

**IN THE HIGH COURT OF SINDH  
BENCH AT SUKKUR**

**Present:**

Yousuf Ali Sayeed &  
Zulfiqar Ali Sangi, JJ

**Constitution Petition No. D-998 of 2023**

Mst. Shaheen Gul.....Petitioner

Versus

Federation of Pakistan and others.....Respondents

**Constitution Petition No. D-1285 of 2023**

Shaheen Gul.....Petitioner

Versus

Federation of Pakistan and others.....Respondents

Petitioner, in person.  
Dareshani Ali Hyder 'Ada', DAG

**ORDER**

**YOUSUF ALI SAYEED J.** - The Petitioner is serving as a photographer in Grade BPS-13 with the National Highway and Motorway Police (the “**NHMP**”), and has preferred the captioned Petitions under Article 199 of the Constitution, seeking to preserve her posting at Sukkur in that capacity, whilst invoking an Office Memorandum dated 21.04.2006 (the “**Memorandum**”) issued by the Cabinet Secretariat, Establishment Division, Government of Pakistan for facilitating married female government servants by providing for their posting at the place of residence of their husbands, irrespective of whether the latter be employed with the Government, in the private sector, or unemployed. The Memorandum reads as follows:

“Government of Pakistan  
Cabinet Secretariat  
Establishment Division

No.10/30/97-R-2 Islamabad, the 21<sup>st</sup> April, 2006.

**OFFICE MEMORANDUM**

SUBJECT; **POSTING OF MARRIED FEMALE GOVERNMENT SERVANTS AT THE PLACE OF RESIDENCE/POSTING OF THEIR HUSBANDS WHO ARE NOT IN GOVERNMENT EMPLOYMENT.**

The undersigned is directed to state that keeping in view the socio-economic problems and hardships faced by husbands and wives in Government service due to posting at different stations of duty, the Establishment Division issued instructions/guidelines vide its O.M No. 10/30/97-R-2 dated 13.05.1998 and posting of unmarried female civil servants at the place of residence of their parents/families. With a view to facilitate those female government servants, whose spouses are not in government service or employed in the private sector or unemployed, it has been decided to extend the facility to this class of government servants, also, to be able to serve at the place of residence of their spouses, irrespective of whether such spouses, are employed with the Government private sector or even unemployed.

Sd/  
(Amir-ul-Haq)  
Deputy Secretary”

2. Towards that end, through Constitutional Petition No. D-998 of 2023 (“**CP-998**”) the Petitioner has impugned an Order dated 07.06.2023 issued by the Deputy Inspector General of the NHMP, whereby she was relieved from her present place of posting at Sukkur and directed to report at her new place of posting, being West Zone, Quetta (the “**Relieving Order**”), with it being prayed that the Relieving Order be declared to be “against the law, rules and policy namely “wedlock policy” dated 21.04.2006”, and that its operation be suspended pending determination of the matter.

3. Simultaneously, through Constitutional Petition No. D-1285 of 2023 (“**CP-1285**”) directions have been elicited for decision of an application moved by the Petitioner within the departmental hierarchy, seeking the initiation of an enquiry against the Superintendent/Sector Commander of the NHMP on the ground that he had misused his authority for purpose of harassment by opposing an application that she had filed on the same basis for seeking cancellation of an earlier Transfer Order dated 20.02.2022 along identical lines.
  
4. Proceeding in person, the Petitioner argued that she had been serving the NHMP diligently since the time of her appointment vide an Order dated 29.10.2019 and was liable to be retained in her present place of posting at Sukkur by virtue of the Memorandum since that was presently the place of residence of her husband. She argued that her challenge was maintainable under Article 199 notwithstanding her status as a ‘civil servant’ since the Relieving Order contravened the Memorandum and had been issued with *mala fide* intent. She also sought to contend that the Petition was maintainable as this Court had earlier entertained Constitutional Petition No.505 of 2022 (“**CP-505**”) filed by her against the earlier Transfer Order dated 20.02.2022.
  
5. Conversely, the learned DAG impugned the maintainability of both the Petitions, pointing out that the Petitioner was a civil servant and that her transfer and posting was a subject falling squarely with the ambit of the terms and conditions of her service, as held by the Supreme Court in the case reported as Muhammad Sajjad v. Federation of Pakistan and others 2023 PLC (C.S.) 292. He argued that the matter thus came within the domain of the Federal Service Tribunal, hence the

jurisdiction of this Court under Article 199 of the Constitution was barred by virtue of Article 212 thereof.

6. As to the merits of the matter, the learned DAG submitted that 57 posts of Photographers in the NHMP had been advertised by the Ministry of Communications on 06.01.2019 in leading newspapers, and keeping in view the operational requirements and workforce of the provinces of Baluchistan and Sindh in particular, it had been expressly mentioned that those candidates recruited/appointed on the domiciles of Sindh and Baluchistan would particularly/mandatorily serve in the relevant province as per their domiciles. It was pointed out that the Petitioner had applied under a domicile of Naseerabad (Balouchistan) issued on 17.12.2015 reflecting her status as "Married" and been selected on and appointed against the quota of Balouchistan on the prescribed terms and conditions, as reflected vide the aforementioned appointment Order dated 29.10.2019. Be that as it may, she had nonetheless been transferred from West Zone (Balouchistan) to South Zone (Sindh) at her personal request on humanitarian grounds vide Order No. NHMP/Addl-IG/SR/() 1720/20, Karachi dated 25.08.2020 for a period of 2 years with the caveat that she would be reverted to the original place of posting (i.e. West Zone), and had executed an Affidavit at the time, acknowledging and accepting that eventuality.
  
7. He submitted that in an endeavour to seek shelter under the Memorandum, the Petitioner had then submitted a marriage certificate dated 16.05.2017 showing her to have been married on 13.02.2016 and reflecting her address and that of her husband as being in Jacobabad. He pointed out that in the year 2021, the Petitioner was transferred/posted to her parent province vide office order No. NHMP/Addl-IG/SR/481 dated 02.04.2021 by the then Regional Commander, but on her personal request, the said transfer order was again cancelled on humanitarian grounds till the completion of the 2-year

period in South Zone vide order No. NHMP/Addl-IG/SR 714 dated 30.04.2021. It was argued that since the lapse of that period, the Petitioner had repeatedly approached this Court to forestall and thwart her transfer. It was pointed out that prior to the captioned Petitions, the Petitioner had filed CP-505, whereby she had challenged the earlier Transfer Order dated 20.02.2022 while seeking that the Respondents be directed to decide an application/representation preferred by her before them in the matter, which was disposed of vide an Order dated 20.09.2022 whereby the respondents were directed to decide that application within a period of 30 days. He submitted that such a decision had been taken, albeit belatedly, in terms of Order No. NHMP/Addl-IG/SR/HRM()1431/23 dated 02.06.2023, whereafter the Relieving Order had followed as a corollary with reference thereto. As for CP-1285, it was submitted that the same had become infructuous as an enquiry had been conducted so as to probe the allegations advanced by the Petitioner, which had been found to be meritless in terms of a Report dated 31.08.2023.

8. We have heard and considered the matter. In view of the Petitioner's status as a civil servant, it merits consideration that while the contention raised by her with reference to the Memorandum may or may not have force, the first question before us is one of jurisdiction. The transfer of an employee/public servant, including the subject of posting is undoubtedly a matter concerning the "terms and conditions" of service, as observed by the Supreme Court in the case of Muhammad Sajjad (Supra). The Constitution envisages the resolution of disputes pertaining to terms and conditions of civil servants by a Tribunal created under Article 212 and not by this Court. The constitutional intent has to be accepted and enforced. The grounds of mala fides, coram non iudice, jurisdictional errors,

illegalities and irregularities are all grounds which can be urged before the Service Tribunal.

9. We are fortified in that regard by the decision rendered by the Supreme court in the case of Ali Azhar Khan Baloch v. Province of Sindh 2015 SCMR 456, where it was held as under:-

“146. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including the disciplinary matters. In other words, the jurisdiction of all other Courts is barred by the provisions of the Sindh Service Tribunals Act, 1973, read with Article 212 of the Constitution.

147. Section 4 of the Service Tribunals Act provides Civil Servant with the right of filing an Appeal before the Tribunal, subject to the qualifications provided therein.

148. In this background, all the Civil Courts, including a Judge (in Chambers) of High Court of Sindh, exercising jurisdiction on the original side as a civil court under C.P.C. cannot entertain a civil suit of a civil Servant relating to the terms and conditions of his service. The exercise of jurisdiction by the High Courts is conferred under Article 175(2) which reads as under:--

"175(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."

149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals.

150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the civil servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions'

includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of civil servants.

151. We, for the aforesaid reasons, conclude that the exercise of jurisdiction by way of suit and Constitution petition filed by a civil Servant with regard to his terms and conditions of service is violative of Articles 175, 212 and 240 and the law.”

10. As for the contention that the Petition is maintainable in view of CP-505 having been entertained, the argument is found to be fallacious as the question of maintainability was never considered in that matter, nor could those proceedings even otherwise hold sway over the command of the Constitution, as determined by the Supreme Court. Indeed, in the case reported as Chief Secretary, Government of Punjab, Lahore v. Mst. Shamim Usman 2021 SCMR 1390 it was observed that:

2. There is more to this case. Before challenging the rejection of her proforma promotion by the competent authority in the recent writ petition impugned before us, the respondent had earlier approached High Court through a constitutional petition<sup>1</sup> wherein she prayed that the petitioner-department "be directed to finalize the promotion case promotion be made effective from 26.05.2012 along with other service benefits." This petition was entertained and allowed. The High Court vide order dated 18.09.2012 directed the competent authority "to immediately place the case of the respondent for promotion from grade 19 to grade-20 before the authority for its consideration in accordance with law, rules and regulations. The said exercise shall be completed within the period of a month from the receipt of order under intimation to this Court through its Deputy Registrar (Judicial)." As no material steps

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<sup>1</sup> W.P. No.21006/12

were taken in this regard by the department, the respondent filed a contempt petition<sup>2</sup> before the High Court. The contempt petition was disposed of vide order dated 21.05.2018 when the decision of the competent authority rejecting the claim of the respondent to proforma promotion was placed before the Court. The Court left it open to the respondent to challenge the departmental order, if so advised. The respondent instead of challenging the order of the competent authority before the Tribunal under the Act, once again approached the High Court through a constitutional petition<sup>3</sup> which is subject matter of this case. The High Court vide impugned order dated 19.02.2020 was pleased to direct the petitioner-department to grant proforma promotion to the respondent in grade-20, hence this petition.

3. Learned Additional Advocate General, Punjab representing the petitioner-department at the very outset points out that the interference by the High Court in service matters is clearly barred under Article 212 of the Constitution and therefore the impugned order is without jurisdiction and thus not sustainable.

4. Learned counsel for the respondent, when asked how such direction could have been issued by the High Court in the light of bar contained in Article 212 of the Constitution, had no explanation to render and kept referring to the interference by the High Court in the matter in the earlier constitutional petition. It is regrettable that inspite of clear constitutional bar under Article 212 of the Constitution, the matter was not only earlier entertained by the High Court but then dealt through a contempt petition and finally when the petitioner-department declined the proforma promotion of the respondent, the High Court directed the department to promote the respondent. It is important to revisit the relevant portion of Article 212 of the Constitution, which states as follows:

**212. Administrative Courts and Tribunals.**

(1) Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of-

(a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;

(b) matters relating to claims arising from tortious acts of Government, or any person

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<sup>2</sup> CrI. Org. No. 2381-W of 2012

<sup>3</sup> W.P. No.231042 of 2018



in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or

(c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), 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 and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal other than an appeal pending before the Supreme Court, shall abate on such establishment:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal<sup>4</sup>.

5. We cannot lose sight of the fact that notwithstanding clauses of Articles 212(1) and (2) begin with "notwithstanding anything hereinbefore contained," thus overriding, inter alia, the constitutional jurisdiction of the High Court under Article 199, which is already "subject to the Constitution." Article 212(1)(a) provides that a Tribunal established under the law will enjoy **exclusive jurisdiction in the matters relating to terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters.** The term "terms and conditions" is clearly spelt out in Chapter II of the Punjab Civil Servants Act, 1974 and the rules thereunder. Article 212(2) in unambiguous terms states that **no other Court can grant injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends.** Scope of jurisdiction and

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<sup>4</sup> Powers extended through Provincial Services Tribunals (Extension of Provisions of the Constitution) Act, 1974 (32 of 1974)

powers of the Tribunal are provided in sections 4 and 5 of the Act. The High Court, therefore, has no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which can be adjudicated upon by the Tribunal under the Act. It is only under section 4(1)(b) of the Act that no appeal can lie to a Tribunal against an order or decision determining the "fitness" of a person to be appointed or promoted and falls outside the purview of the jurisdiction of the Tribunal. In order to fall in the exception envisaged under section 4(1)(b) of the Act, the order must determine "fitness" of a civil servant to an appointment or promotion. In the instant case, the order under challenge before the High Court pertained to the eligibility of the petitioner to be even considered for proforma promotion due to the seniority of a large number of officers awaiting promotion before her and in no manner determined the "fitness" of the respondent. High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of this constitutional limitation will render the order of the High Court void and illegal.<sup>5</sup> Therefore, unless the jurisdiction of the Tribunal is ousted under section 4(1)(b) of the Act, as described above, assumption of jurisdiction by the High Court in respect of matters of terms and conditions of a civil servant is unconstitutional and impermissible. Even the direction passed in the earlier constitutional petition, in this case, was impermissible under the Constitution.

11. While examining the further contention that this Court nonetheless remains vested with jurisdiction where the impugned Order is alleged to be *mala fide*, it merits consideration that while holding the jurisdiction of the High Court under Articles 199 of the Constitution to be barred to be in view of the interplay of Articles 175 and 212 of the Constitution, a Full Bench of this Court dispelled such a plea in the case reported as Abdul Bari v. Government of Pakistan and others PLD 1981 Karachi 290, observing *inter alia* that:

“8. It has, however, been contended, on the aforesaid premises. that the present petitions would still be competent before this Court for a number of reasons. It is first contended that even though the

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<sup>5</sup> See National Assembly Secretariat through Secretary v. Mansoor Ahmed and others 2015 SCMR 253 and Ali Azhar Khan Baloch and others v. Province of Sindh and others 2015 SCMR 456.

order of the nature in question before us may be appealable before the Tribunal nevertheless the High Court has always been held to have jurisdiction under Article 199 in respect of orders which are *mala fide*, *ultra vires* or *coram non judice*. The argument is that the availability of an alternate remedy under the Statute has never been recognized as a bar to the exercise of jurisdiction under Article 199 in respect of orders of the nature mentioned. In fact some of the decisions of the High Courts referred to above, have taken this view. I may mention the Full Bench judgment of the Baluchistan High Court in *Mujeebullah Fijaz's case* already referred to earlier. In this case the Court expressed the opinion that no appeal will lie before the Tribunal, *inter alia*, in a case "when the order is not passed by a competent departmental authority and is for such reason void". In *Afzal Hussain Syed v. Government of Punjab* (3) also it was held that an order of retirement, as in the present case, was appealable before the Tribunal, nevertheless the "High Court may also intervene if the order is void, or *coram non judice* on the face of the record". The reasoning in these cases proceeds on the basis that orders which are *mala fide*, *ultra vires* of the authority passing them or *coram non judice* are null and void in law and, therefore, any Court before which they are brought is not only entitled, but bound to ignore them. With all due respect for the learned Judges we are unable to agree with the proposition. In the first place before a Court could examine whether an order is really of the nature mentioned above it must have jurisdiction to undertake the examination and determine the question. As soon as it is shown that a particular order of the departmental authority lies within the ambit of the Tribunal, the jurisdiction of the civil Courts including the High Court is *ipso facto* ousted as a result of the barring provisions of Article 212. The High Court would, therefore, not be competent on any ground to examine the validity of an order which falls within the jurisdiction of the Tribunal."

12. It is pertinent to note that the learned Full Bench then went on to observe that:

9. It was then contended that inasmuch as the jurisdiction of the Service Tribunal has been confined to entertain appeal from "final" orders made by the departmental authorities, the jurisdiction in respect of other orders continues to remain intact so far as the High Court is concerned. In the view that we have taken, there can be no cavil against this proposition] of law. However, it seems to us that if the impugned order, although not final so far as the departmental authority passing it is concerned, is in the nature of a step towards the final orders

that may eventually be passed, apparently such interlocutory order will eventually merge in the final order and in any case can be brought up before the Service Tribunal in an appeal from the final order. Clearly, therefore, such orders which are in the nature of interlocutory steps and are germane to the final order which is appealable before the Tribunal, will also be outside the jurisdiction of the High Court.

13. In view of the foregoing, the Petitioner's approach to this Court under Article 199 is found to be misconceived, with CP-998 clearly not being maintainable, whereas the purpose of CP-1285 already stands served in view of the aforementioned Report dated 31.08.2023. Both the Petitions thus stand dismissed accordingly. However, before parting with this judgment we would like to record our appreciation for the able assistance rendered by the learned DAG.

JUDGE

Sukkur  
Dated \_\_\_\_\_

JUDGE