

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

C.P. No.D-3154 of 2022

Before:

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

Petitioner: Through Syed Sardar Hussain Shah, advocate.

Respondents: Through Mr. Allah Bachayo Soomro, Additional Advocate General Sindh along with Ghulam Muhammad Chandio focal person Education Department.

Date of hearing: 29.02.2024.

Date of Judgment 19.03.2024

J U D G M E N T

KHADIM HUSSAIN SOOMRO, J. :- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has made the following prayers:-

"A) Declare that inserting the name in the fake appointments of a qualified teacher amounting to harass, borrow beat and to put stigma on lawful career as of teacher and defame her.

B) Declare the stopping the salaries of the petitioner is unlawful, arbitrary and against the settled amounting serious of public functionaries responsible to stop salaries of the petitioner which be released to the petitioner.

C) Permanently restraining the Respondents from taking adverse action against the petitioner during pendency of the above petition and till final disposal thereof.

D) Any other relief which may be deemed fit, just and proper be awarded to her in the circumstances of the case."

2. Brief facts of the case, as per memo of this petition, are that the petitioner, a qualified teacher with an unblemished service record, has been serving since 1990 at Govt. Girls High School Sann. Despite her promotion to High School Teacher in 2014, she has faced harassment since October 2021, with her salary unjustly withheld by the District Education Officer, Jamshoro. Appeals for salary release have been made to no avail despite directives from higher authorities. False allegations and biased treatment have led to show cause notices, and subsequent replies remain unsatisfactorily addressed. Additionally, requests for transfer to her hometown school due to financial hardship have been ignored. Hence, this petition.

3. Learned counsel for the petitioner has argued that the petitioner was appointed as J.S.T. on 03.01.1990, and since then, she has been performing her duties honestly; that the petitioner has been harassed by the Deputy Director of School Education (Elementary, Secondary & Higher Secondary) Hyderabad time to time; malafide act of the respondent can be judged that the petitioner is deprived of her salary from 30.05.2014; that the respondents have violated the fundamental rights of as safeguarded by the constitution Islamic Republic of Pakistan, 1973; that the petitioner moved an application dated 16.06.2022 to District Education Officer, but nothing could be done; that respondents No.3 & 4 have a grudge and inimical attitude towards the petitioner; that the respondents in order to achieve nefarious goals have issued multiple show cause notices dated 07.04.2021, 09.06.2021, 07.10.2021 and 17.06.2021; that the respondents without assigning any genuine reason have stopped salary of the petitioner.

4. Learned A.A.G., as well as the focal person of respondent No.3, submitted that the allegations levelled by the petitioner in the memo of the petition are false and fabricated; the petitioner is a habitual absentee from duties and such disciplinary action was taken against her; first show cause was issued on 07.04.2021, final show cause notice was issued on 17.06.2021; the petitioner was also called for personal hearing on 31.08.2022 and ultimately the petitioner was terminated from service on the ground that she remained absent from her duties.

5. We have heard learned counsel for the parties and perused material available on record. Admittedly, the petitioner, a J.S.T. in the Education Literacy Department, Government of Sindh, is a civil servant and falls 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 "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;" **[underlying for emphasis]**.

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. Admittedly, the petitioner was terminated from her service because of her absence from duties and resultantly departmental proceedings initiated against her. The apex court in the case of Ali Azhar Khan Balouch and other V/S Province of Sindh and others (2015 SCMR 456) has observed that the Service Tribunal has sole authority to adjudicate the matter relating to the terms and conditions of service.

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 by 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 and an order of termination of service can only be called in question before Service Tribunal.

9. The apex Court of Pakistan has resolved that regardless of the presence of fundamental rights matters, including claims of discrimination, challenges against statutory rules unsympathetically affecting civil servants, orders issued by an incompetent authority, orders based on malice and bad faith, 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 when a statute grants a right and a comprehensive mechanism for its enforcement, the invocation of fundamental rights becomes considerably unnecessary. 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. This principle has been laid down in the case of I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others 1991 SCMR 1041. Besides it is also well-settled proposition of law that writ jurisdiction could not be exercised where equally efficacious remedy is available."

11. Similarly 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, necessarily 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" 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). Moreover, in "Muhammad Aslam Bajwa v. Federation of Pakistan" (PLD 1974 Lahore 545),. It has been noted that all provisions of the Constitution preceding Article 212, including Article 199, are encompassed by its exclusionary clauses. Indeed, by giving Article 212 precedence, the Legislature made its intention clear.

13. Looking at the facts and circumstances of the case, as discussed above, this petition is dismissed. However, the petitioner is at liberty to approach the Service Tribunal for the redressal of her grievances.

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