

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

**Before:**

**Mr. Justice Nadeem Akhtar**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P. No.D-2588 of 2019**

Dr. Shaista Shah

Petitioner

Versus

Province of Sindh & others

Respondents.

Date of decision: 24.12.2019

Mr. Ishrat Ali Lohar, advocate for the petitioner who is called absent today and on his behalf Mr. Jamil Ahmed advocate is holding brief.

Mr. Ayaz Hussain Tunio, advocate for respondent No.5.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh

**ORDER**

**ADNAN-UL-KARIM MEMON, J**:- Through this petition, the petitioner has impugned the Notification dated 12.11.2019 issued by respondent No.1 / Chief Secretary Sindh, whereby he has been transferred and posted as Chief Superintendent Medical Officer at Liaquat University Hospital Jamshoro / Hyderabad.

2. We have heard learned Counsel for the parties on the issue of maintainability of the instant petition under Article 199 of the Constitution.

3. It is an admitted fact that the petitioner is civil servant and his terms and conditions of services are governed under Sindh Civil Servants Act, 1973. Section 10 of the aforesaid Act pertains to posting and transfer which unequivocally provides that every civil servant shall be liable to serve anywhere within or outside the province on any post under Government, Federal Government, or any Provincial Government or local authority or corporation or body set up or established by any such Government. Though the petitioner has claimed that his posting and transfer order is based on ill will or *mala fides*. It is necessary for this Court to adjudicate and determine the question of maintainability and assumption of powers despite specific bar contained under Article 212 of the Constitution. Though under Article 199, the scope of powers conferred upon this Court is wide enough, but at the same time powers to entertain the service matters relating to the terms and

conditions of service are barred under Article 212 in which specific and appropriate remedy has already been provided under the Sindh Service Tribunal Act. While constituting the Administrative Court or Tribunal, it is clearly mentioned under Article 212 that legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals for the matters relating to exercise of exclusive jurisdiction in respect of matters relating to the terms and conditions of persons. It is further provided in Sub-Article (2) that where any Tribunal is established, 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. Since equally efficacious remedy is provided to the civil servants under Sindh Service Tribunal Act, therefore, this constitutional petition is not maintainable.

4. Adverting to the case of respondent No.5, according to the petitioner, she is not eligible for holding her present position in BPS-20 which is without any lawful authority and contravention of Sindh Civil Servants Act, 1973 and Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. The procedure for appointment, promotion and transfer is already provided under Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 read with Sindh Civil Servants Act, 1973. The Government in case of exigency may appoint the person on OPS basis on stopgap arrangement or current charge or acting charge or additional charge basis but it does not give any discretionary right or authority to violate the express provisions of law and relevant rules and continue the OPS or additional charge arrangement for unlimited period of time, which is in violation of the Judgment passed by Honorable Supreme Court of Pakistan in the case of Province of Sindh and others V. Ghulam Fareed & others (2014 SCMR 1189), Muhammad Asif Chatha and others v. Chief Secretary, Government of Punjab, Lahore and others (2015 SCMR 165) and Khan Muhammad vs. Chief Secretary Baluchistan and others (2018 SCMR 1411).

5. We have also examined the stance of Respondent No.5. Besides, in our view, the reasoning as put forwarded by Respondent No. 5 is not tenable in law for the simple reason that if the officer does not possess requisite qualifications, experience and length of service to qualify for regular appointment / promotion in a department, then Rule 8-B as discussed supra empowers the competent authority to appoint the civil servant on acting charge basis or current charge basis if a post is required to be filled through promotion, then only the most senior civil servant eligible for promotion, but does not possess the required length of service, appointment of eligible

officer may be made on acting charge basis after observing all the codal and procedural formalities.

6. In the light of the above discussion, the instant petition is dismissed being barred under Article 212 of the Constitution. However it is expected that the post of Medical Superintendent BS-20 in CDF Hospital Hyderabad shall be filled by the Competent Authority in accordance with law, within a period two weeks, from the date of receipt of this order. Meanwhile the impugned notification dated 12<sup>th</sup> November, 2019 shall remain suspended to the extent of respondent No.5 to hold the office of Medical Superintendent (BS-20) CDF Hospital Hyderabad. Let a copy of this order be communicated to respondent No.1 for compliance.

**JUDGE**

**JUDGE**

*\*Irfan Ali\**