

IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1874 of 2021

Ms. Shahida Begum

Versus

Province of Sindh and 04 others.

Date of hearing & order: 26.03.2021

Ms. Rehana Bhatti, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. The petitioner has filed this petition under Article 199 of the Constitution, wherein she has challenged the notification dated 09.03.2021 in respect of her posting and transfer order as Headmistress (BPS-17), from Government Boys and Girls Secondary School Children Home Karachi to Manik Government Boys Secondary School, Shanti Nagar, Gulshan-e-Iqbal, Karachi.

2. The petitioner has objected to the impugned notification on the ground, *inter alia*, that respondent No.5 has caused harassment to her for that she made various complaints against him but the same was ignored by the official respondents. Per learned counsel, respondent No.5 has failed to vacate the possession of the Ground Floor of the subject School Building, who is in connivance with his wife (teacher) and in league with the high-ups of the Education Department, Government of Sindh. Resultantly, the impugned notification was issued to cover up their illegal activities. Per learned counsel, the impugned notification is based on political victimization, despite the ban imposed by the Competent Authority about the transfer and posting of teaching staff in the Education Department, Government of Sindh. In support of her contentions, she relied upon the various documents attached with the memo of the petition; and, complaints made against the official respondents. She further argued that in presence of the ban on the transfer and posting, she could not be relieved from the subject post. She prayed for allowing the instant petition.

3. We have heard learned counsel for the petitioner on the maintainability of the instant petition and perused the material available on record.

4. We are of the view that Article 212 of the Constitution ousts the jurisdiction of this Court in respect of the matters about terms and conditions of Civil Servants. The ouster clause under Article 212 of the Constitution is a Constitutional command, 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 Sindh Service Tribunal (SST). The expression “terms and conditions” includes transfer and posting. Admittedly, the Petitioner is a Civil Servant and her case falls within the ambit of Section 3 (2) of the Sindh Service Tribunals Act, 1973 which says that 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 her terms and condition of service, before the learned SST subject to the qualification provided under the law. *Prima facie*, we do not see any infringement of the right of the Petitioner, which could be called in question by way of Writ Petition, in terms of Section 10 of the Sindh Civil Servant Act, 1973. On the aforesaid proposition, our view is supported by the decision of the Hon’ble Supreme Court of Pakistan in the case of *Khan Muhammad v. Chief Secretary, Government of Balochistan Quetta and others*, **2018 SCMR 1411**.

5. Considering the case of the Petitioner in the above perspective, we find no merit in the instant petition, which is dismissed in limine. However, Petitioner may seek appropriate remedy as provided under the law.

JUDGE

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