

# THE HIGH COURT OF SINDH, KARACHI

Before:

*Justice Mohammad Karim Khan Agha*  
*Justice Adnan-ul-Karim Memon*

## **Const. Petition No.D-4413 of 2023**

[Imran Muhammad Khan and another v. Province of Sindh and others]

Petitioners : Imran Muhammad Khan and Zeeshan  
Muhammad Khan through Mr. Zain-ul-  
Abdeen, Advocate.

Respondents : through Mr. Ali Safdar Depar, AAG

Dates of hearing : 15-01-2025

Date of Order : 15-01-2025

## **ORDER**

**Mohammad Karim Khan Agha, J.** – Through this petition, the petitioners have sought directions against the respondents to pay them salary and arrears along with allowances as per law and per finding of the common judgment dated 20.05.2011 passed by the learned Sindh Service Tribunal.

2. The relevant facts of the case are that the petitioners being qualified for the post of Junior school Teacher (BPS-14) appointed against said posts by the Respondents No. 1 to 3 and posted at the Government Boys Secondary school Saudabad and Kala Board District Korangi Karachi. Since then salaries are not being paid to the petitioners. Per petitioners, they after knocking the door of higher authorities, approached to the Service Tribunal vide Appeals bearing No. 63 & 64 of 2010 which were allowed with direction that the petitioners/appellants are legally entitled to their salaries for the period they have worked and performed their duties in the Education Department accordingly. The respondents were directed to pay their salaries and other allowance admissible as per rules to the appellants after proper verification of the period in each case they actually and physically performed their duties. Additionally the Respondent No.1 at his level had to consider and decide the case of appellants for regularization of their service within period of three Months.

3. Learned counsel for the petitioners contended that after implementation of judgment dated 20.5.2011 in piecemeal, some appellants were paid salaries but the petitioners were kept in lurch due to shortage of funds that is contrary to law and violation of fundamental rights and against the principle of natural justice. Per

counsel, the petitioners moved several applications which are pending before the office of the respondent No. 2 merely false hopes are showed; that since the respondents failed to redress the grievance per Judgment of the Service Tribunal in spite of verification of record. Per counsel for the petitioners, admittedly the petitioners are still serving they deserve salaries and withholding the same would amount to depriving them and their families of their fundamental right of livelihood. It is a case of hardship, in case the respondents are not directed to pay salaries, the petitioners would suffer; that since too much time has passed on the showing false hopes of the department, the Tribunal shall not issue the directions again on application on the ground that implementation has been made by respondents as much as the very conduct and act of respondents is malafide, hence the petitioners are invoking constitutional jurisdiction of this Court.

4. At the very outset, learned Assistant Advocate General raised objection on the maintainability of this petition and contended that this petition is not maintainable as the petitioners have alternate remedy available to them by approaching the Sindh Service Tribunal. Learned AAG further states that the petitioners may move execution application before the Tribunal for non-implementation of its decision as per Section 5(2)(d) of the Sindh Service Tribunals Act, 1973.

5. We have heard learned counsel for the parties and perused the record with their able assistance.

6. The first issue to be determined is whether this petition is maintainable by this court in its Constitutional jurisdiction under Article 199 of the Constitution. For the court to exercise jurisdiction under Article 199 of the Constitution the petitioner must have no other adequate remedy available to him under the law.

7. As noted above the petitioners had already moved the Sindh Service Tribunal and according to the petitioners had received a Judgment in their favour dated 20.05.2011 which however was not being implemented and as such had moved this court for implementation of the aforesaid judgment.

8. In this respect Section 5 (2) especially (d) of the Sindh Service Tribunals Act, 1973 is of significance which is reproduced as under for ease of reference;

**“5. Powers of Tribunals.** – (1) A Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against.

(2) A Tribunal shall, for the purpose of deciding any appeal be deemed to be a Civil Court shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of –

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents;

(c) issuing commission for the examination of witnesses and documents \*[and]

**[(d) execution of its decisions.]** (bold added)

9. From a plain reading of Section 5 (2) (d) of the Sindh Service Tribunals Act, 1973 it is apparent that the petitioner has an alternate remedy available to him under the law which he has not availed before approaching this court in its constitutional jurisdiction.

10. As such since the petitioner has an alternate remedy available to him under the law in terms of Section 5(2)(d) of the Sindh Service Tribunals Act, 1973 this petition is dismissed as being not maintainable.