

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 6572 of 2018

Sumair Saeed,

Petitioner through:

Mr. Abdul Salam Memon advocate

Respondent No.1

Through:

Mr. Muhammad Nishat Warsi, DAG

Respondents No.2 &3

Through:

Mr. Muhammad Arshad Khan Tanoli, advocate

Respondents No.4 &5

Through:

Malik Naeem Iqbal advocate

Dates of hearing:

09.08.2019 and 11.09.2019

Date of short order:

11.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J: - This petition is primarily directed to the validity of the posting / transfer orders dated 08.09.2018 and 10.09.2018, whereby the assignment of additional charge was given to the Respondents No.4 and 5 as Acting Director Human Resource, and Acting Director Commercial and Estates, Head Quarter Civil Aviation Authority respectively. This petition is virtually against the transfer and posting orders of the private Respondents. It is stated on behalf of the petitioner that, basically the impugned transfer orders in respect of the Respondents No.4 and 5 are issued by the Respondent-Authority in complete violation of Regulations 14 & 43 (1) of Civil Aviation Authority Employees (Appointment, Promotion, Transfer and other Service Terms & Conditions) Regulation 2014.

2. Perusal of the aforesaid Regulations, which explicitly provide the conditions for Acting Charge post. It is noted that the Competent Authority may appoint the most suitable employee of Respondent-Authority, belonging to the service cadre on Acting Charge basis who is otherwise eligible for promotion. Per learned Counsel representing the Respondent-Authority that the posting / transfer of the private Respondents is purely temporary and stop-gap arrangement, therefore, no vested

right created to either party to claim benefit arising out of the aforesaid Office Orders. At this juncture, learned Counsel for the petitioner refuted claim of the Respondent-Authority and has referred to various documents attached with the Memo of Petition, more particularly the Minutes of the Meeting, whereby the private Respondents were declared unfit for further promotion, as such their posting against Director (Human Resource) and Director (Commercial and Estates), CAA is contrary to the findings of the Competent Authority. Conversely, the learned Counsel representing the Civil Aviation Authority pointed out that the private Respondents have already instituted judicial proceedings against the aforesaid findings which are stated to be pending before this Court as well as before the Hon'ble Supreme Court of Pakistan. Be that as it may, we are only concerned with the issue of transfer and posting of the private Respondents, one of them has already retired and second one is going to retire on 16th September, 2019.

3. Mr. Abdul Salam Memon, learned Counsel for the Petitioner emphatically argued that the Selection Board did not find the Respondents No.4 and 5, worthy of promotions for the post of Director in the year 2014 and 2017 and their promotion cases were declined rather they were superseded and now they cannot hold the post of Director Human Resource and Director Commercial and Estates in CAA on acting/additional charge basis; that there is no public interest involved for the posting and transfer of the private Respondents No.4 and 5, therefore, their orders for particular postings are nullity in the eyes of law.

4. We asked the learned Counsel for the petitioner as to how the petitioner is an aggrieved person against the transfer and posting of the private Respondents. He replied that the Respondents No.4 and 5 are holding a public office in violation of Article 199(1) (b) (ii) of the Constitution; that the Respondents No.4 and 5, EG-8 officers, are not qualified and eligible to hold the posts of Director Human Resource and Director Commercial and Estates in CAA; that the Respondent No.4 and 5 cannot be posted on acting/additional charge basis in a higher post, which could be made through Selection Board only in accordance with the CAA Service Regulations-2014 and not otherwise; that issuance of writ of quo-warranto against the Respondents No.4 and 5 to meet the ends of justice; that writ of quo-warranto

against the private Respondents against whom, *prima facie*, evidence showing their involvement in the serious charges of misconduct was available, that is why they were permanently superseded; as such the assignment of Acting Charge post of Director Human Resource and Director Commercial and Estates in CAA cannot be given to them; that Director Human Resource position requires selection on the basis of merit and promotion to such post could not be made in a mechanical manner and a variety of factors, such as length of service, experience, examination of service records, evaluation reports of training institutions, record of disciplinary proceedings, reputation of integrity and efficiency, suitability for handling particular assignment, etc. had to be taken into consideration. Be that as it may, here we are only concerned whether the transfer and posting of private Respondents is the domain of the Competent Authority of CAA, if they found the private Respondents to be worthy of posting at the particular post on acting/additional charge basis, in our view, this Court cannot interfere in the service affair of the Respondent-Authority until and unless it is shown that the said posting and transfer orders negate basic provision of law and Constitution, which is lacking in the present case. Learned Counsel for the petitioner focused our attention towards the annexure "E" at pages 205 to 209 of the Court file and forcefully contended that the Respondent No.5 herein is Additional Director in E.G-8 and has been transferred to the post of acting Director Human Resource HQCAA, which is higher post and under challenge in the instant petition. In support of his contention, he relied upon the case of Secretary, Ministry of Science & Technology and another vs. Muhammad Anwar Butt (2015 SCMR 106) and argued that the Acting Charge appointment can only be made against the posts which are likely to fall vacant for a period of six months or more as well as on the recommendation of Departmental Promotion Committee or the Central Selection Board as the case may be; that acting charge appointment shall not amount to appointment by promotion; that acting charge appointment shall not confer any vested right or regular promotion to the post held on acting charge basis and in this regard he also referred the case reported as Province of Sindh and other vs. Ghulam Farid (2014 SCMR 1189). He further relied upon the case of Muhammad Hanif Abbasi vs.

Jehangir Khan Tareen (PLD 2018 SC 114) and emphasized for issuance of writ of quo warranto against the private Respondents.

5. On the contrary, Malik Naeem Iqbal learned counsel representing the private Respondents has referred the Counter Affidavit filed on behalf of the Respondent No.4 and 5 and raised the question of maintainability of the petition. He next argued that the Respondents No.4 and 5 were assigned the charge of the aforesaid posts as a stopgap arrangement till posting of regular appointee; that the appointment of Respondents No.4 and 5 were made by the competent authority of CAA which is in accordance with law. He added that due to shortage of officers in the respective grades, private Respondents had been appointed on current/additional charge basis after observing all the codal formalities; that the Petitioner has no locus standi to file the instant petition against the private Respondents. He, therefore, prayed for dismissal of the petition.

6. Mr. Muhammad Arshad Khan Tanoli, learned Counsel representing Civil Aviation Authority has adopted the arguments advanced by the learned Counsel for the private Respondents, however, he added that the Service Rules of the Respondent-Authority are non-statutory in nature, therefore, this petition is suffering from serious legal defects, thus is liable to be dismissed. In support of his contentions, he relied upon the cases of Malik and Haq v. Muhammad Shamsul Islam (PLD 1961 SC 531), Pakistan Red Crescent Society vs. Nazir Gillani (PLD 2005 SC 806), PIA Corporation vs. Shahabuddin (1993 PLC (CS) 1), Zeba Mumtaz v. First Women Bank Ltd. (PLD 1999 SC 1106), Raziuddin vs. Chairman PIAC (PLD 1992 SC 531), Muhammad Yousaf Shah vs. PIAC (PLD 1981 SC 224), Principal Cadet College Kohat vs. Muhammad Shoaib (PLD 1984 SC 170), Anwar Hussain vs. Development Bank of Pakistan (PLD 1984 SC 194), Anwar Hussain v. A.D.B.P (1992 SCMR 1112), Habib Bank Ltd. vs. Zia-ul-Hassan (1998 SCMR 60), PIAC vs. Tanveer-ur-Rehman (PLD 2010 SC 676) & 2017 SCMR 571.

7. We asked the learned Counsel to assist this Court with regard to the issuance of Office Orders dated 8th September, 2018 and 10th September, 2018 by the Respondent-Authority who have been posted in higher rank. He replied that the aforesaid transfer and posting orders have been issued by the Competent Authority

strictly in accordance with Regulations 7(1) (1) Chapter-I & 117(1) (2) of the Service Regulations, 2014. Per learned Counsel the aforesaid arrangement has been made, keeping in view the suitability and qualification of the private Respondents being senior officers of General Cadre, having sufficient experience in the relevant field, thus no illegality has been committed by the Respondent-Authority; that no violation of Regulations No.14 and 43 has been made; that the transfer and posting is the prerogative of the Respondent-Authority.

8. Mr. Muhammad Nishat Warsi, learned DAG has supported the stance of Civil Aviation Authority and argued that the Secretary CAA is competent authority for posting and transfer of Director (EG-09) on the recommendation of Director General, therefore, the aforesaid posting orders were made in the instant case in accordance with the Service Regulations of 2014 and policy framed in this regard.

9. We have heard the parties at length and considered their submissions and perused the record as well as case law cited at the bar.

10. Firstly, we address the question of jurisdiction of this Court under Article 199 of the Constitution. From the pleadings of the parties, we have noticed that the Civil Aviation Authority is an autonomous organization established under Section 3 of the Pakistan Civil Aviation Authority Ordinance, 1982, Section 12 of the said ordinance empowers the Civil Aviation Authority to prescribe by Regulations the procedure for appointment of its officers, servants and consultants, and the terms and conditions of the service, for posting and transfer of Director (EG-09), the Secretary CAA is competent authority, on the recommendation of Director General. The Honourable Supreme Court in the case of Muhammad Rafi and another vs. Federation of Pakistan and others (2016 SCMR 2146) has held that writ petition is maintainable against the CAA; therefore, we are of the view that the instant Petition could be heard and decided by this Court in Constitutional jurisdiction.

11. Having decided the question of maintainability of the instant Petition, the controversy at hand is whether a writ of quo warranto is not available to one set of Civil/Public Servants against another set of Civil/Public Servants and if a colleague is allowed to challenge another colleague's appointment and posting, there would

be no end to this; there will be anarchy in the Service structure. The Honourable Supreme Court has answered the aforesaid proposition in the cases of Dr. Azeem ur Rehman v. Government of Sindh (2004 SCMR 1299) and Ali Hassan Brohi v. Province of Sindh and others (SBLR 2015 SC 221) and held that the writ of quo warranto cannot be issued in such circumstances.

12. We have noticed that Petitioner if claiming issuance of a writ of quo warranto must satisfy this Court, inter alia, that the office in question is a Public office and is held by an usurper without legal authority, which leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not, which the learned Counsel for the Petitioner has failed to demonstrate before this court. However, we are cognizant of the fact that relief is not to be denied to the litigants on technical consideration; however, a Writ of quo warranto would not be a remedy for a person to air his private vengeance. Petitioner has not been able to show as an 'aggrieved person' in terms of Article 199 of the Constitution of Islamic Republic of Pakistan to agitate any bona fide grievance, therefore he has no case at all to invoke the Constitutional Jurisdiction of this Court, through the instant writ petition. On the aforesaid proposition, we are fortified with the decisions rendered by the Honorable Supreme Court in the cases of Pakistan Tobacco Board and another vs. Tahir Raza and others [2007 SCMR 97], Province of Sindh and others vs. Ghulam Fareed and others [2014 SCMR 1189], Sarwar Ali Khan vs. Chief Secretary to Government of Sindh [PLD 1994 SC 233] and Syed Noorul Hasan vs. The Secretary, Ministry of Industries Government of Pakistan, Islamabad and others [1987 SCMR 598].

13. During the course of arguments, we have been informed that the Respondent No.4 has reached at the age of superannuation and retired from the service of CAA; therefore, no further order is required to be issued against him. It is seen from the record and noted and from the admitted position, as conceded by the learned counsel for the petitioner, that the Respondent No.4 is no more in the service of Respondent-CAA. The same is the position of Respondent No.5 who is also retiring from service on 16.09.2019; hence proceedings against them could now

not be continued since after their retirement. Reliance is placed upon the following judgments of Honorable Supreme Court on the aforesaid issue:-

1. *Muhammad Zaheer Khan v. Government of Pakistan and others* (2010 SCMR 1554),
2. *Abdul Wali vs. WAPDA and others* (2004 SCMR 678)
3. *Roshan Dani and others vs. WAPDA and others* (2015 PLC (CS) 263),
4. *Bilquis Nargis vs. Secretary to Government of the Punjab, Education Department* (1983 PLC (CS) 1141)
5. *Parveen Javaid vs. Chairman WAPDA and others* (2011 PLC (CS) 1527)
6. *Ghulam Nabi vs. Federation of Pakistan and others* (2018 PLC (CS) Note 69).

14. On the aforesaid understanding the transfer and posting orders of the private Respondents come to its logical end after their retirement from service, therefore, in our view at this stage challenging their transfer orders will not serve any purpose.

15. Adverting the main contention of the Petitioner that the private Respondents are holding their respective posts in violation of law and issuance of writ of quo warranto is pre-requisite, the aforesaid assertion has already been answered in the preceding paragraphs, therefore, in such circumstances no further discussion is required on our part.

16. In the light of the above facts and circumstances of the case, we do not find any merit in the captioned Petition, which is dismissed along with all the pending application(s).

17. These are the reasons for our short order dated 11.9.2019, whereby we have dismissed the instant petition.

JUDGE

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