

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P. No.D- 5447 of 2019

Mazhar Ali Babar & another ----- Petitioners
Vs.
Chairman, Federal Board of Revenue,
Govt. of Pakistan, Islamabad & 03 others ----- Respondents

Date of hearing: 27.08.2019
Date of order: 27.08.2019

Mr. Muhammad Ibrahim M. Sahito, advocate for the petitioners.

ORDER

ADNAN-UL-KARIM MEMON, J. :The instant Constitution Petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the Petitioners, seeking direction to the Respondents not to recall their promotion against the posts of officiating Superintendent (Customs) Preventive (BS-16).

2. Relevant facts of the case are that initially the Petitioners were included in Provisional Seniority List of Assistant Private Secretary/Stenographer of Customs Department for promotion against the post of Superintendent (Customs) and due to bifurcation of Customs Preventive of Model Customs Collectorate (MCC) of Port Muhammad Bin Qasim, Karachi, the jurisdiction was withdrawn and assigned to Model Customs Collectorate, Preventive Karachi. Resultantly, the impugned order dated 08.8.2019 has been issued whereby they have virtually taken away the promotion of the Petitioners against the post of Superintendent, compelling the Petitioners to approach this Court.

3. We have noticed that in the impugned order dated 8.8.2019 the Respondent-Department has pleaded that there is no preventive function of MCC Port Qasim i.e. the Collectorate is left only with appraisalment function, therefore, the promotion

path of Assistant Private Secretary of MCC Port Qasim now goes to appraisal side i.e. against the post of Principal Appraiser, as such they cannot consider the case of Petitioners for promotion against the post of Superintendent which is meant for preventive duty.

4. Mr. Muhammad Ibrahim M.Sahito, learned Counsel for the Petitioners has argued that basically the Petitioners are aggrieved by and dissatisfied with the aforesaid analogy of the department has impugned the letter dated 08.8.2019 by filing the captioned Petition; that the post of Superintendent Preventive is open to the promotion up-to Collector, therefore, the Petitioners cannot be deprived from such promotion; that legally the impugned order has taken away the vested rights of the Petitioners; that the Petitioners have length of service and their promotion cannot be recalled; that the Petitioner No.1 surrendered his seniority from Principal Appraiser to Superintendent preventive services; that the aforesaid order wherein promotion of Petitioner No.1 as Superintendent Preventive has been rescinded/seized/withdrawn alongwith exclusion of the Petitioner's name from the seniority list for the promotion .

5. We inquired from the learned Counsel for the Petitioners as to how this Petition is maintainable against the impugned demotion order before this Court as the Petitioners are civil servants and for that penalty, they have the remedy before the learned Federal Service Tribunal. He replied that this is the case of promotion which is excluded from the purview of the jurisdiction of learned FST. In support of his contention, he relied upon section 4(b) of Federal Service Tribunal Act, 1973 and argued that this court can hear and decide the matter on merit.

6. We have gone through the case file and heard the learned Counsel for the Petitioners.

7. Foremost point in the present proceedings is whether the Civil Servants can file a Writ Petition by invoking Constitutional Jurisdiction of this Court in respect of the terms and conditions of his service when there is a bar contained in Article 212 of the Constitution?

8. We are of the view that Article 212 of the Constitution ousts the jurisdiction of this Court in respect of the matters pertaining to terms and conditions of Civil Servants, which restricts the jurisdiction of this Court under Article 199 of the Constitution on the subject which squarely falls within the exclusive domain of the Service Tribunals.

9. Admittedly, the Petitioners are Civil Servants and their case falls within the ambit of Section 3 (2) of the Federal Service Tribunals Act, 1973 which says that Federal Service Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants as under Section 4 of the Service Tribunal Act a Civil Servant has a right to file an Appeal against the impugned order adversely affecting the terms and condition of their service before the Tribunal subject to the qualification provided therein.

10. Without touching the merits of the case, this Court cannot entertain the grievance of the Petitioners against their demotion or withdrawal of promotion under Article 199 of the Constitution. Consequently, the instant Petition stands dismissed in limine along with listed application[s]. However, the Petitioners may avail appropriate remedy as provided to them under the law.

11. The petition stands disposed of in the above terms.

JUDGE

JUDGE