

**IN HIGH COURT OF SINDH, CIRCUIT COURT
MIRPURKHAS**

C.P No. D-310 of 2025

[Gulzar Malkani & others v. Province of Sindh & others]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Counsel for Petitioner:

Mir Ali Bux Talpur, Advocate

Date of Hearing

30.04.2025

Date of Judgement

30.04.2025

ORDER

Riazat Ali Sahar, J. Through this writ petition, the petitioners, all prison staff, impugn their suspension and transfer orders issued without prior inquiry or notice, alleging these were unlawful, arbitrary, and in breach of natural justice. They contend that they were neither on duty at the relevant time nor posted at Central Prison & CF Mirpurkhas when the alleged misconduct occurred, yet they were suspended indefinitely and transferred to different stations, causing them undue hardship without provision of accommodation. Despite repeated requests, no inquiry has been conducted to justify the disciplinary action, leaving them aggrieved and without an alternate remedy, thus

invoking this Court's constitutional jurisdiction under Article 199. Thus, seeking following reliefs:

- “a. Direct the respondents to recall the suspension order of petitioners and reinstate them on their jobs.*
- b. Direct the respondents No.3 and 4 to transfer the petitioners from the office of respondent No.4 to the CP & CF Mirpurkhas.*
- c. Direct the respondents to hold fair and impartial inquiry regarding the suspension and alleged misconduct of petitioners.*
- d. Interim orders are solicited whereby directing the respondents to recall the suspension order of petitioners and transfer them to CP & CF Mirpurkhas.*
- e. Costs of the petition be saddled upon respondents.*
- f. Any other relief which this Honourable Court deems fit and proper under the circumstances of the case.”*

2. The grounds agitated by the petitioners' counsel rest upon the fundamental illegality, arbitrariness, and mala fide nature of the impugned suspension and transfer orders, which were executed without adherence to the principles of natural justice, due process of law, or any preliminary fact-finding inquiry. It was asserted that the entire disciplinary action has been taken under the pretext of "misconduct" without furnishing any specific allegations or providing them with an opportunity to be heard, thereby violating the established legal and procedural safeguards enshrined in the relevant service rules. The counsel also contended that Petitioner No. 2 was not posted at Central Prison & CF Mirpurkhas at the time of the alleged incident, and Petitioners No. 3 and 4 were not on duty at the material time, thus no causal connection can be drawn to implicate them in the refusal to receive the custody of under-trial prisoner Salamat Ali. Despite these glaring factual discrepancies, petitioners were

suspended and subsequently transferred, first to Karachi and then to Hyderabad, without any formal charge-sheet or inquiry proceedings. This action, counsel argued, amounts to victimisation and administrative highhandedness, especially as they have been compelled to travel from Mirpurkhas to Hyderabad daily, in the absence of official accommodation, further exacerbating their financial and professional distress. Moreover, repeated representations to the concerned authorities for initiating a fair and impartial inquiry and for their restoration to their original postings have yielded no response, which reinforces the petitioners' claim that the impugned actions are retaliatory, punitive, and intended to cause unnecessary hardship. Therefore, the petitioners challenge the entire disciplinary process as being in blatant contravention of law, equity, and service jurisprudence, rendering the suspension and transfer orders void, unlawful, and unsustainable in the eyes of law.

3. The petitioners, being civil servants, are governed by a specialised service regime that prescribes a distinct statutory mechanism for redressal of service-related grievances, which ousts the writ jurisdiction of this Court under Article 199 of the Constitution in routine disciplinary matters. It is a settled principle of law that disciplinary proceedings, including suspension and transfer of civil servants, fall squarely within the purview of the executive authority and are regulated exclusively under the statutory framework of the *Sindh Civil Servants*

(Efficiency & Discipline) Rules, 1973 (“E&D Rules”) made under Section 25 of the **Sindh Civil Servants Ordinance, 1973**. **Rule 3** read with **Rule 4-A** and **Rule 5** of the E&D Rules clearly vests the competent authority — often the Chief Minister or a designated officer — with powers to suspend or transfer a civil servant upon preliminary satisfaction regarding inefficiency, misconduct, or other grounds enumerated therein.. Furthermore, the Supreme Court of Pakistan in **Ali Azhar Khan Baloch v. Province of Sindh [2015 SCMR 456]**¹ held that the statutory service rules provide a complete code and judicial review is limited to cases where mala fide, jurisdictional defect, or violation of law is manifest. In the present case, petitioners have failed to demonstrate that the impugned orders suffer from jurisdictional infirmity or are actuated by malice.

4. Most critically, **Article 212 of the Constitution** bars the jurisdiction of the High Courts in matters relating to the terms and conditions of service of civil servants — including transfers, suspensions, or disciplinary proceedings — where a Service Tribunal has been constituted. In **Abdul Wahab v. HBL**

¹100.

“The Constitution gives protection to Civil Servants under Article 240 and 242, which relate to formation of service structure.... Once the Supreme Court arrives at the conclusion that a question of public importance having nexus with the fundamental rights guaranteed by the Constitution has been raised, the exercise of its jurisdiction under Article 184(3) cannot be objected to either by the Government or by any other party.”

101. “The perception that a Civil Servant can only seek redressal of his grievance from the Tribunal or from any other forum provided by the Civil Servants Act, is not correct. A Civil Servant, being a citizen of this country, equally enjoys the fundamental rights conferred by Chapter I of Part II of the Constitution. ... We, after hearing the parties, concluded that the impugned legislative instruments were violative of Articles 240(b), 242(1B), 4, 8, 9 and 25 of the Constitution.”

[2013 SCMR 1383]², the Supreme Court reiterated that where a statutory remedy exists before a competent forum such as a Service Tribunal, the High Court's jurisdiction is ousted.

5. In view of the foregoing legal position, it is evident that the petitioners, being civil servants, have invoked the constitutional jurisdiction of this Court without first exhausting the statutory remedy available to them under the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973. Moreover, the allegations raised pertain exclusively to terms and conditions of service — including suspension and transfer — which are expressly barred from adjudication by this Court under Article 212 of the Constitution. The petitioners have neither substantiated any plea of mala fide nor established any jurisdictional defect or violation of mandatory law warranting judicial review. As such, the petition being misconceived and not maintainable is hereby ***dismissed*** in *limine* along with all listed applications.

JUDGE

JUDGE

²"7.... if the services of an employee are dispensed with by the employer ... other than in accordance with law, the employee shall have a right to take recourse to the remedies available to him and provided by or under the relevant law, before the forum of competent jurisdiction."

"8. "... if the services of an employee are dispensed with by the employer ... other than in accordance with law, the employee shall have a right to take recourse to the remedies available to him and provided by or under the relevant law, before the forum of competent jurisdiction."