

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-257 of 2025
(*Zulfiqar Ali Kariro v province of Sindh & others*)

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order: 24.1.2025

Mr. Ahmed Ali Hussain advocate for the petitioner

Adnan-ul-Karim Memon, J. – The petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic Pakistan, 1973, with the following prayer: -

- I. *Declare that the Impugned SCN & Impugned Inquiry are illegal, malafide, arbitrary, ultra vires the Sindh Civil Servant (Efficiency & Discipline) Rules, 1973 and not otherwise and in violation of the Petitioner rights;*
- II. *Set aside the Impugned SCN & Impugned Inquiry as the same is illegal, malafide, arbitrary, ultra vires the Sindh Civil Servant (Efficiency & Discipline) Rules, 1973 and not otherwise and in violation of the petitioner's rights;*
- III. *Suspend the operation of the Impugned SCN & Impugned Inquiry as the same is illegal, malafide, arbitrary, ultra vires the Sindh Civil Servant (Efficiency & Discipline) Rules, 1973 and not otherwise and in violation of the petitioners' rights;*
- IV. *Restrain the Defendants, their officers, or anyone acting on their behalf from implementing or proceeding against the Plaintiff based on the Impugned SCN & Impugned Inquiry as the same is illegal, malafide, arbitrary, ultra vires the Sindh Civil Servant (Efficiency & Discipline) Rules, 1973 and not otherwise and in violation of the petitioner's rights,*

2. Petitioner Zulfiqar Ali Kariro, is working as a Sub-Registrar in the Revenue Department of the Government of Sindh and challenges the validity of a show cause notice dated 26.12.2024 and disciplinary proceedings against him under Rule 4-A read with sub-rule (3) of Rule 5 of the Sindh Civil Servant (Efficiency & Discipline) Rules, 1973. He submits that the allegations of fraud, forgery, and tampering with manual and computerized property registration records are unfounded.

3. At the very outset, we inquired from learned counsel as to how the instant Petition is maintainable against the disciplinary proceedings initiated against the civil servant under Article 199 of the Constitution, which relates to the terms and conditions of his service and the outcome of the disciplinary proceedings has yet to come, and after its conclusion, he has the remedy under the law to assail the findings adversely affecting him, if any.

4. The counsel argues that the show cause notice is illegal and violates the law. He added that the petitioner was not given a fair opportunity to defend himself. He emphasized that dispensing with a regular inquiry was an erroneous decision. He added that the inquiry report is flawed and ignores crucial details, particularly the fact that the original records were reported as lost before the alleged forgery. The petitioner cannot be held responsible for actions related to decades-old records created before his tenure of service on the subject post as Sub-Registrar. He emphasized that a writ of mandamus is a court order compelling a public official or body to perform a duty that is owed to the public and it can be used to challenge disciplinary proceedings if there is a clear legal right to be free from such proceedings or if the proceedings are being conducted in a manner that violates the service right of civil servant as such his case falls within that exception and this petition is maintainable under Article 199 of the constitution. He attempted to demonstrate that the proceedings against the petitioner are based on false allegations and are being conducted in a manner that violates his service rights, and he has a strong prima facie case for seeking judicial intervention. In support of his arguments, the counsel cited the case of *Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707)*. At this stage, we reminded him that disciplinary proceedings, such as those faced by petitioner Zulfiqar Ali Kariro, clearly fall within the purview of Service Tribunals. He replied with the assertion that the petitioner believes his rights have been violated and the disciplinary proceedings are unlawful, as such he can not approach the Service Tribunal for redress at this stage. He requested the court to quash the disciplinary proceedings.

5. We have considered the arguments of the learned counsel for the petitioner on the maintainability of this petition under Article 199 of the Constitution.

6. This Court will limit its determination to whether the petitioner's challenge to the show cause notice/disciplinary proceedings is properly brought within the scope of its writ jurisdiction.

7. It is well settled that disciplinary proceedings fall within the ambit of expression terms and condition of service of a civil servant, therefore, the jurisdiction of all other courts is barred by the provision of Sindh Service Tribunals Act, 1973 read with Article 212(2) of the Constitution. On the aforesaid proposition, we are fortified with the decision rendered by the Supreme Court in the case of Ali *Azhar Khan Baloch vs. the Province of Sindh [2015 SCMR 456]*. The Supreme Court in paragraphs 146 to 150 has decided the issue in hand no need for further deliberation on our part.

8. Progressing further on the issuance of show cause notice and disciplinary proceedings initiated against the petitioner on account of his alleged misconduct, a constitutional petition against a show cause notice is not maintainable unless the notice is illegal or lacks jurisdiction. A show cause notice is the first step in a process, and it is not an adverse order under the service jurisprudence. Show cause notices provide a fair process for the alleged person to respond to allegations and explain his/her position. Courts generally refrain from interfering in every show cause notice through interim orders, as these proceedings have established procedures. Challenges to show cause notices are permissible, in cases, if the notice lacks jurisdiction, is barred by law, constitutes an abuse of process, or is issued by an authority without jurisdiction (*coram non-judice*) as held in the case of *Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others* (2022 SCMR 92).

9. Additionally, a charge sheet or show-cause notice alone does not constitute an adverse order that infringes upon the rights of civil/public servants as portrayed. This is because the authority may drop proceedings after considering the response. Writs typically lie when rights are infringed. Since a show-cause notice does not inherently infringe on the rights of civil/public servants, courts should be cautious in issuing interim orders that interfere with the statutory authority of the concerned body to probe the allegations and decide the matter finally. A general principle in law is that disciplinary proceedings against a civil/public servant cannot be challenged through a writ petition, as the appropriate forum to contest such proceedings is usually the Service Tribunal, which has exclusive jurisdiction over matters related to terms and conditions of service, including disciplinary issues as discussed in the preceding paragraphs.

10. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to restrain the competent authority from taking action under law against a civil/public servant against whom prima facie evidence showing his/her involvement in the serious charges of misconduct was/is available, for the reason that any such direction would be disharmonious to the principle of good governance and canon of service discipline, rather causing undue interference to hamper the smooth functioning of the departmental authorities, more particularly in the respondent revenue department where the allegations of fraud and forgery are under probe.

11. Keeping in view the above-mentioned facts and circumstances of the case, we do not see any infringement of the right of the Petitioner under the service as well as the constitution, which could be called into question by way of Writ Petition under Article 199 of the constitution. Therefore, this Court finds no ground to interfere with the impugned Show Cause Notice/ disciplinary

proceedings under its Constitutional jurisdiction. The case law, relied upon by learned counsel, is on distinguishable facts and is inapplicable to the facts and circumstances of this case.

12. This being the legal position of the case, we find no merits in the instant petition, which is dismissed accordingly with no order as to costs, leaving the petitioner to avail the remedy against the outcome of the disciplinary proceedings conducted by the respondents, as provided under the law, which shall be concluded, if any, within two months from today and the petitioner shall be provided a meaningful hearing under law.

JUDGE

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