

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 1310 of 2019

Ms. Faryal Kaleem Shaikh,  
Petitioner through: Ali Asadullah Bullo, advocate

Respondents  
Through: Mr. Muhammad Nishat Warsi, DAG

Date of hearing: 17.09.2019  
Date of short order: 17.09.2019

## JUDGMENT

**ADNAN-UL-KARIM MEMON, J:-** By means of this writ petition, the petitioner has challenged her transfer and posting order, whereby she was relieved and posted at Federal Ombudsman Secretariat for protection against harassment for Women at Workplace Peshawar against a vacant position of Assistant Registrar BPS-17 vide Notification dated 31.1.2019 and seeking a mandamus declaring that her posting order is against the Office Memorandum dated 17<sup>th</sup> December, 1999, whereby guideline has been provided for posting and transfer of unmarried female government servants at the station of resident of their parents/family.

2. Mr. Ali Asadullah Bullo learned Counsel for the petitioner has argued that basically this writ petition is filed seeking a Writ of mandamus to call for the relevant records relating to her transfer and posting by dislocating her at the station of resident of her parents/family, strictly in the line with office Memorandum dated 17<sup>th</sup> December, 1999 and quash or set aside the same holding it as arbitrary, illegal, unjust and violative of fundamental rights of the petitioner; that an appropriate direction may be issued to the respondents to continue the petitioner in the office of Federal Ombudsman Secretariat for protection against harassment for Women at Workplace, Regional Office Karachi. He further stated that the Petitioner was erroneously transferred from her present posting in violation of the aforesaid policy, which is also applicable in the Respondent-department. It has been contended by the learned Counsel for petitioner that she was initially appointed as an Assistant Registrar in BPS-17

with the respondents on 17<sup>th</sup> May 2017; that she has been discharging her duties to the best satisfaction of her superiors and everyone concerned; Therefore, he contends that picking and choosing her only for transfer is arbitrary action of the respondents; that the Establishment Division Ministry of Finance had issued a letter on 17.12.1999, wherein a policy was made that female employees of Public Sector entities, married or unmarried, should be posted near to their husband or parents as far as possible; that in pursuance of the said transfer policy, wherein it makes abundantly clear the aforesaid proposition. Therefore, the impugned transfer order is liable to be set aside declaring it as illegal and arbitrary. Learned counsel for the petitioner submits that subsequent to issuance of the transfer order, the petitioner has submitted a representation to the respondents on 31.1.2019 and the respondents have rejected the same vide proceedings dated 6.2.2019.

3. At the very outset, Mr. Muhammad Nishat Warsi Learned DAG has conceded the legal position of the case; however, he raised the question of maintainability on the ground that Federal Ombudsman is competent to transfer the employees of the Regional Offices to other concerned Regional Offices in order to maintain the administration efficiently and effectively. He next submitted that on administrative grounds, the petitioner was transferred from Karachi to Peshawar and there is no malice, arbitrary action and discrimination against the petitioner; that several officers are transferred to various places and they are made in accordance with exigencies of service and for administrative reasons. Learned DAG also submits that normally the Courts should not interfere with the transfer orders, but if some malafides are attributed, for the proven malafides only, the Courts can interfere with the transfer orders; that there are no merits in the instant writ petition and the same is liable to be dismissed.

4. This Court, having considered the rival submissions made by learned counsel for both parties, is of the considered view that the policy decision as contained in the Office Memorandum dated 17<sup>th</sup> April, 1999 is clear in its terms and fully applicable in the case of petitioner. For convenience sake, an excerpt of the Office Memorandum is reproduced as under:-

“2.The above guide-lines are subject to the following conditions:-

- i. Posting of unmarried female Government servants at the station of residence of their parents /family should not be made by dislocation of any Government servants already serving at a particular station unless his transfer is necessitated by compelling reasons of public interest or within the frame work of general policy of posting and transfer.”

5. We are cognizant of the fact that the transfer is an incident of service and the transfer policy/guidelines do not vest an enforceable right in favour of the employee, however, in case of unmarried female employee an exception has been carved out as the Petitioner has specifically pleaded in her application dated 31<sup>st</sup> January, 2019 (available at page-43 of the Memo of Petition) that she is unmarried, wholly dependent and residing along with her aged parents and requested the Respondent-department for consideration of her posting at Karachi.

6. We have noticed that the Establishment Rules Chapter-III, Transfer, Posting & Deputation Rules at Sr. No.5 (2) (ii) provides posting of unmarried female, government servant at the place of residence of parents of the family, the aforesaid policy is a known and followed practice of posting in service jurisprudence. At this juncture, learned Counsel for the petitioner pointed out that that the post of Assistant Registrar BPS-17 at Regional Office Karachi is Karachi based post as such the petitioner cannot be transferred out of Cadre post at Peshawar. In support of his contention he relied upon the Appointment order dated 17.5.2017 available at page 25 of memo of petition. Be that as it may, we have to see the policy decision of Government of Pakistan on the aforesaid proposition, which has already been discussed in the preceding paragraph. An excerpt of the Estacode is reproduced as under:-

“2. The above guidelines are subject to the following conditions:-

- (i) Posting of unmarried female government servants at the station of residence of their parents/family should not be made by dislocation of any government servant already serving at a particular station unless his transfer is necessitated by compelling reasons of public interest or within the framework of general policy of postings and transfer.
- (ii) The prescribed selection authority should be consulted in each case.

3. It has also been decided that the above guidelines shall also be followed by autonomous/semi-autonomous bodies/ corporations etc. under the control of the Federal Government.”

7. In the light of Office Memorandum dated 17<sup>th</sup> December, 1999 as discussed supra the case of Petitioner explicitly falls within paragraph 2(i), as such Notification for transfer of the petitioner at Peshawar is declared against

the policy decision of the Government of Pakistan, Cabinet Secretariat Establishment Division.

8. The Petition is allowed as prayed.

9. These are the reasons of our short dated 17.9.2019, whereby we have allowed the captioned petition.

**JUDGE**

**JUDGE**

Nadir\*