

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Constitutional Petition No. D -1202 of 2021

Order with signature of Judge

Hearing

1. For hearing of CMA No.5040/21.
2. For hearing of main case.

Dated : 25.02.2021

Dr. Rana Khan, advocate for the petitioner.

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This petition is primarily directed to the validity of the posting/transfer order dated 18.12.2020, whereby the assignment of Administrator SS Hospital Landhi was given to the petitioner.

This petition is virtually against the transfer and posting order of the petitioner. It is stated on behalf of the petitioner that, basically the impugned transfer order in respect of the petitioner is issued by the Director Administration for Commissioner Sindh Employees' Social Security Institution, in complete violation of Regulation No. 10 of Sindh Employees' Social Security Institution (Revised) Service Regulation 2006.

Perusal of the aforesaid Regulation, which explicitly provides that the member of the service is liable to transfer and to serve in any other equivalent post in the same cadre in the service within the province. It is noted that the Competent Authority may transfer an employee of respondent-institution, belonging to the service cadre. Per learned Counsel representing the petitioner that the posting/transfer of the petitioner was based on malice as he could not be transferred out of his cadre in the service. At this juncture, learned Counsel for the petitioner was asked to show us the original cadre of the petitioner. She relied upon the statement dated 18.2.2021 filed on behalf of the petitioner and argued that initially he was appointed as Social Security Officer (BPS-16) in the year 1998 and was subsequently promoted in the year 2012 as Director (BPS-18) in the general cadre. Per learned counsel, the post of Administrator is an ex-cadre post and the requirement/eligibility/qualification of the said post did not fulfill by him. She further argued that this posting is related to the medical cadre with certain qualifications which he lacks as discussed supra, as such he could not be transferred and posted against the post of Administrator. She emphasized that in place of the petitioner a Junior Officer in Grade-17 has been posted which violates the transfer policy and the judgment passed by the Hon'ble Supreme Court of Pakistan in Own Pay Scale cases. In support of her contentions, she relied upon the case of Muhammad Bachal Memon and others v. Syed Tanveer Hussain Shah and others, 2014 SCMR 1539,

and argued that the impugned transfer order amounts to a change of cadre which has to be done under the provisions of regulations and not otherwise as discussed supra.

The contentions raised require consideration to the extent whether the transfer and posting of the petitioner as Administrator in SS Hospital Landhi is/was out of cadre posting or otherwise, let notice be issued to the respondents as well as to learned AAG for a date to be fixed by the office, after three weeks. In the meanwhile, no coercive action shall be taken against petitioner so far as his posting as Administrator in SS Hospital Landhi is concerned.

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