

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NOS. 909 TO 912 OF 2020 &
CRIMINAL ORIGINAL PETITION NO. 87 OF 2020

(On appeal against judgment dated 31.01.2020 passed by the
High Court of Balochistan, Quetta, in CP No. 246/2008 &
334/2019)

Khalilullah Kakar	(In CAs 909 & 911 of 2020)
Irfan Ali	(In CA 910 of 2020 & Cr.O.P. 87 of 2020)
Abdul Haleem and another	(In CA 912 of 2020)
	... Appellants/Petitioner

VERSUS

Provincial Police Officer, Balochistan etc	(In all cases)
	... Respondents

For the Appellants:	Mr. Muhammad Shoaib Shaheen, ASC (In CAs 909 & 910 of 2020)
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In person
(In CA 911 of 2020 & Cr.O.P. 87 of 2020)

Sh. Riazul Haque, ASC
Syed Rifaqat Hussain Shah, AOR
(In CA 912 of 2020)

For the Respondents:	Syed Iftikhar Hussain Gillani, Sr. ASC (For respondent Nos. 2, 3, 5 to 10, 20 in CA 909 of 2020, respondent Nos. 2, 3, 5, 8, 12 in CA 910 of 2020 and respondent Nos. 2, 3, 5 to 10, 12 in CA 911 of 2020)
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Mr. Adnan Basharat, ASC
(For remaining respondents in CAs 909 to 912/2020)

For Govt of Balochistan: Mr. Ayaz Khan Swati, Addl. A.G

Date of Hearing: 24.03.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this consolidated judgment, we intend to decide the above titled cases, as the issue involved in these cases is common and they have arisen out of the same judgment.

2. **Civil Appeal Nos. 909/910/911/912/2020:** Through these appeals by leave of the Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter to be referred as 'the Constitution'), the appellants have called in question the judgment dated 31.01.2020 passed by the High Court of Balochistan, Quetta, whereby the Constitutional Petitions filed by the respondents were allowed and the Provincial Police Officer, Balochistan, was directed to issue a joint seniority list of Deputy Superintendents of Police (hereinafter to be referred as 'DSPs') of all cadres/branches.

3. Succinctly stated the facts of the matter are that as per practice at some point of time there was a joint seniority list of DSPs belonging to different cadres/branches of the Balochistan Police Force. However, subsequently the seniority lists upto the rank of DSPs qua some of the branches was separated keeping in view the nature of work. The respondents being DSPs of legal/prosecution branch challenged the issuance of separate seniority lists by filing Constitutional Petition No. 246/2008 before the High Court of Balochistan, Quetta. The said Constitutional Petition was finally accepted vide judgment dated 23.04.2009. Consequently, a joint seniority list of DSPs was issued on 16.08.2009. The police officers of the rank of DSPs of different cadres challenged the judgment of the High Court dated 23.04.2009 by filing an application under Section 12(2) CPC, which was accepted vide judgment dated 20.06.2017. Resultantly, the earlier order dated 23.04.2009 was recalled and the petition was directed to be amended by impleading the DSPs of other branches as respondents. This order was assailed before this Court through Civil Petition No. 5196/2017 and this Court maintained the same vide order dated 11.06.2018. The appellant department although issued joint seniority list on 11.12.2017 but ultimately issued two separate notifications on 06.03.2019 determining the seniority of 26 DSPs belonging to legal/prosecution branch in one notification whereas through the other notification, the seniority of 170 DSPs of other branches was determined separately. The DSPs of the legal/prosecution branch filed objections qua the separate seniority lists but without awaiting its fate filed Constitutional Petition No. 334/2019 before the High

Court of Balochistan, Quetta. Both the above-said Constitutional Petitions were allowed vide impugned judgment and the department was directed to issue joint seniority lists of DSPs of all branches. Hence, these appeals with leave of the Court.

4. *Learned counsel for the appellants along with appellant in person in Civil Appeal No. 911/2020 inter alia contended that in all the Provinces of Pakistan including Islamabad Capital Territory, the seniority of prosecution/legal branch is being maintained separately as the qualification and training for this branch of Police is entirely different than that of the other branches, which are called general cadre; that the law also does not permit making of a joint seniority list; that as the respondents were civil servants, the learned High Court while adjudicating the constitutional petitions has wrongly assumed jurisdiction, which is contrary to the spirit of the Constitution of Islamic Republic of Pakistan; that the learned High Court has travelled beyond its jurisdiction and authority to declare the separate seniority lists as illegal without considering the legal and factual aspects of the case. They lastly prayed that the impugned judgment being against the law, may be set aside.*

5. *On the other hand, learned counsel for the respondents have defended the impugned judgment on the ground that the police force has already been declared one indivisible body possessing various limbs performing the assigned functions and each of these limbs of the establishment are in-fact integral part of police force and as such under no rule of construction they can be considered as separate or different cadres, therefore, there is no irregularity in the impugned judgment. It has been further argued that the seniority list with specified assignment of job is classified only to the rank of DSPs whereas on further promotion the same is merged into and the seniority list irrespective of the classification of branch becomes irrelevant.*

6. *We have heard learned counsel for the parties and have perused the record as well as the relevant law.*

7. *The questions involved in these appeals are two fold i.e. (i) whether in the given facts and circumstances of this case the constitutional petitions were maintainable before the learned High Court in view of the specific bar contained in Article 212(2) of the*

Constitution of Islamic Republic of Pakistan, 1973, and (ii) whether there should be a joint seniority list of DSPs of all cadres/branches and the same is sustainable due to the requirement of classification, manner of selection, training procedure and identification through the same uniform and rank.

8. As far as the first question which could hit the very roots of this case is the assumption of jurisdiction by the learned High Court of Balochistan under Article 199 of the Constitution in the presence of specific bar provided under Article 212(2) of the Constitution is concerned, there is no denial to this fact that the respondents being employees of Balochistan Police Force are civil servants and the matter pertaining to issuance of joint seniority lists specifically relates to their terms and conditions of service, which particularly rests within the jurisdiction of Balochistan Service Tribunal. The learned High Court mainly assumed jurisdiction on the ground that at the time of passing of the impugned judgment, the Balochistan Service Tribunal was not functional. The Service Tribunal was not non-functional for an indefinite period. It has been brought to our notice that the earlier Chairman of the Balochistan Service Tribunal remained performing his duties with effect from 06.12.2016 to 05.12.2019 and thereafter the incumbent Chairman was appointed on 05.05.2020 whereas Constitutional Petition Nos. 334/2019 was filed on 01.04.2019 when the Tribunal was operational. Similarly, Constitutional Petition No. 246/2008 was initially filed on 11.05.2008 and after the judgment of this Court dated 06.11.2018 the amended petition was filed on 24.09.2019. On these dates also, the Tribunal was functional. Therefore, it can be safely said that the very institution of the Constitutional petitions was against the Constitutional mandate. It is an established principle of law that the courts assume their jurisdiction through particular law conferring a particular jurisdiction. Article 212(2) of the Constitution specifically places an embargo on all other courts except Service Tribunal to grant an injunction, make any order or 'entertain' any proceedings in respect of any matter relating to the terms and conditions of service even if they are mala fide, ultra vires or coram non judice. It would be in order to reproduce the said Article 212(2) of the Constitution, which reads as under:-

(2) Notwithstanding anything hereinbefore contained where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal; other than an appeal pending before the Supreme Court, shall abate on such establishment:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal."

9. The word 'entertain' used in Article 212(2) of the Constitution is of significance importance. This means that any petition or proceeding relating to the terms and conditions of service even should not be entertained by the High Court in its constitutional jurisdiction under Article 199 of the Constitution. In view of the facts and circumstances of this case, entertaining and then proceeding with the constitutional petitions amounts to defeating the express Constitutional mandate under which Tribunal is vested with jurisdiction to deal with the matters of civil servants. This Court in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456) has held as under:-

"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."

10. In Asadullah Rashid Vs. Muhammad Muneer (1998 SCMR 2129), this Court held as under:-

"Constitutional petition under Art. 199 of the Constitution is not maintainable by a civil servant in relation to any matter connected with the terms and conditions of service in respect whereof the Service Tribunal has jurisdiction, in view of Art. 212 of the Constitution of Pakistan. Orders, even if mala fide, ultra vires or coram non judice, fell within the ambit of Service Tribunal and jurisdiction of

Civil Courts including High Court is ipso facto ousted as result of barring provision of Art. 212 of the Constitution."

11. The same was the view of this Court in National Assembly Secretariat Vs. Manzoor Ahmed (2015 SCMR 253). The writ jurisdiction is extraordinary in its scope, it has to be exercised sparingly. The jurisdiction conferred on the High Courts under Article 199 of the Constitution is an extraordinary relief and the same has to be exercised in aid of justice and not to interfere in jurisdictions of other statutory forums. When the law has provided an adequate remedy, constitutional jurisdiction under Article 199 of the Constitution cannot be exercised as the same has to be exercised in exceptional circumstances, which could justify invoking the said jurisdiction. It has time and again been said by this Court that tendency to bypass remedy provided under relevant statute by resorting to constitutional jurisdiction is to be discouraged so that legislative intent is not defeated. The same is meant to be exercised in extraordinary circumstances and not in run of the mill cases. Even otherwise, we have noted that the respondents had not approached the learned High Court after exhausting the remedy of filing departmental appeal. Therefore, we are compelled to observe that the very constitutional petitions were not maintainable before the learned High Court.

12. The second question before us is whether there should be a joint seniority list of DSPs of all cadres or it has to be separated from each other depending upon the nature of work. It is a matter of common practice, which is prevalent in all four Provinces and Islamabad Capital Territory that seniority lists of DSPs of legal/prosecution branch is being prepared separately as compared to DSPs of other branches. Section 2(b) of the Baluchistan Deputy Superintendents of Police Service Rules, 1978, speaks about different branches of the Police. It says, "'branch" means a branch of the Department organized as a separate and self-contained unit such as General Branch, Prosecution Branch, Tele communication Branch, Special Branch, Motor Transport Branch, Finger Print Branch and Anti Corruption Branch." So, the very enactment, which deals with only the DSPs of Balochistan, itself admits about the different branches. The aforesaid DSP Rules, 1978, Balochistan

Police Act, 2011 and the Police Rules, 1934, are silent on the point as to whether there should be separate or joint seniority lists of DSPs but the language used therein about the different branches of the police force and the fact that the mode of recruitment, nature of job, duties and training of legal/prosecution branch of the Balochistan Police is different than the other branches of the police, leaves no room to believe that the act of issuing separate seniority lists is well reasoned, in line with the practice followed in other Provinces including Islamabad Capital Territory and Gilgit Baltistan and in accordance with the intent of the law. So far as the law laid down by this Court in Gul Hassan Jatoi (2016 SCMR 1254) is concerned, the issuance of separate seniority lists upto the rank of DSPs does not in any manner bifurcate the compactness of the Police force when it is established that beyond the rank of DSPs, the seniority list is again merged into one unit and as such supplement the words of this Court 'one indivisible body'.

13. *For what has been discussed above, these appeals are allowed and the impugned judgment is set aside.*

14. **Criminal Original Petition No: 87/2020:** *Since, the main appeals have been allowed, this Criminal Original Petition for initiating contempt proceedings against the respondents has become infructuous and is disposed of accordingly.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad
Announced on **21.05.2021**

Approved For Reporting
Khurram