

HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6825 of 2018

Akbar Ali Dero..... Petitioner

Versus

Federation of Pakistan & others Respondents

Date of hearing: 28.09.2018

Mr. Zayyad Khan Abbasi, Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner has called in question his transfer and posting orders dated 30.08.2018 & 03.09.2018 issued by the Respondent Directorate General, Pakistan Post.

2. The grievance of the Petitioner is with regard to his transfer and posting orders. Petitioner has submitted that he has been performing his duties as Post Master General, Metropolitan Circle, Karachi with keen interest and devotion without any complaint of whatsoever nature and all of a sudden the Respondents vide orders dated 30.08.2018 & 03.09.2018 has transferred his service at Quetta Circle by terminating the existing arrangement without assigning any reason. Petitioner being aggrieved by and dissatisfied with the impugned transfer orders has approached this Court on 28.09.2018.

3. Mr. Zayyad Khan Abbasi, learned counsel for the Petitioner has contended that the impugned transfer orders dated 30.08.2018 & 03.09.2018 are based on malafide intention. Per learned counsel the case of the Petitioner falls within the ambit of

the expression “Frequent Transfer from one city to another city” without completing his tenure of posting in violation of transfer policy as provided in the Esta Code ; that the transfer orders issued by the Respondents are in violation of the dicta laid down by the Hon’ble Supreme Court of Pakistan in the case of Syed Mehmood Ahmed Naqvi Vs. Federation of Pakistan (PLD 2013 SC 195) and Zahid Akhtar Vs. Government of Punjab & others (PLD 1995 SC 530); that Petitioner being eligible in all respect is entitled for completion of his minimum tenure of his posting as a Post Master General, Metropolitan Circle, Karachi; that the impugned transfer orders are violative of section 24-A of the General Clause Act; that the impugned orders do not reflect any reason of the transfer and posting of the Petitioner; that the transfer and posting of the Petitioner is based on victimization thus not sustainable in law; that the Petitioner was not at fault when he was ordered to be transferred as such this Court can take cognizance of the matter. Learned counsel further added that during the entire service of the Petitioner, nothing adverse was observed against him; that the aforesaid act of the Respondent Department is against the basic principles of posting and transfer. Learned counsel argued that when the ordinary tenure of posting has been specified in law such tenure of posting is required to be respected; that the transfer and posting is to be made due to exigency of service and not otherwise. He lastly prayed for allowing the instant petition. Learned counsel for the Petitioner, due to the urgency pointed out in the matter has argued the entire case on merit.

4. Upon query by this Court as to how the instant Petition is maintainable against the transfer and posting, the learned counsel for the Petitioner argued that the case of the Petitioner falls within the principles enunciated in Esta Code. He has further contended that due to untimely transfer and posting of the petitioner he is

badly suffering and argued that this Court can hear and decide the matter on merits.

5. We have heard the learned counsel for the Petitioner and have perused the material available on record.

6. Foremost point in the present proceedings is whether the Civil Servant can file a Writ Petition by invoking Constitutional Jurisdiction of this Court in respect of the terms and conditions of his service when there is a bar contained in Article 212 of the Constitution?

7. We are of the view that Article 212 of the Constitution ousts the jurisdiction of this Court in respect of the matters pertaining to terms and conditions of Civil Servants. The ouster clause under Article 212 of the Constitution is a Constitutional command, which restricts the jurisdiction of this Court under Article 199 of the Constitution on the subject which squarely falls within the exclusive domain of the Tribunals. 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. Admittedly, the Petitioner is a Civil Servant and his case falls within the ambit of Section 3 (2) of the Sindh Service Tribunals Act, 1973 which says that Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants as under Section 4 of the Service Tribunal Act a Civil Servant has a right to file an appeal against the impugned order adversely affecting the terms and condition of his service before the Tribunal subject to the qualification provided therein.

9. Prima facie the last posting order of the Petitioner show that on promotion from BS-19 to BS-20 (Postal Group), he was transferred to Post Master General, Metropolitan Circle Karachi vide office letter dated 26.02.2018 and the Petitioner now has called in-question the general transfer order dated 30.08.2018 issued by the Respondent Department in exigency of the service. Prima facie, the service of the Petitioner is not a tenure post to attract the dicta laid down by the Hon'ble Supreme Court of Pakistan in the cases discussed supra

10. The impugned order dated 30.08.2018 clearly indicates that the Respondents issued general transfer and posting order of its employees, prima facie this is not a person specific transfer and posting, but two other employees of Post Office Department were directed to report their duties at their place of posting. On the above proposition of law, the principle has already been settled by the Hon'ble Supreme Court of Pakistan in the case of Peer Muhammad Vs Government of Balochistan & others 2007 SCMR 54.

11. We are of the view that Government is entitled to make rules in the interest of expediency of service and for removal of anomalies, if any, in service rules. We are fortified on this issue by the decisions rendered by the Hon'ble Supreme Court in the cases of Government of Khyber Pakhtunkhwa and others v. Hayat Hussain and others (2016 SCMR 1021) and Khan Muhammad Vs. the Chief Secretary Government of Baluchistan Quetta & others (2018 SCMR 1411). It is a well settled now that a Civil Servant cannot claim a vested right on a particular post at a particular place. Therefore, the forum chosen by the Petitioner by invoking

the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law.

12. 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. Consequently, the instant Petition being meritless stands dismissed in limine along with the listed applications.

JUDGE

JUDGE

Nadir/ P.A