

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No. D-1970 of 2025

[Mst. Shameen Shaikh v. Director General Pakistan Post Office & Others]

Before:

JUSTICE ARBAB ALI HAKRO

JUSTICE RIAZAT ALI SAHAR

Petitioner:	Mst. Shameen Shaikh through Mr. Kewal Kumar, Advocate
Respondents:	Director General Pakistan Post Office and others through Mr. Bashir Ahmed Almani, Assistant Attorney General for Pakistan along with Nasim Iqbal, Chief Post Master Hyderabad GPO (Respondent No. 2) and Nabil Solangi, AS (Court)
Date of Hearing:	05.03.2026.
Date of Judgment:	19.03.2026.

JUDGMENT

RIAZAT ALI SAHAR, J. - Through this constitutional petition, the petitioner has challenged the impugned Letter/Order dated 30.10.2025 issued by Respondent No.2 whereby she has been directed to deposit an amount of Rs. 836,823/- on the allegation of misappropriation, failing which the matter would be reported to the FIA for initiation of criminal proceedings. It is the case of the petitioner that despite submitting her written defence and cooperating with the inquiry proceedings, the respondents, without providing a fair opportunity of hearing, without disclosing the findings or recommendations of the inquiry committee, and without following the due process envisaged under the applicable service rules, issued the impugned letter which is arbitrary, unlawful and violative of the principles of natural justice as well as the fundamental rights guaranteed under the Constitution; thus, seeking following reliefs:

“a) Allow this petition in favour of the petitioner and declare the impugned Letter/Order issued by the respondent No.2 dated 30.10.2025 null & void, arbitrary, abuse of power and set aside the same.

b) Suspend the operation of the impugned Letter/Order dated 30-10-2025 issued by the respondent No.2 till the disposal of this petition.

c) Allow any other relief or reliefs which this Honourable Court may deem fit and proper in the circumstances of the case in the interest of justice.”

2. The brief background of the case is that the petitioner was appointed as Cleric (BPS-09) in Pakistan Post, Hyderabad GPO vide appointment letter dated 23.05.2011; consequently, she was allowed to join her service vide letter dated 26.05.2011 issued by respondent No.2 (available at page-21 to 23 of Court file) and has been performing her duties honestly and diligently. Subsequently, her scale was revised to BPS-10 in the year 2022 and later she was transferred to Post Office Latifabad Unit No.05 where she has been working as Postmaster. During course of service, the respondent No.2 initiated an inquiry against the petitioner through letter dated 03.09.2025 on the allegation of misappropriation of an amount of Rs.856,823/-, to which the petitioner submitted her written defence and fully cooperated with the inquiry proceedings. However, without properly considering her defence and without disclosing the findings or recommendations of the inquiry committee, the respondent No.2 issued the impugned letter dated 30.10.2025 directing the petitioner to deposit the alleged amount, failing which the matter would be referred to FIA for criminal proceedings.

3. Learned counsel for the petitioner contended that the impugned Letter/Order dated 30.10.2025 issued by the respondent No.2 is patently illegal, arbitrary and without lawful authority as the same has been issued in sheer disregard of the settled principles of service jurisprudence and the rules governing departmental inquiries. He argued that although an inquiry was initiated against the petitioner on the allegation of misappropriation of an amount of Rs.836,823/-, the petitioner had duly submitted her written defence within the stipulated period and also appeared before the inquiry committee and fully cooperated with the proceedings; however, her defence was neither properly considered nor any finding or

recommendation of the inquiry committee was communicated to her. It was further contended that the respondents, without concluding the inquiry in accordance with law and without issuing any show-cause notice or providing a fair opportunity of hearing to the petitioner, straightaway issued the impugned threatening letter directing her to deposit the alleged amount forthwith and further warning that in case of failure her case would be referred to the FIA for registration of criminal proceedings, which action is contrary to the principles of natural justice and due process of law. Learned counsel further submitted that under the scheme of service rules, the competent authority is required to first complete the inquiry, consider the inquiry report and thereafter issue a show-cause notice before imposing any liability or penalty, whereas in the present case the respondents have acted in a hasty and arbitrary manner. He also contended that such coercive action, without following the prescribed procedure, amounts to abuse of authority and violation of the petitioner's fundamental rights guaranteed under Articles 4, 9, 10-A and 14 of the Constitution of the Islamic Republic of Pakistan, 1973. Learned counsel lastly argued that the impugned letter has caused serious prejudice, harassment and mental agony to the petitioner and if the same is not suspended, the respondents may proceed to initiate criminal proceedings against her before she could avail her departmental remedy, therefore the impugned letter is liable to be declared unlawful and set aside by this Court.

4. Notices were duly issued to Respondent Nos.1 to 3, who entered appearance and filed their detailed comments/reply contesting the claim of the petitioner on both maintainability as well as merits. In their reply, the respondents primarily raised a preliminary objection that the instant constitutional petition is not maintainable in view of Article 212 (2) of the Constitution of Islamic Republic of Pakistan, 1973, asserting that the petitioner is a civil servant within the meaning of the Civil Servants Act, 1973 and the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, therefore the matter, being one arising out of terms and conditions of service, falls within the exclusive jurisdiction of the Federal Service

Tribunal. In support of such objection, the respondents placed reliance upon the judgments reported as 2024 PLC (C.S.) 1530, 2025 SCMR 134, PLD 2005 SC 842 and 1999 SCMR 2828. On merits, the respondents averred that while the petitioner was serving as Postmaster at Latifabad No.5 Post Office, Hyderabad since 19.03.2025, she allegedly collected electricity bills amounting to Rs.8,36,823/- from 84 consumers, but failed to deposit the same in the Government account and instead misappropriated the amount, as allegedly established during the inquiry proceedings. It was their case that on the basis of the inquiry report, the impugned letter dated 30.10.2025 was lawfully issued directing the petitioner to deposit the misappropriated amount, failing which the matter would be referred to FIA for recovery and criminal proceedings. The respondents further asserted that the recovery was necessary for settlement of the claims of affected consumers, who had also approached higher forums including the Wafaqi Mohtasib. They further maintained that the petitioner was afforded due opportunity during both the fact-finding inquiry and the regular inquiry under the E&D Rules, 2020; that the allegations stood proved against her; that thereafter a show-cause notice dated 01.12.2025 was also issued in accordance with law; and that instead of availing the departmental remedy available under Rule 22 (2) of the Civil Servants Act, 1973, the petitioner approached this Court merely to delay and obstruct the departmental proceedings. The respondents also denied the allegation of arbitrariness, contending that the impugned action was based on lawful inquiry proceedings, and further asserted that disciplinary proceedings and criminal proceedings operate in separate fields. On these assertions, Respondent Nos.1 to 3 sought dismissal of the instant petition.

5. Heard the learned counsel for the petitioner as well as the learned Assistant Attorney General for Pakistan appearing on behalf of Respondent Nos.1 to 3 and perused the material available on record with their able assistance. From the arguments advanced and the pleadings of the parties, it appears that the principal controversy requiring determination by this Court is whether the

instant constitutional petition is maintainable in view of the bar contained under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, as asserted by the respondents, or whether the impugned Letter/Order dated 30.10.2025 issued by Respondent No.2 directing the petitioner to deposit the alleged misappropriated amount and threatening referral of the matter to FIA has been issued without lawful authority, in violation of due process and principles of natural justice, thereby attracting the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The resolution of the aforesaid issue necessarily requires examination of the true nature of the grievance, the status of the petitioner, the character of the impugned action and the extent of the constitutional bar created by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

6. At the very outset, it is to be noted that **the petitioner is admittedly serving in Pakistan Post and, therefore, squarely falls within the category of a civil servant for the purposes of service jurisprudence.** The record further reveals that the impugned action has arisen out of departmental proceedings initiated against her on allegations of financial irregularity and misappropriation committed during the discharge of official duties as Postmaster. The respondents have specifically pleaded that an inquiry was conducted, the petitioner was associated with the proceedings, and thereafter the impugned communication dated 30.10.2025 was issued, followed by a show-cause notice dated 01.12.2025. Thus, irrespective of the language employed in the petition, the substratum of the dispute unmistakably arises from and is integrally connected with the petitioner's terms and conditions of service, including disciplinary consequences flowing from alleged misconduct committed in service. Once the matter is found to be service-related in substance, the form of drafting or the invocation of fundamental rights cannot alter the true legal character of the controversy.

7. Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 begins with a non obstante clause and authorises the establishment of administrative courts and tribunals to exercise exclusive jurisdiction in matters relating to the terms and conditions of persons in the service of Pakistan, including disciplinary matters. Sub-Article (2) thereof further mandates that where such tribunal has been established, no other court shall grant an injunction, make any order or entertain proceedings in respect of any matter to which the jurisdiction of such tribunal extends. The constitutional command is, therefore, explicit and exclusionary. It is now a settled principle that where jurisdiction is expressly ousted by the Constitution itself, the High Court while exercising jurisdiction under Article 199 cannot assume authority merely because the impugned action is alleged to be arbitrary, mala fide, coram non iudice or violative of fundamental rights. Jurisdiction is the foundation of adjudicatory authority; where it is absent, the entire superstructure collapses. The august Supreme Court in *Khyber Tractors (Pvt.) Ltd. Through Manager v. Pakistan Through Ministry of Finance, Revenue and Economic Affairs, Islamabad PLD 2005 SC 842* reiterated that the question of jurisdiction is always of foundational importance and that any order passed by a forum lacking jurisdiction, even if otherwise correct on merits, is unsustainable in law. This principle applies with greater force where the ouster stems directly from the Constitution.

8. The recent pronouncement of the Supreme Court reported as *Muhammad Hassanullah (Omg/B-18), Acting Additional Secretary, Health Department, Balochistan v. Chief Secretary, Government of Balochistan, Quetta and another 2025 SCMR 134* has authoritatively reaffirmed that the bar contained under Article 212 is attracted whenever the grievance of a civil servant relates to terms and conditions of service, and that such bar extends even to cases where the impugned order is alleged to be without jurisdiction, mala fide, coram non iudice, or violative of fundamental rights. **The ratio decidendi of the said judgment is that the exclusivity conferred upon the service tribunal cannot be circumvented by clever drafting or by**

dressing up a service grievance in constitutional attire. The Court further held that the proper test is whether the grievance has been agitated by a civil servant and whether it relates to the terms and conditions of service. If the answer is in the affirmative, the High Court's constitutional jurisdiction stands ousted. The principle laid down therein applies with full force to the present case because the petitioner, being a civil servant, has challenged an action stemming from departmental inquiry and threatened disciplinary and consequential proceedings arising out of her official functions.

9. Likewise, in *Ahmad Ullah and others v. District Education Officer (Male), Buner and Others 2024 Plc (C.S.) 1530*, the Honourable Supreme Court again examined the distinction between matters falling within the exclusive domain of the Service Tribunal and those excluded therefrom. It was held that eligibility and all matters concerning service conditions fall within the exclusive jurisdiction of the Tribunal, and that even a plea of violation of fundamental rights does not confer jurisdiction upon the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The ratio of that judgment is of broader application: before entertaining any constitutional petition filed by a civil servant, the High Court must first determine the bar of jurisdiction under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. In other words, maintainability is not a peripheral objection but the threshold question. In the present matter, that threshold objection has been specifically raised by the respondents, and once it is found that the impugned communication is part of the disciplinary continuum, no further adjudication on merits would be legally warranted by this Court.

10. Reference may also be made to *Sarfraz Ahmad Hiraja v. Water and Power Development Authority and others 1999 SCMR 2828*, wherein the Honourable Supreme Court held in unequivocal terms that the High Court cannot entertain a petition relating to the terms and conditions of service of a civil servant even on the ground of mala fide. The legal maxim *quando aliquid*

prohibetur ex directo, prohibetur et per obliquum fully applies; what cannot be done directly cannot be permitted indirectly. Therefore, once a service matter is assigned by the Constitution to a specialised forum, the same cannot be brought before the High Court by merely alleging breach of natural justice or by apprehending adverse consequences such as initiation of criminal proceedings. Such allegations may constitute grounds before the competent service forum, but they do not revive jurisdiction where the Constitution has expressly excluded it.

11. The learned counsel for the petitioner has strenuously argued that the impugned letter is not a final order of penalty but a coercive and threatening communication issued without disclosure of the inquiry report, without proper hearing and without conclusion of proceedings strictly in accordance with law. I have given anxious consideration to this submission. However, even if for the sake of argument it is assumed that the departmental authority acted prematurely or in breach of the prescribed procedure, the grievance would still remain embedded in the petitioner's service relationship and the disciplinary process initiated against her. The Service Tribunal, while seized of a competent appeal or upon exhaustion/lapse of departmental remedy in accordance with the governing law, is fully empowered to examine whether the impugned action is lawful, whether due process has been observed, whether the inquiry was conducted in accordance with applicable rules, and whether the petitioner has been prejudiced by procedural impropriety. The existence of an alternate constitutional forum of exclusive jurisdiction is not displaced merely because the petitioner alleges that the departmental action is harsh, illegal or procedurally defective.

12. The record further shows that according to the respondents, a show-cause notice dated 01.12.2025 has already been issued and that departmental remedies were available to the petitioner under the service laws, which, according to the respondents, were not availed before invoking the constitutional

jurisdiction of this Court. Whether the proceedings were correctly initiated, whether the petitioner was afforded adequate opportunity, whether the recovery could lawfully be ordered in the manner adopted, and whether criminal referral could be threatened at that stage, are all questions which may legitimately arise for examination before the competent service forum; however, these are not questions which this Court can adjudicate in exercise of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 once the constitutional bar under Article 212 is found applicable. It is settled that where law prescribes that a thing is to be done in a particular manner, it must be done in that manner alone and not otherwise. Equally settled is the principle that jurisdiction cannot be conferred by consent, waiver, acquiescence or sympathetic considerations.

13. It may also be observed that the apprehension of possible referral to FIA or contemplated criminal proceedings does not change the complexion of the present lis. The impugned letter itself emanates from the employer department in consequence of alleged misconduct committed during service and seeks recovery of an amount alleged to have been misappropriated while performing official duties. The mere inclusion of a warning that the matter may be reported to another agency in case of non-compliance does not convert an otherwise service matter into a pure constitutional or criminal law issue for the purpose of jurisdiction. So long as the genesis of the dispute lies in disciplinary action arising out of service, the constitutional bar remains operative. Whether parallel criminal consequences can or cannot be initiated, and to what extent, are matters to be considered at the relevant stage by the competent forum and in accordance with law. Any observation by this Court on such merits may unnecessarily prejudice either side and would therefore be inappropriate.

14. For the foregoing reasons, we are of the considered view that the grievance raised in the present petition is essentially and predominantly one relating to the petitioner's terms and conditions of service and disciplinary proceedings arising therefrom.

Consequently, in view of the express bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 and the law laid down by the Honourable Supreme Court in 2024 PLC (C.S.) 1530, 2025 SCMR 134 and 1999 SCMR 2828, this constitutional petition is not maintainable before this Court. Once this conclusion is reached, any observation touching upon the merits of the controversy, including the validity of the inquiry, adequacy of opportunity, legality of proposed recovery, or propriety of threatened referral to FIA, would be wholly tentative and unnecessary, and may prejudice the case of either party before the competent forum. Therefore, this Court refrains from entering into the merits of the matter.

15. Accordingly, the instant constitutional petition is **dismissed** as being not maintainable. However, the petitioner shall be at liberty to avail the remedy available to her under the relevant service law before the competent departmental forum/Service Tribunal, strictly in accordance with law. It is clarified that any such remedy, if availed, shall be decided on its own merits and in accordance with law, without being influenced by any observation contained herein, as the observations made above are confined only to the question of constitutional maintainability. There will be no order as to costs. The pending miscellaneous application, if any, stand disposed of.

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