

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

C.P. No. D- 384 of 2019

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Petitioner : Zahid Hussain
through Mr. Bashir Ahmed Almani
Advocate

Respondents : None present for respondents

Date of hearing: 04.3.2019
Date of decision: 04.3.2019

ORDER

ADNAN-UL-KARIM MEMON,J:- Through the instant petition, the petitioner seeks declaration to the effect that his relieving order dated 18.2.2019 issued by the respondent No.3 is illegal and void whereby he has been relieved from the office of Assistant Administrator Evacuee Trust Property, Government of Sindh, Hyderabad Region to report to the Office of Administrator (SZ), ETP Karachi.

2. Mr. Bashir Ahmed Almani learned counsel for the petitioner has argued that the petitioner was posted as Inspector Evacuee Trust Property Hyderabad Region and has been performing his duty with due diligence. He has averred that respondent No.3 out of his personal grudge and departmental intrigues forcibly and illegally relieved him from his office vide impugned letter dated 18.2.2019 with the allegations that during preparation of subject / Forensic Audit he remained absent from the duty. learned counsel next contended that the petitioner is under obligation not to comply with the order of his superiors which is contrary to law; that the allegations leveled by the respondent No. 3

in the impugned letter are false and fabricated one on the premise that the petitioner sought only one day casual leave but he ignored the same and relieved him from his office without granting casual leave; that in the past respondent No.3 had also acted against one official namely Maqbool Ahmed Panhwar. He lastly prayed for allowing the instant petition.

3. Upon query of this Court as to how this petition is maintainable against a transfer & posting order. He in reply has submitted that the impugned relieving order is based upon the assertion that the petitioner is habitual of remaining absent on Friday and he is late comer, and is also not interested in his duty, these allegations can only be trashed out through departmental proceedings and there is nothing against the petitioner on record, therefore, the allegations are afterthought and cannot be considered for relieving the petitioner from his present posting.

4. We have heard learned counsel for the petitioner and perused the material available on record.

5. Prime facie the impugned order dated 18.2.2019 explicitly show that the petitioner has been relieved from his present posting to report to the office of Administrator (ZS) ETP Karachi which is simplicitor reporting order.

6. Foremost point in the present proceedings is whether the public Servant can file a Writ Petition by invoking Constitutional Jurisdiction of this Court in respect of the terms and conditions of his service.

7. We are of the view that A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary.

No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. The courts are always reluctant in interfering with a transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala-fides. The jurisdiction of this Court in respect of the matters pertaining to terms and conditions of public/Government Servants is limited under Article 199 of the Constitution on the subject which squarely falls within the exclusive domain of the administrative department. The expression “terms and conditions” includes transfer and posting, we are fortified on this point by the decision of the Hon’ble Supreme Court in the case of Ali Azhar Khan Balouch and others v. Province of Sindh and others (2015 SCMR 456).

8. In the facts and circumstance, on this point, this Court has no jurisdiction to interfere by means of Writ. We are fortified on this issue by the decisions rendered by the Hon’ble Supreme Court in the case of Government of Khyber Pakhtunkhwa and others v. Hayat Hussain and others (2016 SCMR 1021). Keeping in view the above mentioned facts and circumstances of the case, we do not see any infringement of right of the Petitioner which could be called in question by way of Writ Petition.

9. It is a well settled principle of law that a public/government Servant has no vested right to remain on a particular post forever or for a stipulated period. He can be transferred at any time under the administrative law. Reference may be made to the case of PEER MUHAMMAD v. GOVERNMENT OF BALOCHISTAN and others (2007 SCMR 54).

10. In view of the categorical declaration of law by the Honble Apex Court in case (supra) and in a number of catena of other cases, as the petitioner is

failed to show that impugned transfer order is vitiated by violation of any statutory rule or suffers from mala-fides, the same cannot be interfered with.

11. In the light of above facts and circumstances of the case we are not inclined to entertain this petition under Article 199 of the Constitution which is misconceived and is hereby dismissed in limine along with pending applications.

JUDGE

JUDGE