

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P. No. 38694 of 2023.

Sarfraz Ahmed. Vs. Member (VI), Punjab Service Tribunal, Lahore etc.

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02. 13.06.2023. Ch. Shahzad Hussain Sangla, Advocate for the petitioner.
Rana Shamshad Khan, Additional Advocate General.

C.M. No.3 of 2023.

Instant application seeking permission to place on record certain documents is **allowed** subject to all just and legal exceptions.

MAIN CASE.

2. Briefly put, while serving as Junior Clerk in the office of Chief Executive Officer, District Education Authority, Pakpattan (respondent No.3) the petitioner was transferred to Government High School, 88/EB, Arifwala, *vide* order, dated 25.05.2023, against which he filed departmental appeal before the Director Public Instructions (DPI), Secondary Education, Punjab, Lahore (respondent No.2). Since the appeal of the petitioner was not being decided he filed appeal (No.2410/2023) before the Punjab Service Tribunal (PST), Lahore which was decided through order, dated 29.05.2023, directing respondent No.2 to decide the departmental

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appeal of the petitioner. Aggrieved of order, dated 29.05.2023, passed by PST, the petitioner has filed this petition.

3. Learned counsel for the petitioner submits that according to the documents brought on record by the petitioner through miscellaneous application (C.M. No.3 of 2023), while issuing direction for decision of appeal of an employee the PST held in abeyance the orders challenged in the appeal but in the matter of the petitioner said relief has not been granted, thus, it is case of clear discrimination.

4. When posed with the query as to how instant petition is maintainable as the order passed by PST can be challenged before the Hon'ble Supreme Court of Pakistan in terms of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), learned counsel for the petitioner while referring to the case reported as Dean/Chief Executive Gomal Medical College, Medical Teaching Institution, D.I. Khan v. Muhammad Armaghan Khan and others (PLD 2023 SC 190) submits that since appeal before the Hon'ble Supreme Court of Pakistan is not maintainable against an order passed by PST

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the petitioner has been left with no option but to file instant petition.

5. After hearing learned counsel for the petitioner and going through the documents, appended with this petition, in particular the aforesaid judgment, I have noted that in prayer clause of this petition the petitioner has challenged his Transfer Order, dated 25.05.2023, but at the rostrum learned counsel for the petitioner has also impugned validity of order, dated 29.05.2023, passed by PST.

6. While dealing with question regarding maintainability of appeal against order of a Tribunal, the Apex Court of the country in the referred case has *inter-alia* held as under: -

10. The creation of an Administrative Tribunal is at the discretion of the relevant legislature; it is not mandatory for it to do so. One point to keep in mind is that the (exclusive) jurisdiction conferred on a Tribunal created under clause (1) need not be in respect of all the matters that can come within the scope of para (a); it may be that it is exercised only in relation to some of such matters. But if such a Tribunal is created, that in any case takes the matter to clause (2). This clause also opens with an identically worded non-obstante clause, i.e., it overrides "anything herein before contained". In respect of a Tribunal created by Federal legislation it has automatic effect, mandatorily excluding the jurisdiction of any other court to "grant an injunction, make any order or entertain any proceedings in respect of any matter to which

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the jurisdiction of such Administrative Court or Tribunal extends". All judicial remedies are therefore closed as soon as the relevant legislation comes into force. The only such door left open is provided by clause (3), which provides for a right of appeal to this Court in terms as stated therein. Federal legislation therefore presents no special problem. The real problem is in relation to a Tribunal created by Provincial legislation. Here, the proviso to clause (2) becomes applicable. This provides that a Provincial Assembly may (but is not required to) pass a resolution asking Parliament to extend clause (2) to the Tribunal created by it, and on such resolution Parliament may (but is not required to) enact the necessary legislation in this regard. If both these stages are crossed the proviso becomes applicable, and the effect then is the same as in the case of Federal legislation: all judicial remedies are closed and the only avenue for redress is an appeal to this Court in terms of clause (3).

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20. *The conclusions arrived at above require certain directions to be given, keeping in mind that leave petitions and appeals under clause (3) of Article 212 may well be pending from Tribunals not covered by the proviso to clause (2), and many such petitions and appeals appear to have been decided and disposed of in the past. We are of the view that matters must therefore be regularized in the following terms:*

a. *It is held that no appeal lies to this Court in terms of Article 212(3) against the decision of a Tribunal created by a Provincial law to which the proviso to clause (2) has not been*

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applied. Any such leave petitions and appeals as are pending, being not maintainable, must be returned forthwith by the Office and no such leave petitions are to be entertained in future;

b. Nothing in sub-para (a) above applies in relation to the following:

- i. Leave petitions and/or appeals that already stand decided or disposed of (including by way of having been withdrawn or remanded or otherwise dealt with), whether by way of a detailed judgment or a short order whether announced orally or in writing and regardless of whether in respect of any such matter detailed reasons are awaited, all such matters being regarded as past and closed;*
- ii. Leave petitions and/or appeals in which judgment is reserved, unless the concerned Bench directs otherwise;*
- iii. Leave petitions and/or appeals that are part heard, unless the Bench concerned directs otherwise;*
- iv. Such pending leave petitions and/or appeals as may be directed by the Hon'ble Chief Justice.*

c. A litigant to whom a leave petition or appeal has been returned in terms of sub-para (a) or by reason of anything contained in sub-para (b), and who chooses or wishes to avail another remedy before any other forum as may be available under law shall have the benefit of section 14 of the Limitation Act, 1908 if any question of limitation arises or (as the case may be) equivalent equitable

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relaxations if any question of delay or laches arises.

d. The Registrar shall ensure that a copy of this judgment is forthwith sent to the registrars of all Tribunals to which sub-para (a) applies and the said registrars shall immediately bring it to the attention of the Chairpersons and members of the said Tribunals. It shall be the responsibility of each Chairperson to ensure that till such time as the proviso to clause (2) of Article 212 becomes applicable to the Tribunal, the following (or similar) legend is suitably incorporated in the title page of each decision thereof for the benefit of all litigants:

"This Tribunal is not covered by the proviso to clause (2) of Article 212 of the Constitution of the Islamic Republic of Pakistan and therefore no leave petition or appeal lies to the Hon'ble Supreme Court of Pakistan in terms of clause (3) of the said Article."

From the above, it is crystal clear that the remedy of appeal before the Apex Court of the country against an order of Administrative Tribunal, established through a provincial enactment, is not available until and unless the Parliament, by law, extends the provisions of Article 212(2) of the Constitution to include a Court or Tribunal established under provincial law. Insofar as the case in hand is concerned, admittedly, the impugned order has been

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passed by PST, established pursuant to adoption of a bill by the Provincial Assembly of the Punjab which was assented to by the Governor of Punjab, on 20.06.1974. Now the question further boils down to the effect as to whether clause 2 of Article 212 of the Constitution was extended to PST or not, to see as to whether remedy of appeal, before Hon'ble Supreme Court of Pakistan, against any order passed by it is available to an aggrieved party or not. The Provincial Service Tribunals (Extension of Provisions of Constitution) Act, 1974 was promulgated, on 02.05.1974, section 2 whereof reads as under: -

“2. Provisions of Article 212(2) to extend to Provincial Service Tribunals: The provisions of clause (2) of Article 212 of the Constitution of the Islamic Republic of Pakistan shall extend to the Service Tribunals respectively established under Acts of the Provincial Assemblies of the North-West Frontier Province, the Punjab and Sind.”

According to the afore-quoted enactment, the provisions of Article 212(2) of the Constitution have been extended to PST, hence, the present case stands distinguished from the referred case inasmuch as the Tribunal, whose order was subject matter of the referred case, was not extended the provisions of Article 212(2) of the Constitution.

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7. Since remedy of appeal before Hon'ble Supreme Court of Pakistan is available to the petitioner against an order passed by PST and remedy of appeal is also available against Transfer Order, dated 25.05.2023, instant petition is not maintainable which is accordingly **dismissed** with the observation that the petitioner would be at liberty to approach the forum concerned, for redressal of his grievance.

(Shujaat Ali Khan)
Judge

Approved for Reporting

Judge

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