

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-333 of 2016

Mian Syed Hussain & 11 others Petitioners

Versus

Province of Sindh & others Respondents

Date of hearing: 03.09.2018

Petitioner No.1 present in person.
Mr. Ali Safdar Deepar, State Counsel.

ORDER

ADNAN-UL-KARIM MEMON, J: - Through the instant Petition, the Petitioners are seeking direction for issuance of posting orders and release of their salaries.

2. The case of the Petitioners in a nutshell is that in pursuance of advertisement published in "Daily Dawn" on 14.2.2010, inviting applications for appointment of Chowkidar/Naib Qasids in BPS-01, in Regional Directorate of Food Karachi Region, the Petitioners applied for the aforesaid posts and after interview were declared successful candidates. Petitioners have submitted that on 09.04.2013, Respondent-Food department issued offer letters to the Petitioners as Chowkedar/Naib Qasid in

BPS-1, and in pursuance thereof, they joined their respective duties upon fulfilling all the legal & codal formalities. Petitioners have submitted that they performed their duties assigned to them with keen interest and devotion without any complaint thereof; they are required to be paid salaries for their service accordingly. Petitioners added that due to non-payment of their salaries, they filed C.P. No.D-3566 of 2014 before this Court, later on the same was remitted to the learned Sindh Service Tribunal, Karachi vide order dated 20.01.2015, however their Service Appeal No. 65/2015 was dismissed by the learned Sindh Service Tribunal vide order dated 10.03.2015 with certain observation to approach the Department for decision on their representations. Petitioners have submitted that on 20.03.2015 they made representations to the Competent Authority but to no avail, Petitioners being aggrieved by and dissatisfied with above attitude of the Respondents, filed Execution Application No.29/2015 before the learned Sindh Service Tribunal, which was disposed of vide order dated 07.08.2015. Petitioners have asserted that they again approached the Respondent-Department, but their request was not acceded to vide orders dated 30.08.2015 and 04.11.2015 on the premise that the Petitioners were not appointed in their Department through any proper procedure and recruitment criteria. Petitioner being aggrieved by and dissatisfied with the aforesaid office orders preferred Service Appeal No. 1586 of 2015 along with the other connected Appeals before the learned Sindh Service Tribunal, Karachi, which were dismissed vide common order dated 07.12.2015. Petitioners being aggrieved by and dissatisfied with

the aforesaid action of the Respondents have filed the instant Petition on 13.01.2016.

3. Upon notice, Respondents filed para-wise comments and denied the allegations.

4. Petitioner No.1 present in person has submitted that he represents all the Petitioners and stated that the Respondent-Department has issued letters of offer appointment to their nearest and dearest relatives, and the Petitioners have been ignored; that the appointment of the Petitioners cannot be subjected to discriminatory treatment; that Petitioners are entitled for similar treatment in respect of posting orders under, which their similarly placed colleagues have been posted vide office order dated 30.3.2017; that the Petitioners are qualified persons to hold the subject posts after fulfillment of all codal formalities as such the Petitioner's fundamental rights are at stake. In support of the contention the Petitioner relied upon the case of Manzoor Hussain Chandio and others Vs. Province of Sindh and others (2009 PLC 925). In the end the Petitioner submitted that all the Petitioners are liable to be appointed as well as posted in the Respondent-department.

5. On the other hand Mr. Ali Safdar Deepar, learned State counsel has contended that the basic offer letters issued by the then Deputy Director Food Karachi Region are not in accordance with the law; that the representation of the Petitioners were considered and declined by the Respondent-department; that learned Sindh Service Tribunal has dismissed their service appeals

thus they are not entitled to be appointed on the aforesaid posts; that the Petitioners have no right to agitate their service grievances before this Court under Article 199 of the Constitution of Pakistan, 1973 hence, Petition is not maintainable. He lastly prayed for dismissal of the instant petition.

6. We have heard the Petitioner No.1 present in person, learned State counsel and have perused the material available on record.

7. Foremost, we would address the question of maintainability of instant Petition under Article 199 of the Constitution. Admittedly, the Petitioners filed Service Appeals No. 1586 of 2015 along with other connected Appeals before the learned Sindh Service Tribunal and their respective Appeals were dismissed vide common order dated 07.12.2015 in the following terms:-

“6. After a careful examination of the entire record, we are of the considered opinion that the entire proceedings on which the appellants are relying are not genuine. They are maneuvered and fake.

7. In the above circumstances, all the appeals are frivolous having no substance and therefore, they stand dismissed in limine.

8. Upon query by this Court as to how the instant Petition is maintainable against the common order dated 07.12.2015 passed by the learned Sindh Service Tribunal at Karachi in Service Appeal No. 1586 of 2015 along with connected Appeals as the Petitioners have failed to file Petitions for Grant of leave to Appeal before the Hon'ble Supreme Court of Pakistan against the order dated 07.12.2015 passed by the learned Sindh Service Tribunal as provided under Article 212 (3) of the Constitution of the Islamic Republic of Pakistan, 1973. The Petitioner No.1 reiterated his

above arguments and stated that this is a case of hardship and they have no other forum to agitate their grievance and this Court can hear and decide the matter on merits. Be that as it may, we are cognizant of the fact that this Court cannot entertain the grievance of the Petitioners under Article 199 of the Constitution, in view of the bar contained under Article 212 (3) of the Constitution, which ousts the jurisdiction of this Court. The ouster clause under Article 212 (3) of the Constitution is a Constitutional command, which restricts the jurisdiction of this Court on the subject, which squarely falls within the exclusive domain of the Hon'ble Supreme Court of Pakistan, being the Appellate Court in respect of the decisions of Service Tribunals. We are fortified on this point by the decision of the Hon'ble Supreme Court in the case of Ali Azhar Khan Balouch and others v. Province of Sindh and others (2015 SCMR 456). Therefore, the forum chosen by the Petitioners by invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law.

09. In view of the foregoing, without touching the merits of the case, the captioned Constitutional Petition is found to be devoid of jurisdictional error and is accordingly dismissed along with the listed application(s). However, the Petitioners may avail appropriate remedy as provided to them under the law.

Karachi
Dated:

JUDGE

JUDGE