

**IN THE HIGH COURT OF SINDH, AT KARACHI**

Const. Petition No.D-5209 of 2025

**Present:**

*Mr. Justice Muhammad Karim Khan Agha*

*Mr. Justice Nisar Ahmed Bhanbhro*

Petitioners:

Shahid Ali & others                      *Through* Mr. Shoaib Ali Khatian, Advocate

Respondents:

Province of Sindh and others                      Nemo

Date of hearing:                      11.11.2025

Date of decision:                      11.11.2025

**O R D E R**

**Nisar Ahmed Bhanbhro, J:** Through instant Petition, the Petitioner has claimed the following relief:

- (a) A writ of mandamus directing the Respondents to perform its statutory obligations and duties fairly, justly, reasonably and in accordance with law and decide the appeal of Petitioners.*
- (b) Any other additional relief(s) as this Honorable Court may deem fit and proper in the circumstances of the case.*

2. At the very outset Learned Counsel for the Petitioners was confronted as to how this petition was maintainable, as in the prayer clause of the petition, Petitioners have not challenged any order or action taken by the Respondents.

3. Learned counsel for the petitioners contended that pursuant to an advertisement published in year 2012 Petitioners applied for various teaching positions; that Petitioners appeared in the written test conducted by the Department on 02.04.2012; that Petitioners were declared successful in the written test, and were issued appointment letters; that Petitioners performed duties diligently, but after lapse of few months their salaries were stopped and ultimately the services of Petitioners were terminated vide letter dated

15.11.2012 without affording them the right of hearing; that Petitioners challenged the termination order before Sindh Service Tribunal (SST) through service appeal, which was allowed. School Education Department challenged the order of SST before Learned Apex Court. The Appeal filed by the department was allowed by the Honorable Supreme Court and case was remanded back to SST for decision afresh. In de novo proceedings SST dismissed the Service Appeal of Petitioners. He further argued that the Department scrutinized the cases of other appointees but refused to scrutinize the cases of Petitioners, they preferred appeal which was yet to be decided. He argued that the petition was maintainable, hence prayed for issuance of notice.

4. Heard Learned Counsel for Petitioners. Perused material available on record. Admittedly, the petitioners were appointed as Teachers in School Education Department in District Shikapur vide appointment orders dated 25.10.2012. The appointment orders of Petitioners were found bogus, as there was no recommendation of District Recruitment Committee, mandatory requirement under the APT rules for issuance of appointment orders. Petitioners were conveyed such information of cancellation of appointment orders through letter dated 15.11.2012. The record reflects that Petitioner No 9 and 15 challenged the cancellation order before SST through service appeal No 1311 of 2015 and others, were decided by Learned SST vide consolidated order dated 07.12.2025, wherein the recruitment process in District Shikarpur was declared null and void and illegal. Petitioners No 9 and 15 did not challenge the order of SST before Appellate Forum that is Honorable Supreme Court of Pakistan, thus attained finality.

5. The contention of the Learned Counsel for the petitioners that the Petitioners condemned unheard was not sustained from the record. The Petitioners were appointed as Teachers by the District Education Officer in violation of APT Rules; thus, their appointments were not sustainable under the law and withdrawn/ cancelled by the Deputy Commissioner who was the Chairman of District Recruitment Committee. The Petitioners (except Petitioners No 9 and 15) did not challenge the cancellation order before appellate forum. The Petitioners were civil servants and the right course available under the law was to file departmental appeal in terms of Rule 3 of the Sindh Civil Servants (Appeal) Rules 1980, which provided for filing of an appeal within 30 days of an order passed by the Competent Authority, Rule 3 reads as under:

*3.-(1) A civil servant aggrieved by an order of the competent authority relating to the terms and conditions of his service may, within 30 days from the date of the order, prefer an appeal to the appellate authority:*

*Provided that where the order is made by the Government there shall be no appeal by the civil servant but he may apply for review of the order: Provided further that the appellate authority or as the case may be, Government may condone the delay in preferring appeal or review petition, if it is satisfied that the delay was for reasons beyond the control of the appellant or for the reasons that the earlier appeal or review petition was not addressed to the proper forum.*

*(2) Where the order of the competent authority affects more than one civil servants every affected civil servant shall prefer appeal separately.*

*(3) Where the civil servant has died, the appeal may be filed or pursued if it has already been filed, by any of his legal heirs entitled to inherit his property; provided that the benefit likely to accrue in the appeal is heritable.*

6. Perusal of the record further transpired that the Petitioners did not file the Departmental Appeal within stipulated time and preferred a representation before Chief Secretary Sindh in year 2023 after the lapse of about 11 years, which was hopelessly time barred. Under the appeal rules if the Competent Authority failed to decide the Departmental Appeal within a reasonable time, the Petitioner again had a proper forum to file a service appeal before Service Tribunal established under Sindh Service Tribunal Act, 1973 (SST Act). Section 3 of the SST Act excluded the jurisdiction of any other forum or Court to adjudicate the matters relating to the terms and conditions of the service. If the Competent Authority failed to decide the appeal within 120 days' time, the Petitioner could have filed Service Appeal by invoking section 4 of the SST Act, which reads as under:

*4. Appeals to Tribunals.- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within twelve months of the establishment of a tribunal whichever is latter prefer an appeal to the Tribunal having jurisdiction in the matter.*

*Provided that (a) where an appeal, review or representation to a departmental authority is provided under the Sindh Civil Servants Act, 1973, or any rules, against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was so preferred; and*

*(b) no appeal shall lie to a Tribunal against an order or a decision of a departmental authority determining the 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; and (c) subject to the provisions of section 6, no appeal shall lie to a Tribunal against an order or decision of a departmental authority made at any time before the 1st July, 1969.*

*Explanation. – In this section, “departmental authority” means any authority, other than a Tribunal, which is competent to make an order in respect of any of the terms and conditions of civil servants.*

7. It was within the competence and jurisdiction of Service Tribunal to pass orders to confirm, set aside, vary or modify the order appealed against and was conferred the same powers as of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of enforcing the attendance of any person and examining him on oath; compelling the production of documents; issuing commission for the examination of witnesses and documents; and execution of its decisions. In presence of such a forum for adjudication of the right of the civil servants if aggrieved by the adverse final orders, the writ jurisdiction of this Court was not available.

8. Under the constitutional command, in the presence of specific bar contained under Article 212(2) of the Constitution of Islamic Republic of Pakistan of 1973, the very institution of the Constitutional petitions was against the spirit of law. 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 based upon mala fide, ultra vires or coram non judice. Article 212(2) of the Constitution, 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 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. The word 'entertain' used in Article 212(2) of the Constitution is of great significance and importance. This 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. In view of the facts and circumstances of this case, 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.

10. This view is fortified by the judgment of Honorable Supreme Court of Pakistan in the case of MUHAMMAD HASSANULLAH (OMG/B-18), ACTING ADDITIONAL SECRETARY, HEALTH DEPARTMENT, BALOCHISTAN Versus CHIEF SECRETARY, GOVERNMENT OF BALOCHISTAN, QUETTA and another reported as 2025 S C M R 134, wherein it has been held that:

*6. In the case before us, the respondents were asserting a right which fell within their terms and conditions of service. They were admittedly civil servants within the meaning of the said expression as defined under the Act of 1974. It was mandatory for them to have agitated the grievance in the manner prescribed under the scheme of law applicable to a civil servant under the Act of 1974 and the Tribunals Act. Moreover, they had explicitly stated in the memorandum of the petition that the same matter was challenged and it was pending before the Tribunal. The objection regarding maintainability of the petition and its adjudication under Article 199 of the Constitution was raised by the Government but it was not adverted to by the High Court. The respondents were attempting to achieve an object which was not justiciable before the High Court while exercising jurisdiction under Article 199 of the Constitution. The bar under Article 212 had ousted the jurisdiction of the High Court. The declaration made by the High Court was, therefore, not sustainable. The matter was already pending before the Tribunal and thus the latter had the exclusive jurisdiction to adjudicate upon it.*

11. In presence of an appropriate and adequate available under the law, civil servant cannot be allowed to bypass the forum of Service Tribunal, which for all purposes was an

adequate remedy under the law. Even on the grounds of the mala fides and ulterior motives the constitution petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot be maintained in lieu of the bar contained under article 212(2) of the constitution. More over in the case of Petitioners matter was adjudicated by the fact - finding forum wherein it was held that the appointments of teachers in District Shikarpur were done in violation of laws and rules thus not sustainable. Therefore, decision on the appeal filed by the Petitioners after about 11 years delay will not yield any fruits, as Respondents cannot sit over the orders passed by a judicial forum.

12. For the foregoing reasons, this petition being misconceived and devoid of merits and not maintainable, is accordingly dismissed in *limine* with listed applications with no order as to the costs.

Judge

Head of the Constitution Benches

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Approved for reporting