

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.1862/2023

Date	Order with signature of Judge
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1. For order on CMA No.18281/2023
2. For order on CMA No.18282/2023
3. For order on CMA No.18283/2023

15.11.2023

Mr. Abdul Qadir Mirza advocate.

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1. Urgency granted.
2. Exemption granted subject to all just legal exceptions.
3. Heard learned counsel for plaintiff. He has relied upon 2005 PLC (CS) 554 (Inspector General of Police Sindh vs. Habib-ur-Rehman Abro)

Precisely relevant facts are that plaintiff was posted at SIU/CIA in December 2018 as a DSP Operations; his scope of work and powers initially were as per Order dated SSP/SIU/RDR/-1419/2020 dated 04.08.2020 and after few days his powers were limited and regulated by the Order No.SSP/SIU/SHO/580-83-2020, dated 18.08.2020 of the SSP SIU/CIA according to which all the Incharge were directed to report the SHO before departure for raid and after conducting raid SHO shall be reported regarding the results of the same on immediate basis and all suspects should be produced before SHO who will personally interrogate/interview each suspect and inform the SSP about it. Upon having done with all such interrogation, the DSP Operations, then shall be the third person before whom the suspects shall be produced for interview; that during the tenure of serving as DSP Operations SIU/CIA, although it was not mentioned in his duties as outlined in SSP SIU/CIA order

dated 18.08.2020, still being a competent and vigilant Officer, the plaintiff always tried to observe a check and balance which is essential for smooth and transparent working of any Department. However, in doing so the Plaintiff observed that several officials were involved in doing irregularities/illegal activities while performing their duties such as not mentioning the names of suspects in suspect list, however, they have been brought and kept in the jail, or catching suspects which are not in their mandate, or bringing about the suspects and releasing them arbitrarily without presenting them before the plaintiff for investigation/interview, etc. It is further contended that he observed the above illegal and unusual activities of officers namely 1) SIP Mumtaz Mehar, 2) WHC Tasawar Hussain, 3) SHO Rana Ashfaq, 4) PSO Khudayat Gondal, 5) SI Ghulam Ismail, 6) Usman Asghar Qureshi, 7) SIP Dharmindar, 8) SI Mazhar Abbas. It is further contended that plaintiff issued several reports of misconduct addressed to the then SSP SIU/CIA, which highlighted the specific and particular misconducts of each one of them. However, regrettably no action was sought against the said officials by the then SSP SIU/CIA; that same fact can be easily corroborated from the fact that when the plaintiff started issuing misconduct reports of SI Mumtaz Ahmed, the then SSP immediately exempted said Mumtaz Ahmed also from standby duty vide letter No.SSP/SIU/SSC/TP/5372-74 dated 24.06.2021; that charge sheet dated 01.02.2022 was issued to plaintiff just to victimize him due to his reports etc that he made to higher officers. Plaintiff has prayed that:-

“(i) To declare that the Show Cause Notice as well as ground of action both dated 31.10.2023 bearing Ref No.18862- 63/E-I issued by defendant No.2 are void ab-intio, illegal and have no sanctity in the eyes of law.

(ii) To direct defendant No.1 and 2 not to create impediments in the promotion of the Plaintiff.

(iii) To grant permanent injunction and suspend the operation of purported Show Cause Notice as well as ground of action both dated 31.10.2023 bearing Ref No.18862- 63/E-I.

(iv) To Direct defendants to pay the plaintiff a sum of Rs.100,000,000/- (Rupees Ten Crore Only) towards special and general damages.

(v) Any further order/relief as this Hon'ble Court deems appropriate in the circumstances of the case.

(vi) Award cost of the Petition.”

Admittedly plaintiff is a civil servant; he has challenged departmental proceedings in this civil suit. Case law relied upon by learned counsel also reflects that matter was heard and decided by the Sindh Services Tribunal. It appears that the matter relates to the terms and conditions of service for which the jurisdiction of this Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. The remedy under Section 4 of the Sindh Service Tribunals Act, 1973 is available to the Petitioner to approach the Service Tribunal for redressal of his grievance relating to the terms and conditions of service. Article 212(2) of the Constitution specifically places an embargo on all other courts except Service Tribunal to grant an injunction, make any order or “entertain” any proceedings in respect of any matter relating to the terms and conditions of service even if they are malafide, ultra vires or coram-non-judice. It would be expedient to reproduce the said Article 212(2) of the Constitution, which reads as under:-

“(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."

The word 'entertain' used in Article 212(2) of the Constitution is of much importance. In Case of **Ali Azhar Khan Baloch and others v. Province Of Sindh and others (2015 SCMR 456)**, it was held by the Apex Court in Paragraph No.149 that: "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".

In view of above this suit appears to be barred under Article 212 of the Constitution of Pakistan 1973 and Section 4 of the Sindh Service Tribunals Act, 1973. In such circumstances, the application for grant of injunction at this interlocutory stage being bereft of merits is hereby dismissed accordingly. However, the learned counsel for the plaintiffs is put on notice to satisfy on the maintainability of the Suit.

J U D G E