

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No. D-900 of 2023
(Jamsher Ali Siyal & 82 others v. P.O. Sindh & others)

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro &
Mr. Justice Arbab Ali Hakro**

Mr. Fidaullah Qureshi, Advocate for petitioners except petitioners No.2,13 & 74.

Mr. Noor Hassan Malik, Advocate for petitioners No.2,13 & 74.

Mr. Ali Raza Baloch, Assistant A.G a/w Inspector/P.I Muhammad Akhtar Pathan on behalf of DIGP, Sukkur and SIP Jameel on behalf of SSP, Khairpur.

Date of Hearing : **15-11-2023**

Date of Decision : **28-11-2023**

ORDER

MUHAMMAD IQBAL KALHORO, J:- Petitioners were appointed in Sindh Reserve Police (SRP) as police constables. By afflux of time plus on promotion with the approval of Departmental Promotion Committee (DPC), they reached the rank of Sub-Inspectors and were performing their duties at different police stations, when impugned order dated 12.05.2023 was issued by respondent No.3/DIGP, Sukkur Range. This order connotes the guidelines issued by the CPO, Sindh vide orders dated 27.05.2016 etc, whereby an Enquiry Committee was constituted of senior police officers to look into the seniority / promotion of all police officials still holding the charge of Sub-Inspectors in SRP, purportedly in compliance of a judgment of Supreme Court dated 06.05.2016, passed in C.P.No.493 and others of 2015.

2. The Enquiry Committee submitted its report after scrutiny / examination of entire record on a case to case basis and after hearing each individual in person. It has recommended adjustment/ settlement of the seniority of such officials at par with their batchmates of Sukkur Range from the date of their initial appointment. Acting on such recommendation, in the impugned order, the seniority of the petitioners

has been adjusted / settled. Some of them have been demoted to the junior position and some of the petitioners have been put at par in seniority with their batchmates. The petitioners have challenged the said order on the grounds, amongst others, the petitioners were not heard before their seniority was withdrawn / settled / adjusted and secondly, the female police officials, who were promoted like them and working as Sub-Inspectors, their promotion has not been rattled / withdrawn, but a kind of moratorium / freezing on their promotion has been enforced till promotion of their batchmates, which according to learned counsel, is discriminatory and against Article 25 of the Constitution.

3. We have heard learned counsel for the parties. Learned counsel for petitioners have reiterated the above facts and grounds in their arguments and have relied upon the case law reported as *Nazeer Ahmed Chkrani v. Government of Pakistan* (**2004 SCMR 623**) and *Gul Hassan Jatoi and others v. Faqeer Muhammad Jatoi & others* (**2016 SCMR 1244**).

4. On the other hand, learned Assistant A.G has strongly taken an exception to maintainability of this petition by arguing that the petitioners are admittedly civil servants. This petition is incompetent before this Court as the petitioners have an adequate and efficacious remedy before the Sindh Service Tribunal u/s 4 of the Sindh Service Tribunal Act, 1973. To support his arguments, he has relied upon case law reported as **2015 SCMR 456, 2016 SCMR 1254, 2021 SCMR 1168, 2021 SCMR 1390, 2007 SCMR 54, PLD 2001 SC 1032, 1999 PLC (CS) 230, 2009 PLC (CS) 539 and 2009 PLC (CS) 568.**

5. We have considered such arguments and perused material available on record including the case law relied at bar. Insofar as issue of non-hearing of the petitioners before passing of impugned order is concerned, sub-para-C of para-2 of the impugned order clearly states that the Enquiry Committee had scrutinized the record minutely on a case to case basis and had called each individual / police official to appear before it on 27.04.2023 at 1000 hours in the Range Office, Sukkur. The Committee heard them in person and provided them a full opportunity to explain their position regarding their seniority over their batchmates. In response, they could not adduce any convincing reason or offer any explanation to justify their promotion beyond seniority of

their batchmates. In the comments, the same para has been reproduced by respondent No.4/SSP, Khairpur. The principle of *audi alteram partem* that nobody should be judged without a hearing, therefore, does not seem to be attracted to the case of petitioners. And what's more the case of the petitioners for the purpose, as above, was examined in compliance of the directions of the Supreme Court. They were found to have been promoted beyond and above seniority of their batchmates without any justification and hence this seniority was adjusted with their batchmates through the impugned order.

6. As to the ground of discrimination highlighted through a letter dated 07.06.2023, by learned counsel for the petitioners envisaging patently a lenient view taken against female police officials. Suffice it to say that the subject of said letter / notification is different. It is about merger / unified seniority of male & female police personnel of Sindh Police, and in it a reference to a notification dated 15.12.2022 on the same subject has been made. It further shows that about merger of male & female seniority a separate Committee was constituted and on recommendations of such Committee, the moratorium / freezing on their promotion has been reinforced until promotion of their batchmates is carried forward. This letter *prima facie* has no connection with the impugned order dated 12.05.2023 and is apparently on a different subject. It has got nothing to do with seniority of the petitioners or its adjustment / settlement.

7. But, be that as it may, we are of a humble view that the contention of learned AAG: this petition, in view of the fact the petitioners are civil servants, is not maintainable, is correct. Learned AAG in this regard has relied upon a case of *Khalilullah Karar and others v. PPO, Balochistan and others* (2021 SCMR 1168). The Supreme Court has observed that the word 'entertain' used in Article 212(2) of the Constitution is of significance. It means that any petition or proceeding relating to the terms and conditions of service should not even be entertained by the High Court in its constitutional jurisdiction under Article 199 of the Constitution. It is further stated that the respondents being police employees were civil servants and the matter pertaining to issuance of joint seniority lists specifically was related to their terms and conditions of service, which particularly rested within

the jurisdiction of Provincial Service Tribunal. Filing of constitutional petition before the High Court at the time when the Provincial Service Tribunal was functional was against the constitutional mandate. The Supreme Court has further observed that the jurisdiction conferred on the High Courts under Article 199 of the Constitution was an extraordinary relief and the same has to be exercised in aid of justice and not to interfere in jurisdictions of other statutory forums. When the law has provided an adequate remedy, constitutional jurisdiction under Article 199 of the Constitution cannot be exercised as the same has to be exercised in exceptional circumstances, justifying invoking the said jurisdiction. Tendency to bypass remedy provided under relevant statute by resorting to constitutional jurisdiction was to be discouraged so that legislative intent is not defeated.

8. Further, chapter-II of the Sindh Civil Servants Act, 1973 defines terms and conditions of service of civil servants. Section 12 in chapter-II states that a civil servant appointed on a higher post, *ad hoc* or on temporary or officiating basis shall be liable to reversion to his lower post without notice. The import of this section clearly speculates that a civil servant appointed on a higher post or status on *ad hoc*, temporary or officiating basis shall be liable to be reversed to his substantive post or grade without serving any notice. This provision sets out two permutations: reversion to lower or substantive post can be made by the competent authority without a notice and second this exercise comes within terms and conditions of the service. Section 4 of the Sindh Service Tribunals Act, 1973 provides for in clear terms that any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of the terms and conditions of his service may, subject to stipulated limitation period, prefer an appeal to the Tribunal having jurisdiction in the matter. It seems that the petitioners have an adequate and efficacious remedy available before the Sindh Service Tribunal, and not before this Court under Article 199 of the Constitution.

9. For foregoing discussion, we are of the view that the case of the petitioners falls within terms and conditions of service. Whatever the merits of their case are, neither there is a question of non-hearing of petitioners, nor of not providing them an opportunity before passing of

impugned order, and nor the question of discrimination between them and in favour of lady police officials to justify jurisdiction of this Court. This case squarely falls within the jurisdiction of Sindh Service Tribunal. And therefore, this Court under Article 199 of the Constitution cannot look into the subject matter and declare the impugned order as nullified. This petition found to be incompetent, is **dismissed** accordingly. The petitioners, however, would be at liberty to approach the relevant forum in accordance with law.

The petition is accordingly **disposed of** in the above terms.

JUDGE

JUDGE

Ahmad