

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

Constitution Petition No. D – 2658 of 2017

DATE _____ ORDER WITH SIGNATURE OF JUDGE(S) _____

Present -
Mrs. Justice Kausar Sultana Hussain
Mr. Justice Khadim Hussain Soomro

1. For order on office objection.
2. For hearing of MA No.10309/2012.
3. For orders on MA No.611/2018.
4. For orders on MA No.2595/2018.
5. For hearing of main case.

The Petitioners : Through Mr. Muhammad Arshad S. Pathan
Advocate

For Respondents : Through Mr. Allah Bachayo Soomro, Additional
Advocate General Sindh.


Date of hearing : 18.04.2024

Date of Decision : 18 07.2024

ORDER

KHADIM HUSSAIN SOOMRO, J. :- Through the instant Petition, the petitioners have prayed as under:-

- (a) *To issue writ declaring that the act of respondents No.3 & 6 towards issuance of letter and order against the petitioners without notice, without giving any opportunity of being heard are illegal, unlawful, unjust without lawful authority and are not binding upon the petitioners.*
- (b) *To declare that the Act of respondent No.3 being illegal, unlawful, collusive, corum-notice, without lawful authority and power, as the demotion cannot be made without any lawful authority and that too is unwarranted and the letter and order dated 12.07.2017 and 13.07.2017 being illegal, liable to be declared void ab-initio liable to be suspended.*
- (c) *To restrain the respondents No.3 & 6 from disturbing the place of posting and from disturbing the service structure / profile of the petitioners and further restrain the respondents No.1 to 3 from taking any coercive, compelling action on account of filing of Petition, in any manner whatsoever.*
- d) *Any other relief which this Honourable Court deems fit and proper.*


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e) *Cost of the Petition.*


2. The relevant facts of the case are that the Petitioners are employees lower grades and were appointed on merit in initial pay scales of BPS-01 to BPS-05 in Liaquat University Hospital, Hyderabad/Jamshoro. The Supreme Court, in its judgment, as reported in 2015 SCMR 456, directed all Executives of Departments throughout Pakistan to adhere to the judgment. Subsequently, departmental heads, through Secretaries and Chief Secretaries, issued instructions to all District Management and independent authorities under their administrative control to fully execute the judgment without exception. They further directed the submission of a Certificate confirming such compliance to the Chief Secretary Sindh to be submitted before the Supreme Court. In response to the aforementioned instructions, the Medical Superintendent, Liaquat University Hospital, Hyderabad/Jamshoro submitted information and confirmation of compliance via an office letter dated 19.04.2013. This submission included details of employees serving at Liaquat University Hospital Hyderabad / Jamshoro based on methods of absorption, appointment by transfer, and officers posted on O.P.S., etc. Additionally, another letter dated 11.12.2015 was dispatched to the Secretary of Health and Chief Secretary Sindh regarding the repatriation of said employees. Moreover, the Medical Superintendent of Liaquat University Hospital Hyderabad/Jamshoro issued a compliance letter dated 20.03.2015, explicitly stating that in response to the requested information in the prescribed proforma regarding the subject matter, the response should be considered as having no relevant data ("NIL"). Subsequently, an employee named Tariq Javaid challenged his seniority in C.P. No. D-846 of 2014, which was adjudicated on 10.11.2016. The Petition was dismissed, with directions given to the Chief Secretary to determine the outcome of the appeal or representation. During the appeal hearing, the said Tariq Javaid, in collusion with the Section Officer, presented an allegedly fabricated and inaccurate list that claimed certain employees of the lower grades were affected. Despite these matters not being under consideration by the Chief Secretary nor pertaining to compliance with previous orders of the Hon'ble Supreme Court. Suddenly, during the hearing before the Chief Secretary and Secretary of Health, the Section Officer, Muhammad Saleem, who was complicit with Tariq Javaid, issued a letter dated 12.07.2017 bearing No. SO(PM-II)9-454/014 to the Medical Superintendent of Liaquat University Hospital Hyderabad / Jamshoro., the subject of the letter was "illegal appointment, promotion, adjustment in violation of rules and procedure. Following compliance with the aforementioned letter, the Medical Superintendent of Liaquat University Hospital Hyderabad / Jamshoro issued the impugned letter dated 13.07.2017, without hearing the persons/employees affected, notice, or any demand related to the orders of the Hon'ble Supreme Court, which had already been adhered to. The Medical

Superintendent issued an allegedly void ab initio, illegal, and unlawful order dated 13.07.2017, which is impugned on the grounds that it was issued without adherence to required rules and bye-laws, without providing a show cause opportunity to the petitioners, without granting the petitioners a chance to be heard, and without following due process of law. Consequently, the order is deemed illegal, unlawful, unjust, and unsustainable under the law. Hence, the instant Petition was filed with the above-mentioned prayers.

3. Counsel for the petitioners mainly emphasized that the impugned order dated 13.07.2017 is illegal. The employees from BPS-2, 3, and 5 were demoted illegally. The Counsel argues that in the list sent by the Section Officer in his letter dated 12.07.2017, the names of present petitioners do not find a place. The order dated 13.07.2017 included the names of the petitioners, which is not only the height of injustice but incompetency on the part of the Medical Superintendent who, without verifying the record, issued the impugned letter, which is liable to be set aside / withdrawn. He further argued that the Medical Superintendent has also, in his letter No.ENQ/CMIT/24/2014/1883 Karachi dated 08.08.2014, whereby the then M.S. has clarified that no illegal appointment promotion or O.P.S. employees and/or appointment by transfer existed in Liaquat Medical University Hospital Hyderabad / Jamshoro but the present Medical Superintendent did not verify the record and documents. Hence, the impugned order is illegal and liable to be set aside.

4. On the other hand, learned A.A.G. argued that the promotions of the petitioners were against the law and Supreme Court judgments. He further argued that all Government departments are bound to comply with the orders of the Hon'ble Supreme Court in its letter and spirit. He further argued that Respondent No.3 had implemented the orders communicated under Government Letter No.SO (PM-II) 9-454/014 Dated 12.07.2017, and the Medical Superintendent scrutinized the files of employees and found illegal promotion/adjustment. Hence, they were demoted, and such a report was sent to the Government under this order letter dated 13.07.2017. Lastly, he prayed for the dismissal of the Petition, which was not maintainable.

5. We have heard learned Counsels for the parties and perused material available on record. Admittedly, the petitioners are employees of the Health Department Government of Sindh, civil servants, and fall within the ambit of section S.2(1)(b) Civil Servants Act, 1973 (The Act). The definition of "Civil Servant" under the Civil Servants Act 1973 excludes specific categories explicitly. This exclusion includes persons on deputation to the Federation from any Province or other authority, those employed on a contract or work-charge basis funded from contingencies, and individuals designated as "worker" or


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"workman" under the Factories Act, 1934, or the Workmen's Compensation Act, 1923.

6. Article 212 of the constitution provides the establishment of Administrative Tribunals with exclusive jurisdiction solely pertaining to disputes concerning the terms and conditions of service of a 'Civil Servant' as defined in the Civil Servants Act, 1973. Consequently, the jurisdiction of the Tribunal cannot be expanded to encompass any other category of disputes. In order to enhance brevity and accuracy, the relevant articles are herein reproduced -

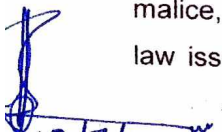
"212. (1) Notwithstanding anything hereinbefore contained the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of:

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

7. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority, eligibility to promotion, and disciplinary proceedings. Section 3(2) of the Service Tribunals Act, 1973, provides that the Tribunal shall have exclusive jurisdiction in matters related to civil service terms and conditions, particularly in the context of jurisdiction. The term "exclusive jurisdiction" indicates that the Service Tribunals have sole authority to adjudicate and resolve legal matters related to civil servants' service terms and conditions. In other words, other forums, such as Civil courts or High courts, are precluded from hearing or deciding on cases falling within the ambit of this provision. Reliance can be placed in the case of Ali Azhar Khan Balouch and other V/S Province of Sindh and others (2015 SCMR 456).

8. Article 212 of the Constitution prohibits this Court from hearing any case involving the terms and conditions of employment, including disciplinary procedures, of any individual currently or previously employed in Pakistan. However, an order, whether original or appellate, bars the jurisdiction of this Court. The word 'final' has been removed from Section 4 of the Civil Servants Act, although this does not imply that every order issued by the Departmental Authority would be challengeable before the Service Tribunal. Only orders that determine a substantial matter in dispute regarding terms and conditions of service or disciplinary action can be contested before the Service Tribunal.

9. The Honorable Supreme Court of Pakistan has resolved that regardless of the presence of matters pertaining to fundamental rights, including claims of discrimination, challenges against statutory rules unsympathetically affecting civil servants, orders issued by an incompetent authority, orders based on malice, or instances where an authority lacking jurisdiction under the governing law issues an order affecting the terms and conditions of a civil servant, the



exclusive forum for redressal in all aforementioned circumstances, as well as others, the remedy lies with Service Tribunal established under Article 212 of the Constitution. Reliance is placed on the cases of "Iqan Ahmed Khurram v Government of Pakistan and others" (PLD 1980 SC 153), "Khalid Mahmood Wattoo v. Government of Punjab" (1998 SCMR 2280), "Muzaffar Hussain v The Superintendent of Police, District Sialkot" (2002 P.L.C. (C.S.) 442) and "Ali Azhar Khan Baloch and others v. Province of Sindh and others" (2015 SCMR 456).

10. It is a well-settled principle of law that invoking fundamental rights becomes considerably unnecessary when a statute grants a right and a comprehensive mechanism for its enforcement. The jurisdiction of the High Court, as per Article 212 of the Constitution, is unequivocally precluded, given the existence of a specific forum designated for addressing the grievances of the petitioner. This remains valid regardless of whether the order in question was issued due to malice aforethought, coram non-judice, lack of jurisdiction, or any other reason. In this context, the Hon'ble Supreme Court of Pakistan in "Syed Arshad Ali and others v. Pakistan Telecommunication Company Ltd. and others" (2008 SCMR 314) has observed as under:-

"It is well-recognized that if a right has been conferred by a statute and a complete mechanism has been provided for enforcement thereof, there could hardly be any occasion to invoke the applicability of fundamental rights. The jurisdiction of the High Court will be patently barred under Article 212 of the Constitution of Islamic Republic of Pakistan, in view of the specific forum provided for redressal of the grievances of the petitioners, even if the order proposed to be challenged may have been passed in whatsoever circumstances viz. mala fide, coram non-judice or without jurisdiction."

11. The similar principle as laid down above in the case of "I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others" (1991 SCMR 1041) was decided by a five-judge members bench of Pakistan's Supreme Court with the following paragraph 6 of Article 212, as follow :-

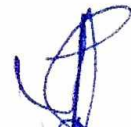
"A perusal of the above-quoted Article 212 of the Constitution indicates that under clause (1), the appropriate Legislature has been empowered to enact for the establishment of one or more Administrative Courts or Tribunals for exercising exclusive jurisdiction in respect of the matters referred to in sub-clauses (a), (b) and (c) of the above clause, which inter alia include the matters relating to the terms and conditions of persons (who are or have been) in the service of Pakistan including in respect of disciplinary matters. It may further be noticed that clause (2) of the above Article provides that notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established in terms of 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. It also

provides the abatement of the pending proceedings in respect of such matters except those appeals, which were then pending in this Court."

12. Article 212 of the Constitution operates to eliminate the jurisdiction of High Courts and civil courts regarding issues interrelated to the terms and conditions of civil servants. The conditions within Article 212 do not establish simultaneous jurisdiction for civil courts, High Courts, and Tribunals. The ouster of jurisdiction as envisaged by Article 212 of the Constitution is mandated constitutionally and, consequently, confines the jurisdiction of civil courts and High Courts in matters that come distinctly within the exclusive purview of Service Tribunals. Article 212 of the Constitution has established a comprehensive remedy process before a venue, the Tribunal, which functions as a court for all purposes. Reliance can be placed on "Sh. Riaz-ul-Haq and another v. Federation of Pakistan through Ministry of Law and others" (PLD 2013 SC 501). An appellate tribunal with judicial powers is established under this Article. Furthermore, Article 212 of the Constitution, which begins with a non-obstante phrase, starts with the phrase "notwithstanding anything hereinbefore contained", which suggests that the provision prevails over preceding provisions or regulations. There are a plethora of judgments on this point, including "Abdul Bari v. Government of Pakistan and 2 others" (PLD 1981 Karachi 290) and "Mian Amanul Mulk v. N.W.F.P. through Chief Secretary" (PLD 1981 Peshawar 1).

13. Moreover, another aspect of the petitioners' claim to have been affected is due to an allegedly false claim made by one Tariq Javaid, who, in collusion with Section officer namely Muhammad Saleem, managed the issuance of a letter dated 12.07.2017 addressed to Medical Superintendent of Liaquat University Hospital Hyderabad / Jamshoro with a subject 'illegal appointment, promotion, adjustment in violation of rules and procedure'. This facet of the allegation requires proper appreciation of documents that are beyond the scope of a constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

13. Looking at the facts and circumstances of the case, as discussed above, we dismiss this Petition. However, the petitioners are at liberty to approach the competent forum for the redressal of their grievances.



Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-1789 of 2023

DATE ORDER WITH SIGNATURE OF JUDGE(S)

For orders on office objection
For hearing of MA-10313/234
For hearing of main case

01.08.2024

Mr. Zain-ul-Abdin Sahito advocate for petitioner.
Mr. Muhammad Ismail Bhutto, Addl: A.G along with Muhammad
Usman AD, DG, Health Office, Hyderabad.

Ms. Rehana Siddiqui, advocate files power along with comments on
behalf of respondent No.3, taken on record.

Petition essentially assails an order issued in 2016 and matter
subsequent thereto pertaining to terms and conditions of service of a
government servant. Upon being confronted with the bar of laches in
addition to that contained in Article 212 of the Constitution, learned
counsel does not press this petition, which is dismissed as withdrawn
along with listed application.


JUDGE


JUDGE