali Sangi

Petitioner: Dr. Kalssom Begum through Mr. Sarfraz Ahmed Akhund, Advocate.

Respondents No.1 to 5: Through Mr. Ali Raza Balouch, Additional Advocate General Sindh along with Mr. Ali Akber Siyal, Consultant Focal Person on Legal Affairs PUMHSW-SBA.

Respondents No.6: Through Mr. Abdul Salam Memon, Advocate.

Date of hearing: 23-12-2024.

Date of decision: 24-01-2025

ORDER

Zulfiqar Ali Sangi, J. The petitioner has filed the instant petition with the following prayers:-

“(a) To direct respondent No.3 to follow the principle of law settled in 2023 SCMR 174 and declare the petitioner as senior to the respondent No.6 as she has been appointed on regular basis while respondent No.6 came from back door having been appointed on contract basis and thereafter got his service regularized retrospectively by regularization Act passed in the year 2019.

“(b) To grant any other relief which this Court deems fit and proper in the circumstances of the case.

“(c) To award the costs of the petition.”

2. Learned counsel for the petitioner submits that the petitioner's case is at par with that of respondent No. 6, but the petitioner has been deprived of relief. Therefore, this petition has been filed. In support of his contention, he relies upon the case *Mushtaque Ahmed Memon and another v. Arshad Hussain Bhutto and others (2023 SCMR 174)* [Annexure 'D', Page 27] and the case *Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others v. Sameena Parveen and others (2009 SCMR 1)*. On being queried by the Court, learned counsel admits that the petitioner has not approached the Service Tribunal despite being a civil servant and has directly filed this petition before this

Court. He submits that the petition may be allowed, and respondents be directed to consider the petitioner's case as per the prayer.

3. Mr. Ali Raza Balouch, Additional Advocate General Sindh, while opposing the petition, submits that this is the third petition filed by the petitioner. The earlier petitions were CP No. D-206 of 2023 and CP No. D-1179 of 2022. He further informs the Court that the petitioner has also filed CP Nos. 47 of 2023 and 461 of 2023. He draws the Court's attention to the order dated 02.05.2023 and submits that CP No. D-206 of 2023 was dismissed by a detailed order dated 23.11.2023. Lastly submits that petition is barred by Article 212 of the Constitution of Islamic Republic of Pakistan and the same may be dismissed

4. Mr. Abdul Salam Memon, learned counsel for respondent No. 6, also opposes the petition. He refers to paragraph 6 of the judgment in *Mushtaque Ahmed Memon* (supra) and submits that the petitioner has filed this petition without approaching the Sindh Service Tribunal, therefore, her petition is not maintainable and may be dismissed.

5. We have heard learned counsel for the parties and have gone through the material available on record with their able assistance.

6. Upon perusal of record, it is evident that the petitioner had previously filed petitions CP No. D-47 of 2023, CP No. D-206 of 2023, and the present petition. CP No. D-47 of 2023 was withdrawn on 02.05.2023, while CP No. D-206 of 2023 was dismissed by this Court through a detailed order dated 23.11.2023. Respondent No. 6, Dr. Rukhsar Ali Shahani, was also a party (respondent No. 8) in that petition. The petitioner in C.P No. D-47 of 2023 had made the following prayers:-

(a). *To direct the respondent No.1 to 4 to consider the objections of petitioner (in respect of seniority list of professors of KMC Khairpur) and decide the same after giving her the opportunity of hearing, and then pass an order as per law, rules and policy and submit such compliance report before this Honourable Court.*

(b). *To direct the respondents No. 1 to 4 to consider the objections of the petitioner in respect of seniority list of professors working in KMC Khairpur as the petitioner has been deprived from her seniority and her name has been placed at Serial No.4 instead of Serial No.1 as she is most senior professor than respondent No.8 to 10. Further the respondents No.1 to 4 may kindly be directed to revise/review the seniority list of the professors of KMC Khairpur Mir's after considering the objections of the petitioner and submit such revised list before this Honourable Court.*

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(c). To restrain the respondents No. 1 to 7 for taking any coercive measures/action against the petitioner in respect of her service, due to filing of this petition against them.

(d). To grant any relief which this Honourable Court deems fit under the circumstances of the case.

(e). To award the cost of petition.

7 After a detailed hearing, this Court while dismissing the petition of the present petitioner observed as under:-

“11. A gist of the above discussion is that the maintainability of the petition, in view of the fact that petitioner is a civil servant and she can approach the Sindh Service Tribunal to challenge notification dated 28.01.2023 is under serious question and cannot be lost sight of either. And apparently, in order to make this petition maintainable before this court, she has challenged notification dated 22.12.2022. But this approach has failed to satisfy us either on merits of the case or maintainability of this petition before this court.”

8 Now coming to the prayer clause of the instant petition we have perused the judgment of Honourable Supreme Court in the case of **Mushtaque Ahmed Memon and another v. Arshad Hussain Bhutto and others (2023 SCMR 174)** from which it reflects that initially the parties approached this court by filing Constitutional Petition which was objected by raising a specific plea of maintainability being barred by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. And after dismissal of the petition from this court the parties approached the Sindh Service Tribunal by filing appeals to safeguard their seniority. The Tribunal's Judgment favors the approaching party and was challenged by the opposite party before the Honourable Supreme Court and it was maintained. Here in the case in hand the petitioner had approached this court without approaching the Sindh Service Tribunal. It is an established principle of law that the courts assume their jurisdiction through particular law conferring a particular jurisdiction. Article 212(2) of the Constitution specifically places an embargo on all other courts except Service Tribunal to grant an injunction, make any order or 'entertain' any proceedings in respect of any matter relating to the terms and conditions of service even if they are mala fide, ultra vires or coram non iudice. The Article 212(2) of the Constitution of Islamic Republic of Pakistan, 1973 reads as under:-

(2) Notwithstanding anything hereinbefore contained where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal

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extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal; other than an appeal pending before the Supreme Court, shall abate on such establishment:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal."

9 It is necessary to understand the word 'entertain' used in Article 212(2) of the Constitution of Islamic Republic of Pakistan, 1973. It means that any petition or proceeding relating to the terms and conditions of service even should not be entertained by the High Court in its constitutional jurisdiction under Article 199 of the Constitution. Entertaining and then proceeding with the constitutional petitions amounts to defeating the express Constitutional mandate under which Tribunal is vested with jurisdiction to deal with the matters of civil servants. The foremost aspiration of setting up a Tribunal is to provide an expeditious and fast moving remedy for settling the disputes relating to the terms and conditions of service. Indubitably, as, and when, any issue is cropped up in respect of the terms and conditions of the service including the grievance against the dismissal from service, compulsory retirement, **wrong fixation of seniority**, or grievance against any minor or major penalty, then the recourse is to be made through the Tribunal which is an ultimate fact-finding forum available and they are not supposed to file civil suit in the Civil Court or the Writ Petition in the High Court to challenge the adverse departmental or disciplinary actions against them as was held by the Supreme Court of Pakistan in case of **Abdullah Channah v. The Administrative Committee and others (2024 PLC (C.S) 946)**. Further the Supreme Court of Pakistan in the case of **Mukhtar Ahmad Junejo and others v. Province of Sind and others (PLD 1986 SC 560)** has held that the disputes relating to **seniority** are pertaining to the terms and conditions of service of a civil servant and any dispute regarding the seniority arose then only the Service Tribunal has jurisdiction to entertain it. The above principle has also been settled by the Supreme Court of Pakistan in the cases of **Iftikharullah Khan v. The Secretary, Irrigation and Power Department (2002 PLC (CS) 720)**, **L.H. Shaikh v. General Manager, Karachi Tele-communication Region (1974 SCMR 82)** and **Khadim**

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Hussain v. Dr. Farzana Chaudhry and others (2001 PLC (C.S) 1239).

10 The Supreme Court Pakistan in the case of ***Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456)***, also while discussing the correct jurisdiction to challenge the service disputes has held as under:-

"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."

11. In another case of ***Asadullah Rashid v. Muhammad Muneer (1998 SCMR 2129)***, the Honourable Supreme Court of Pakistan has held as under:-

"Constitutional petition under Art. 199 of the Constitution is not maintainable by a civil servant in relation to any matter connected with the terms and conditions of service in respect whereof the Service Tribunal has jurisdiction, in view of Art. 212 of the Constitution of Pakistan. Orders, even if mala fide, ultra vires or coram non iudice, fell within the ambit of Service Tribunal and jurisdiction of Civil Courts including High Court is ipso facto ousted as result of barring provision of Art. 212 of the Constitution."

12. In the case ***National Assembly Secretariat v. Manzoor Ahmed (2015 SCMR 253)***, it was held by the Honourable Supreme Court of Pakistan that the writ jurisdiction is an extraordinary in its scope, it has to be exercised sparingly. The jurisdiction conferred on the High Courts under Article 199 of the Constitution is an extraordinary relief and the same has to be exercised in aid of justice and not to interfere in jurisdictions of other statutory forums. When the law has provided an adequate remedy, Constitutional jurisdiction under Article 199 of the Constitution cannot be exercised as the same has to be exercised in exceptional circumstances, which could justify invoking the said jurisdiction. In the case of ***Khalilullah Kakar v. Provincial Police Officer, Baluchistan and others (2021 P L C (C.S.) 1030)***, the Honourable Supreme Court of Pakistan has held as under:-

"It has time and again been said by this Court that tendency to bypass remedy provided under relevant statute by resorting to constitutional jurisdiction is to be

discouraged so that legislative intent is not defeated. The same is meant to be exercised in extraordinary circumstances and not in run of the mill cases. Even otherwise, we have noted that the respondents had not approached the learned High Court after exhausting the remedy of filing departmental appeal. Therefore, we are compelled to observe that the very constitutional petitions were not maintainable before the learned High Court."

13. In light of the foregoing discussion, and having carefully examined the material on record and principles settled by the superior Courts (Supra), it is clear that the petitioner has filed this petition in contravention of the constitutional bar imposed by Article 212 (2) of the Constitution of the Islamic Republic of Pakistan, 1973. As such, this petition is not maintainable. Consequently, this petition stands dismissed along with pending applications. The petitioner may approach the Sindh Service Tribunal for redressal of her grievances in accordance with law if she desires.

JUDGE
24/01/2025

~~JUDGE~~

Announced by us in open court

~~JUDGE~~
27/11/24

Shahid Hussain Soomro

~~JUDGE~~
28/01/2025

Muhammad Saleem Jaffer, J.