Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN.

JUDICIAL DEPARTMENT

WRIT PETITION NO.11573 OF 2018.

Muhammad Hassan Tahir Vs. Govt. of Punjab and others

Sr. No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.

15.08.2018 **Mr. M. Sohail Iqbal Bhatti, Advocate for the petitioner.**
Mr. Khalid Masood Ghani, AAG on Court's Call.

By filing instant writ petition under Article 199 of The Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, Inspector, Punjab Police, has assailed the legality and propriety of order dated 06.08.2018 passed by the respondent No.5/Addl. Inspector General of Police, Regional Police Officer, Multan, by which the petitioner has been compulsory retired from service with immediate effect.

2. The main ground of attack taken by learned counsel for the petitioner is that the respondent No.5 (Competent Authority) was transferred vide notification dated 3rd August, 2018 with immediate effect and posted as Addl. Inspector General of Police, Investigation Branch, Lahore, whereas on 05.08.2018 the Authority has issued show cause notice against the petitioner to submit reply, within seven days, but before lapse of that period and submission of reply of show cause notice by petitioner, vide impugned order dated 06.08.2018, the petitioner stood compulsory retired from service. It has been further contended that the impugned order has been passed in violation of The Punjab Police (E & D)

Rules, 1975 and as such the same is liable to be struck down. In support of this contention, learned counsel for the petitioner has relied on case "*Suo Motu action regarding Violation of Public Procurement Rules, 2004 in procurement loss of billions of Rupees of exchequer caused by National Insurance Company Ltd*." (**2012 PLC (C.S.) 394**), "*Faisal Sultan vs. E.D.O. (Education) and others*" (**2011 PLC (C.S.) 419**) & "*Messrs Chenab Cement Product (Pvt.) Ltd. and others vs. Banking Tribunal, Lahore and others*" (**PLD 1996 Lahore 672**).

3. Heard.

4. Part VII of the Constitution of Islamic Republic of Pakistan, 1973 provides "System of Judicature" in the country, headed by the Hon'ble Supreme Court as ultimate Court of appeal with other Courts and Tribunals constituting a principal forum for administrating justice by applying law in the settlement of disputes and controversies that are brought before them. Function of each Court or Tribunal has been well defined under the Constitution and the laws made under the Constitution, which also specify the subjects with which those Courts or Tribunals have to deal with. This multiple system has thus created certain limitations on their jurisdiction so that one Court or Tribunal could not encroach upon the defined field or subject of the other and each court or Tribunal is required to exercise powers/authority within its allotted sphere and not beyond that unless and until specifically permitted. Needless to mention that under Article 212 placed in Chapter 4 of Part-VII supra Special Courts and Tribunals have been created. At this juncture it would be

advantageous to reproduce Article 212 of the Constitution which reads as under:-

> *"212. Administrative Courts and Tribunals. (1). Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of—*
>
> > *(a) Matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;*
> >
> > *(b) …..*
> >
> > *(c) …..*
>
> *(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 proceeding 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."*

5. The matter agitated before this Court relates to the terms and conditions of service and in view of bar under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, does not fall within the jurisdiction and domain of this Court under Article 199 of the Constitution. In case "*Ali Azhar Khan Baloch and others vs. Province of Sindh and others*" (**2015 SCMR 456**), following principle has been laid down:-

> *"…We, after perusal of the aforesaid record in suits and H.C.A, are of the considered view that the issue raised by the parties relates to their terms and conditions of service and cannot be entertained by a High Court either in its Constitutional jurisdiction*

> *or in its Original Civil jurisdiction or in High Court Appeal, being barred under Article 212 of the Constitution…"*

6. Moreover, the petitioner has alternate remedy of filing departmental appeal and in case of failure to succeed in that appeal, by approaching the Punjab Service Tribunal. Needless to mention that absence of adequate and efficacious remedy is condition precedent for issuing a writ. In case "*Indus Trading and Contracting Company vs. Collector of Customs (Preventive) Karachi and others*" (**2016 SCMR 842**), the Hon'ble Supreme Court of Pakistan has held as under:-

> *"…Ordinarily, the jurisdiction of the High Courts under Article 199 of the Constitution should not be invoked where alternative forum under a special law, duly empowered to decide the controversy is available and functioning. Where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. The very purpose of creating a special forum is that disputes should reach expeditious resolution headed by quasi judicial or judicial officers who with their specific knowledge, expertise and experience are well equipped to decide controversies relating to a particular subject in a shortest possible time. Therefore, in spite of such remedy being made available under the law, resorting to the provisions of Article 199(1) of the Constitution, as a matter of course, would not only demonstrate mistrust on the functioning of the special forum but it is painful to know that High Courts have been over-burdened with a very large number of such cases. This in turn results in delays in the resolution of the dispute as a large numbers of cases get decided after several years. These cases ought to be taken to forum provided under the Special law instead of the High Courts. Such bypass of the proper forum is contrary to the intention of the provisions of Article 199(1) of the Constitution which confers jurisdiction on the High Court only and only when there is no adequate remedy is available under any law. Where adequate*

> *forum is fully functional, the High Courts must deprecate such tendency at the very initial stage and relegate the parties to seek remedy before the special forum created under the special law to which the controversy relates…*" (emphasis supplied by me).

Similar view has been taken in case "*Rai Ashraf and others versus Muhammad Saleem Bhatti and others*" (**PLD 2010 Supreme Court 691**) and "*Collector of Customs, Lahore and others vs. Universal Gateway Trading Corporation and another*" (**2005 SCMR 37**).

7. As a sequel to the above discussions, the instant writ petition, being not maintainable, is dismissed in *limine*. However, the petitioner may avail alternate remedy before the competent forum, in accordance with law.

(Mujahid Mustaqeem Ahmed)
Judge

APPROVED FOR REPORTING.

Judge

Khalid