

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

PRESENT:

**Mr. Justice Naimatullah Phulpoto,
Mr. Justice Zulfiqar Ali Sangi,**

(1) C. P. No.D-380 of 2020

Petitioners : Ali Mohammad Bijarani and others.

Respondents : Chairman, Election Committee, Sindh Primary
Teachers Association & others.

Mr. Habibullah G. Ghouri, advocate for the petitioners.
Mr. Abdul Rehman A. Bhutto, advocate for respondents No.2 and 3.
Mr. Zafar Ali Malghani, advocate for respondent No.9.
Mr. Liaquat Ali Shar, Addl. A.G.

(2) C. P. No.D-423 of 2020

Petitioners : Tareeq Ahmed Abro & others.

Respondents : Deputy Director, Industries/Administrator & others.

Mr. Asif Ali Abdul Razak Soomro, advocate for the petitioners.
Mr. Asif Hussain Chandio, advocate for respondent No.4.
Mr. Ashfaque Hussain Abro, advocate respondents No.9 & 10.
Mr. Riaz Hussain Khoso, advocate for respondents No.11 to 19.
Mr. Liaquat Ali Shar, Addl. A.G.

Date of hearing : 18.11.2020.

Date of decision : 18.11.2020.

ORDER.

NAIMATULLAH PHULPOTO, J.- Through this Constitution Petition
(C. P. No.D-380/2020) filed by petitioners against the respondents, it is
prayed for the following relief(s):-

*a) That this Honourable Court may graciously be pleased to issue a writ
declaring the impugned orders dated 22.9.2020 and 26.9.2020 passed*

by Respondents No.2 and 3 as null and void and their action to declare the Petitioners as ineligible to contest the elections of Primary Teachers Association Sindh for Taluka Tangwani District Kashmore @ Kandhkot scheduled on 18th October 2020 and further direct the Respondents to hold fair and transparent elections by allowing the Petitioner to contest the same.

b) To suspend the operation of impugned orders dated 22.9.2020 and 26.9.2020 passed by Respondents No.2 and 3 respectively during pendency of this Petition and issue a writ of prohibition restraining the Respondents from declaring the panel of Respondent No.9 as successful in the elections of Sindh Primary Teachers Association Taluka Tangwani, District Kashmore at Kandhkot.

c) Award costs of the petition.

d) Any other equitable relief be granted to the Petitioners.

2. Subject to the maintainability of the petition, notices were issued against the respondents as well as AAG. Comments are filed by respondents No.1, 2, 3, 4, 5, 7 and 9.

3. Since the question of the maintainability of the petition was raised by this Court on the day of the filing of the petition, learned advocate for the petitioners was asked to satisfy us about the maintainability of the petition. Mr. Habibullah G. Ghouri, learned Counsel for the petitioners, submitted that petitioners only seek declaration of the impugned orders as null and void and to contest the election is the fundamental right of the petitioners. Mr. Ghouri submitted that petition is maintainable under the law and petitioners are entitled for the reliefs, for which petition is filed.

4. Mr. Liaquat Ali Shar, learned AAG contended that All Sindh Primary Teachers Association is an association and Constitution Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is not maintainable. In support of his contentions, he has relied upon the orders passed by this Court in C. P. No.D-101/2015, dated 12.02.2015.

5. M/s Abdul Rehman A. Bhutto and Zaffar Ali Malghani, Counsel for the respondents No.2, 3 and 9, have supported the arguments of the learned AAG and argued that petition is not maintainable under the law.

6. In the connected C. P. No.D-423/2020 filed by petitioners Tareeq Ahmed Abro and others against the respondents, it is prayed for following relief(s):-

- a) *That this Honourable Court may graciously be pleased to declare the impugned decision dated 25.10.2020 of respondent No.4/Chairman, Central Election Committee, All Sindh Primary Teachers Association as illegal, malafide, null and void as well as unwarranted and against norms of equity as well as principles of natural justice.*
- b) *That this Honourable Court may graciously be further pleased to set aside impugned decision dated 25.10.2020 of respondent No.4/Chairman, Central Election Committee, All Sindh Primary Teachers Association being illegal, malafide, null and void as well as unwarranted and against norms of equity as well as principles of natural justice.*
- c) *That this Honourable Court may graciously be further pleased to suspend impugned decision dated 25.10.2020 of respondent No.4/Chairman, Central Election Committee, All Sindh Primary Teachers Association till decision of main petition.*
- d) *Award costs.*
- e) *Grant any other equitable relief.*

7. Comments have been filed by respondents No.1, 2, 3, 4, 9, 10 and 11 to 19. Respondents No.11 to 19 have questioned the maintainability of the Constitution Petition in the matter

8. As in both the petitions common question of law and facts is involved, we intend to decide the same by this single order.

9. Mr. Asif Ali Abdul Razak Soomro, learned advocate for the petitioners, contended that the petitioners have been declared as returned candidates and election was held on the orders passed by this

Court in C. P. No.D-1745/2019 at Hyderabad. It is further submitted that election is the fundamental right of petitioners. It is argued that impugned decision dated 25.10.2020 passed by respondent No.4/Chairman, Central Election Committee, was illegal and malafide. Lastly, it is submitted that petitioners are entitled for the reliefs, for which petition is filed.

10. Mr. Liaquat Ali Shar, learned AAG argued that this Constitution Petition is also not maintainable under Article 199 of the Constitution. According to him, All Sindh Primary Teachers Association is an association. Controversy involved in the petition do not relate in connection with the affairs of Federation, a Province or a local authority. Lastly, it is submitted that petition is not maintainable and relied upon the orders passed by this Court in C. P. No.D-101/2015 dated 12.2.2015.

11. Mr. Ashfaque Hussain Abro appearing on behalf of the respondents No.9 and 10 submitted that petitioners have been declared as returned candidates and supported the case of petitioners.

12. Mr. Riaz Hussain Khoso, Counsel for respondents No.11 to 19, argued that it is the case of teachers association; in such matters, petition is not maintainable under the law.

13. We have carefully heard the learned Counsel for the parties and perused the relevant record and case-law.

14. The superior Courts of Pakistan have been entrusted with the power of judicial review which is an important feature of our Constitution. Article 199 of the Constitution empowers a High Court to issue writs of *mandamus*, *prohibition*, *certiorari*, *quo warranto* and *habeas corrupt* (*without using the said terms*) as long as the respective conditions

contained in Article 199 *supra* are met. In this regard, sub-Article (1) is germane which is reproduced below for ease of reference:

“199. Jurisdiction of High Court.

(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

(a) on the application of any aggrieved party, make an order-

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order-

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11.”

[Emphasis supplied]

15. From a bare reading of the foregoing sub-Article, there is no cavil to the proposition that as a general rule for the purposes of Article 199 of the Constitution, this Court under Article 199 of the Constitution has power to issue direction to a person performing functions in connection with affairs of Federation, a Province or a local authority to refrain from doing anything he is not permitted by law or to do anything he is required by law to do within its territorial limits.

16. In the case of Ghulam Murtaza Wadho v. Chairman Taluka Election Committee, All Sindh Primary Teachers Association Kamber-Shahdadkot and others, C. P. No.D-101/2015 vide orders dated 12.2.2015 this Court observed that Primary Teachers Association has nothing to do with the affairs of Federation, Province or any autonomous body, it was held that petition was not maintainable, and dismissed in *limine*. Order dated 12.2.2015 is reproduced hereunder:-

“Mr. Ghulam Dastagir Shahan, advocate files Vakalatnama along with comments on behalf of respondents, same are taken on record.

From the pleadings, it appears that the petitioner, is a member of All Sindh Primary Teachers Association which is registered under Society Registration Act. His grievance relates to the election of the Association. On query, learned Counsel for the petitioner very candidly concedes that Association has nothing to do with the affairs of Federation, Province or any autonomous body. In view of above, we are of the considered view that instant petition being devoid of merits and is not maintainable, which is accordingly dismissed in limine.”

17. Present case, relates to teachers Association; grievance of petitioners relate to election of teachers Association, which are not performing functions in connection with the affairs of the Federation, a Province or a local authority. Thus, no direction under sub-Article (1)(a)(i) of Article 199 of Constitution can be issued to refrain them from doing anything or to do anything required by law to do within territorial jurisdiction of this Court.

18. For the aforesaid facts, reasons and circumstances, we hold that these Constitution Petitions are not maintainable. Resultantly, these petitions were dismissed by us through short order dated 18.11.2020 and above are the detailed reasons thereof.

JUDGE

JUDGE

We have carefully heard the learned Counsel for the parties and perused the relevant record of both the petitions.

14. The crucial issue involved in these petitions is regarding the maintainability of these petitions. It is argued before us that in C. P. No.D-1745/2019 dated 18.7.2019 directions were issued by learned Circuit Court, Hyderabad for conducting the elections in an impartial manner, but it appears that said C. P. was dismissed as not pressed vide order dated 22.09.2020 at Circuit Court, Hyderabad. Identical issue, which is involved in these petitions, came before this Court in C. P. No.D-101/2015 and said petition was dismissed in *limine* by this Court vide order dated 12.02.2015. It was held as under:-

“Mr. Ghulam Dastagir Shahan, advocate files Vakalatnama along with comments on behalf of respondents, which are taken on record.

From the pleadings, it appears that the petitioner, a member of All Sindh Primary Teachers Association which is registered under Society Registration Act. His grievance relates to the election of the Association. On query, learned Counsel for the petitioner very candidly concedes that Association has nothing to do with the affairs of Federation, Province or any autonomous body. In view of above, we are of the considered view that instant petition being devoid of merits and is not maintainable, which is accordingly dismissed in limine.”

15. After hearing the learned Counsel for the parties, we have come to the conclusion that association has nothing to do with the affairs of the Federation, a Province or any autonomous body. For ready reference, jurisdiction of High Court under Article 199(1) of the Constitution of Islamic Republic of Pakistan, 1973 reads under:-

“199. Jurisdiction of High Court.

(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

- (a) on the application of any aggrieved party, make an order-
- (i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or
 - (ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or
- (b) on the application of any person, make an order-
- (i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or
 - (ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or
- (c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11.”

16. All Sindh Primary Teachers Association has nothing to do with the affairs of Federation, a Province or any autonomous body. Thus, this Court has no jurisdiction to entertain the aforesaid petitions.

17. For the above-stated reasons, we have no hesitation to hold that petitions are not maintainable, hence, the same were dismissed by short order dated 18.11.2020 and above are the detailed reasons thereof.

JUDGE

JUDGE

Qazi Tahir PA/*