

HIGH COURT OF SIND, CIRCUIT COURT, HYDERABAD

C.P. No.D-3640 of 2022

[Ghulam Murtaza Shaikh vs. Province of Sindh and others]

Before: **Justice Arbab Ali Hakro**
Justice Riazat Ali Sahar

Petitioner by : Barrister Jawad Ahmed Qureshi, Advocate

Respondents by : Mr.Rafiq Ahmed Dahri, Asst. A.G Sindh

Mr.Zulfiqar Ali Memon, Administrative Officer,
focal person, Director Crop Reporting Service
Centre, Hyderabad

Dates of Hearing : 10.3.2025, 27.3.2025 & 10.4.2025

Date of Decision : **24.4.2025**

JUDGMENT

ARBAB ALI HAKRO, J:- Through this Constitutional Petition, the Petitioner prays for the issuance of appropriate directions to the Respondents, mandating them to accord pay protection to the Petitioner with effect from 06.11.2020. Furthermore, the Petitioner beseeches this Court to declare that he is rightfully entitled to such pay protection and that the letter dated 04.01.2022, issued by the office of Respondent No.3, is null, void, and devoid of lawful authority.

2. The brief facts underpinning the institution of the instant petition are that the Petitioner was initially appointed as Accounts Assistant in Pay Scale 3 by the Pakistan Broadcasting Corporation (PBC) on 24.03.2004. Subsequently, on 30.05.2019, the Petitioner was promoted to the position of Assistant Accounts Officer in Pay Scale 6, equivalent to BPS-17, and was assigned to the PBC Karachi. In October 2017, the Government of Sindh advertised vacancies for the post of Statistical Officer (Non-Supervisory, BPS-17) within the Agriculture, Supply, and Prices Department, through the Sindh Public Service Commission, Hyderabad. Availing himself of the proper channel, the Petitioner applied for the said post and, upon completion of all codal formalities, was appointed as Statistical Officer (BPS-17) on 09.03.2020. Subsequently, on 06.11.2020, the Petitioner was relieved from service at PBC and formally assumed the post of Statistical Officer on the same date. The Petitioner, having rendered service to the Federal Government for over sixteen years, sought to have his previous service

counted and pay protection granted. Respondents No.4 and No.5, vide letters dated 02.03.2021 and 24.03.2021, forwarded the matter to Respondent No.1 for requisite approval concerning pay protection and recognition of the Petitioner's prior service at PBC. However, Respondent No.3, by way of a letter dated 04.01.2022, unlawfully declined to grant pay protection to the Petitioner, citing reliance on a Policy Circular dated 03.06.2016. Aggrieved thereby, the Petitioner has invoked the Constitutional jurisdiction of this Court.

3. Upon issuance of notices to the Respondents, Respondents No. 1, 3, and 6 have submitted their respective comments/statements. Respondents No. 1 and 3 have submitted in their comments that, in accordance with the Policy Circular dated 03.06.2016 issued by the Finance Department, Government of Sindh, the benefit of pay protection is restricted to employees of autonomous organizations that have unequivocally adopted the Basic Pay Scale (BPS) scheme of the Government in its entirety. They assert that, in the instant case, the PBC maintains a separate and distinct pay scale regime that bears no nexus with the Government's BPS framework. Consequently, it has been averred that the relief sought by the Petitioner is devoid of merit and cannot be granted.

4. At the very outset, learned counsel representing the Petitioner contends that the refusal of the Respondents to grant pay protection to the Petitioner is patently illegal and constitutes a violation of established service rules. It is argued that under the Policy Circular dated 03.06.2016 issued by the Government of Sindh, the Petitioner is entitled to pay protection, as such benefit has been extended to employees of autonomous bodies. The counsel further submits that the PBC has adopted the scheme of Basic Pay Scales, thereby fulfilling the criteria for pay protection under the said notification. It is also asserted that the Respondents' conduct in denying pay protection to the Petitioner constitutes a violation of the Petitioner's fundamental right to be treated in accordance with the law, and such failure has resulted in a grave infringement of the Petitioner's constitutionally guaranteed fundamental rights.

5. Conversely, learned Assistant A.G Sindh, representing Respondents No.1 and 3, contends that under the Policy Circular dated 03.06.2016 issued by the Finance Department, Government of Sindh, the benefit of pay protection is strictly limited to employees of autonomous organizations that have completely adopted the Basic Pay Scale (BPS) scheme of the Government. It is argued that the PBC operates under its own distinct and independent pay scale system, which is not aligned or correlated with the Government's BPS structure. Consequently, he assert that the Petitioner

does not qualify for pay protection under the aforementioned policy, and the relief sought by the Petitioner is devoid of merit and legally untenable.

6. We have meticulously examined the factual matrix of the present case as well as the legal arguments advanced by the learned counsel for the parties.

7. Prior to embarking upon an adjudication of the merits of the case, it is imperative for this Court to address, as a threshold matter, the issue of its jurisdiction pursuant to the parameters enshrined within Article 212 of the Constitution. It is incontrovertible that if it is established that the Petitioner is indeed a civil servant, the consequential issues articulated in the petition inevitably fall within the ambit of the terms and conditions of service of a government employee. Such matters, therefore, necessitate no further judicial scrutiny. Undoubtedly, the Petitioner is a Government Servant, presently discharging his duties as a Statistical Officer (BPS-17) at the Crop Reporting Service Centre, Government of Sindh, Dadu. Given the aforementioned contextual framework, if this Court were to advance its inquiry further, recourse must be had to Section 2(b) of the Sindh Civil Servants Act, 1973 ("the **Act of 1973**"), which succinctly delineates the definition of a '**Civil Servant**' as follows:

2 (b) *“civil servant” means a person who is a member of a civil service of the Province or holds a civil post in connection with the affairs of the Province, but does not include –*

- (i) a person who is on deputation to the Province from the Federation or any other Province or authority; or*
- (ii) a person who is employed on contract, or on work-charged basis, or who is paid from contingencies; or*
- (iii) a person who is “worker” or “workman” as defined in the Factories Act, 1934 (XXV of 1934), or the Workmen’s Compensation Act, 1923 (VIII of 1923);*

8. From a plain reading of the statutory definition of a "**civil servant**," as referred to hereinabove, delineates with unequivocal precision the parameters of its applicability. It categorically encompasses persons who are integrally affiliated with the civil service of the Province or who occupy a civil post in direct connection with the administrative affairs of the Province. However, the ambit of this definition is meticulously circumscribed by explicit exclusions, which are, firstly, that it excludes those persons who are on deputation to the Province from the Federation, any other Province, or any external authority, thereby underscoring the principle of jurisdictional autonomy. Secondly, it excludes persons employed on a contractual basis from its purview, those engaged on a work-charged basis, or those remunerated from contingencies, thereby distinguishing permanent civil service roles from transient or ad hoc engagements. Lastly, it unequivocally

excludes persons classified as "workers" or "workmen" under the Factories Act, 1934, or the Workmen's Compensation Act, 1923, thereby demarcating the boundary between civil servants and industrial laborers.

9. The Petitioner, presently serving as a Statistical Officer (BPS-17) at the Crop Reporting Service Centre, Government of Sindh, unequivocally falls within the ambit of the definition of a "civil servant" as enshrined in Section 2(b) of the Act of 1973. The terms and conditions governing the service of a civil servant, including matters such as pay protection, are exclusively regulated by the Sindh Service Tribunals Act, 1973, as mandated by Article 212 of the Constitution. Consequently, once it is conclusively established that the Petitioner is a civil servant and that his grievances pertain to the terms and conditions of his service, the jurisdiction of this Court to entertain the instant Constitutional Petition stands unequivocally ousted. In the case of **Ali Azhar Khan Baloch and others**¹, the Supreme Court of Pakistan elucidated the principle as follows:

"146. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including the disciplinary matters. In other words, the jurisdiction of all other Courts is barred by the provisions of the Sindh Service Tribunals Act, 1973, read with Article 212 of the Constitution.

147. Section 4 of the Service Tribunals Act provides Civil Servant with the right of filing an Appeal before the Tribunal, subject to the qualifications provided therein.

148. In this background, all the Civil Courts, including a Judge (in Chambers) of High Court of Sindh, exercising jurisdiction on the original side as a civil court under C.P.C. cannot entertain a civil suit of a civil Servant relating to the terms and conditions of his service. The exercise of jurisdiction by the High Courts is conferred under Article 175(2) which reads as under:--

"175(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."

149. 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.

150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the civil servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions' includes transfer,

¹ Ali Azhar Khan Baloch and others vs. Province of Sindh and others (2015 SCMR 456)

posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of civil servants.

151. We, for the aforesaid reasons, conclude that the exercise of jurisdiction by way of suit and Constitution petition filed by a civil Servant with regard to his terms and conditions of service is violative of Articles 175, 212 and 240 and the law.”

10. In support of the present Petition, the learned counsel for the Petitioner placed reliance upon the case of **Controller of Military Accounts (RC) Education Cell, Rawalpindi²**. Consequently, notice of the instant Petition was ordered to be issued. However, upon a meticulous examination of the aforementioned case, it transpires that while the Pay Protection issue was central to that matter, the procedural trajectory adopted therein markedly differs from the present case. In the cited case, the aggrieved incumbent, dissatisfied with the decision of the concerned authority, initially filed a departmental representation. Upon receiving no response, the incumbent proceeded to file a Service Appeal before the Federal Service Tribunal, which entertained the appeal. Conversely, in the present case, the Petitioner has directly approached this Court by filing the instant Petition, bypassing the procedural recourse of departmental representation and subsequent appeal before the competent Service Tribunal.

11. In light of the above, and without delving into the merits of the case, it is apparent that the present petition is prima facie barred under the ambit of Article 212 of the Constitution. Accordingly, the petition stands **dismissed**. However, the Petitioner, if aggrieved, is at liberty to pursue an appropriate remedy by invoking the jurisdiction of the competent Service Tribunal, as provided under the law.

JUDGE

JUDGE

AHSAN K. ABRO

² Controller of Military Accounts (RC) Education Cell, Rawalpindi vs. Muhammad Zafar, Assistant Professor and another (2017 SCMR 482)