

Order Sheet  
**IN THE HIGH COURT OF SINDH KARACHI**

Constitutional Petition No.D-5504 of 2021  
Constitutional Petition No.D-5505 of 2021

Date	Order with Signature of Judge
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For order as to maintainability of petition

03.6.2022

Malik Naeem Iqbal, advocate for the petitioners in both petitions  
Mr. Ali Safdar Depar, AAG alongwith Mr. Waqas Abid Baloch, Registrar, Sindh Service Tribunal

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The learned Chairman, Sindh Service Tribunal by impugned final order dated 18.06.2021 has imposed the major penalty of dismissal from service upon the petitioners as provided under the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, in the following terms:

“19. Both of the accused have tried to shift the burden upon Assistant Accounts Branch Mr. Muhammad Rahim by saying that under his directions Zuhaib Hussain prepared the bills and the DDO passed them. Further that upon some of the bills Muhammad Rahim has put his initial also. The attempt to shift the burden upon Muhammad Rahim Assistant cannot succeed simply for presence of his initial on few bills. All the forged cash memos and bills of petroleum services are in the handwriting of Zuhaib Hussain and he signed them as cashier and station manager. He has not denied forging of the bills and putting signatures as cashier and station manager. He has therefore principal role in the forgery of fake bills. Getting initial from Muhammad Rahim on few such bills after preparation thereof by him (Zuhaib Hussain) cannot get out of the entire continued activity of corruption and misconduct. The position would have been different if he had put only his initial. The attempt on the part of both of the accused to involve Muhammad Rahim is unsuccessful attempt on their part to shift the responsibility. By taking such plea they cannot get out of the entire continued activity of corruption and misconduct.

20. It is also an important fact deserving to be mentioned here that DDO, Faheem Ali has stated during his personal hearing on 29.03.2021 that Vendor Furqan had been submitting the bills including therein his submission/service charges and he had been passing those bills allowing him the commission at the rate of 10% to 20% in addition to the price of the articles. This act of payment in excess of the price was illegal and against the rules which require the purchase to be made on efficient and economical basis. Obviously, such illegal favour was extended to the so-called Vendor for joining the illegal activities.

In view of the above, the upon activity of embezzlement and forgeries by accused Zuhaib Hussain, Junior Clerk and Faheem Ali, the DDO stands proved. They deserve the major penalty of Dismissal from

Service. Consequently, the major penalty of Dismissal from Service as provided in Rule 4 of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 is awarded to them.”

2. Before we come to the facts in the instant petitions, we need not examine the submission of the parties in detail in terms of Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973.

3. Learned counsel for the petitioners, has submitted that the service rules of the employees of the Sindh Service Tribunal have been framed under Article 208 of the Constitution, and the case of the petitioners is not covered by the definition of "civil servant" given in Clause (a) of section 2 of the Sindh Civil Servants Act, 1973. He further submitted that the definition of "civil servant" given in the above provision of the Act, 1973, the petitioners are deemed to be a member in the service of the Sindh Service Tribunal in terms of the notification dated 30.04.2015 issued by the Sindh Service Tribunal at Karachi whereby the competent authority framed the service rules of the employees of the Tribunal called as Sindh Service Tribunal Establishment (Appointment, Promotion, and Conditions of Service) Rules 2015, however, he has submitted that though the terms and conditions of service of the petitioners were initially governed under the provisions of Sindh Civil Servants Act 1973 and rules framed thereunder, however, on account of change of law the petitioners are no more civil servants, thus they cannot approach the learned Sindh Service Tribunal for redressal of their grievances, as such these petitions are maintainable under Article 199 of the Constitution. In support of his contentions, he relied upon the case of Registrar, Supreme Court of Pakistan, Islamabad v. Qazi Wali Muhammad, **1997 SCMR 141**. He further submitted that the Parliament had not been given any role in regulating the terms and conditions of service of the Court's employees under Article 208 of the Constitution, therefore, they cannot be treated to be civil servants as such these petitions are maintainable under Article 199 of the Constitution.

4. On merits, he has submitted that the purported allegations of fraud and forgery have not been attended by the Chairman, Sindh Service Tribunal through regular mode of inquiry, thus they cannot be saddled with the aforesaid liability, and the impugned order suffered from various legal discrepancies which could only be thrashed out through regular inquiry. He prayed for allowing the petitions by setting aside the impugned order dated 18.06.2021 being illegal, unlawful, unconstitutional, arbitrary, discriminatory, and in violation of principles of natural justice, equity and fairness.

5. Learned AAG has submitted that the present petitions are not maintainable before this Court under Article 199 of the Constitution on the premise that the grievance of the petitioners falls within the domain of the Sindh Service Tribunal as mandated by Article 212 of the Constitution; however, the competent authority of the respondent-Tribunal, on verification of their service record, will decide their review applications within a reasonable time. He further submitted that not only this, but if the Petitioners are yet aggrieved by the order passed on their review, they could file an appeal before the Sindh Service Tribunal under Section 4 of the Sindh Service Tribunal Act, 1973, therefore, the jurisdiction of this Court is barred under Article 212 of the Constitution.

6. Having heard the learned counsel for the parties and after perusal of the final order passed by the learned Chairman, Sindh Service Tribunal, we do not find that this Court has jurisdiction under Article 199(1) (ii) of the Constitution of the Islamic Republic of Pakistan, 1973, as well as in terms of the ratio of the decisions rendered by the Honorable Supreme Court in the case of *Khalilullah Kakar v. Provincial Police Officer*, **2021 SCMR 1171**, and *Chief Secretary Government of Punjab Lahore, etc v. Ms. Shamim Usman*, **2021 SCMR 1390**, to take into consideration all the grounds raised by learned counsel for the petitioners in the memo of petitions which wholly pertain to matters relating to the terms and conditions of service of the petitioners against which Article 212(3) of the Constitution imposes a specific bar.

Without touching the merits of the case, these petitions are held to be not maintainable under Article 199 of the Constitution, and the same are dismissed in the terms noted above.

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