

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P No.D-37 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on M.A No.130/2019
2. For orders on office objection
3. For orders on M.A No.131/2019
4. For orders on M.A No.132/2019
5. For hearing of main case

14.01.2019.

Mr. Shoukat Ali Pathan, advocate for the petitioner

1. Granted.

2to5. The main grievance of the petitioner is that he is victim of frequent transfer and posting and claimed protection in accordance with the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Anita Turab [PLD 2013 SC 159].

Mr. Shoukat Ali Pathan, learned counsel for the petitioner has argued that the petitioner was appointed as Secretary UC in Sindh Local Government Department and was posted as Secretary Union Committee-13, Hyderabad, vide order dated 5th December, 2016; that he submitted his joining report, but later on the same was cancelled and he was transferred vide letter dated 11th December, 2017. He next added that petitioner filed constitution petition bearing No.D-5235 of 2015 before this Court, which was disposed of, vide order dated 17.08.2016 with the following directions:

“5. Since the categorical statement has been made and the petitioners have already been allowed BPS-8, therefore, let the seniority list be made and as stated by the Admin Officer thereafter the matter may be referred to the Departmental Promotion Committee for promotion of the petitioners in accordance with law to BPS-11 within six (6) months. The petition stands disposed of alongwith the listed application.”

He next submitted that the petitioner was transferred and posted and within short span of time he was relieved from his charge without any lawful justification. Learned counsel contended that normally tenure of posting of a Government servant is three (3) years, however, the respondents did not allow the petitioner to complete his tenure of posting, which is in violation of judgment passed by Hon'ble Supreme Court of Pakistan in the case of Anita Turab, as discussed supra; that petitioner has called into question his transfer and posting through the instant petition and the respondents have acted in violation of law and transferred the services of the petitioner without any justifiable reason. He lastly prayed for allowing the instant petition.

Upon query of this Court as to how instant petition is maintainable against the transfer and posting order, learned counsel reiterated his above arguments and argued that this Court can hear and decide the grievance of the petitioner.

We have gone through the case laws and heard the learned counsel for the petitioner at some length. Admittedly, the petitioner is employee of Sindh Local Government Department and was allowed relinquishment of charge as Secretary Committee-13, Hyderabad, but record reflects that subsequently on the application dated 13.12.2017 made by the petitioner, requesting for cancellation of his posting order, which was acted upon vide order dated 14.12.2017 [*available at page 27 of the MoP*]. It is well settled now that public servant cannot claim a vested right of a particular post at particular place, therefore, the forum chosen by the petitioner by invoking constitutional jurisdiction under Article 199 of the Constitution is not proper under the law.

On the above proposition, a principle has already been settled in the case of Pir Muhammad Shah versus Government of Balochistan & others [2007 SCMR 54]. The petitioner has assailed his transfer order before this Court. We are of the considered view that the expression '*Terms and Conditions*' includes transfer, which falls within the jurisdictional domain of

competent authority, however, this Court can exercise powers under Article 199 of the Constitution, when the ordinary tenure for posting has been specified, but in the present matter, the petitioner has failed to point out whether the charge of the post of Secretary UC is of a tenure post.

The case laws cited by the learned counsel for the petitioner is of no help to him, as the case of Anita Turab deals with the period of tenure of a post of civil servant whereas, the petitioner is not a civil servant but is an employee of Local Government Department, Government of Sindh, petitioner thus has failed to make out his case for indulgence of this Court at this stage

In view of the above mentioned facts and circumstances of the case, we do not find any infringement of rights of the petitioner, which could be called into question by way of writ petition, therefore, instant petition being meritless stands dismissed in limine alongwith listed applications.

JUDGE

JUDGE

Sajjad Ali Jessar