

2019 P L C (C.S.) 1533

[Sindh High Court]

Before Syed Hassan Azhar Rizvi and Adnan-ul-Karim Memon, JJ

MUHAMMAD AZAM CHANNA

Versus

PROVINCE OF SINDH through Chief Secretary and 3 others

C.P. No.D-4997 of 2017, decided on 18th August, 2017.

Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974---

---R.3(2)---Sindh Service Tribunal Act (XV of 1973), S.4(b)---Transfer of employee---Expression 'terms and conditions' of service---Scope---Contention of employee was that impugned transfer order was based on mala fide intention---Validity---Transfer order of a Civil Servant would fall within the ambit of "terms and conditions" of service---Expression 'terms and conditions' of service would include transfer of posting of employee---Service Tribunal had exclusive jurisdiction in the matter with regard to terms and conditions of service of civil servants---Employee had no vested right to be posted against a particular post---No question of infringement of right of employee would arise in the present case---Provisions of Art. 212 of the Constitution ousted the jurisdiction of all other Courts except Service Tribunal in the matters of "terms and conditions" of service---Order of departmental authority even though without jurisdiction or mala fide could be challenged only before Service Tribunal---Constitutional petition was dismissed in circumstances.

Ali Azhar Khan Baloch v. Province of Sindh and others 2015 SCMR 456; Peer Muhammad v. Government of Balochistan and others 2007 SCMR 54 and Government of Khyber Pakhtunkhwa and others v. Hayat Hussain and others 2016 SCMR 1021 rel.

Zubair Ahmed Abro for Petitioner.

Malik Naeem Iqbal along with Respondent No.4.

Muzaffar Ali Leghari Additional Advocate General Sindh along with Shafqat Ali Abro Section Officer I, S&GACD,

Abdul Samad Sheikh Inchare Legal Section Agriculture Department.

Date of hearing: 18th August, 2017.

JUDGMENT

ADNAN-UL-KARIM MEMON, J.---Through the instant petition, the Petitioner has impugned Notifications dated 26.07.2017 issued by the Respondent No.1, whereby he was transferred and posted as Project Director (BS-19), Agro Export Processing Zone, Karachi, whereby relieved from the charge of Planning and Monitoring Cell, Agriculture, supply and Prices Department.

2. Brief facts of the case are that the Petitioner is a Civil Servant; he was posted as Director (BS-19) Planning and Monitoring Cell, Agriculture, supply and Prices Department. As per record Petitioner was assigned to hold the charge of the post of Project Director (BS-19) Agro Export Processing Zone, Karachi in addition to his own duties; that on 26.07.2017, through the impugned Notification Petitioner was relieved from the charge/post of Director, Planning and Monitoring cell.

3. Mr. Zubair Ahmed Abro learned counsel for the petitioner has argued that the impugned Notification is in violation of Rules 3, 4, 6, 7 and 8 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974; that the Respondent No.1 has issued the impugned Notification in defiance of law and the principle laid down by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch v. Province of Sindh and others (2015 SCMR 456); that the Petitioner/civil servant cannot be transferred to any other cadre, department, post or service unless he is illegible for such post, in terms of the Rule 3(2) (supra). He next added that the impugned transfer order is based on mala fide intention on the part of Respondents Nos.1 to 3, who in connivance with Respondent No.4 transferred him to accommodate Respondent No.4; that he has not been allowed to complete his tenure of posting as required under the law and pronouncements of Hon'ble Supreme Court on the issue of transfer and posting. He next contended that the transfer order of the petitioner is based on mala fide intention and prayed for setting aside the same.

4. Mr. Malik Naeem Iqbal learned counsel for the Respondent No.4 has contended that Petitioner has no right to be posted against the particular post, therefore the question of his fundamental right does not arise; that the question of posting / transfer relates to terms and condition of the civil servant and Service Tribunal has jurisdiction to dilate upon and decide such matters of transfer and posting; that Constitutional jurisdiction of this Court cannot be invoked to get such controversy resolved. He further added that the question of mala fide can be challenged before the concerned Service Tribunal and jurisdiction of this Court is specifically bared in view of Article 212 of Constitution of Islamic Republic of Pakistan. In support of his contention, he has placed reliance in the case of Peer Muhammad v. Government of Balochistan and others (2007 SCMR 54).

5. Mr. Muzaffar Ali Leghari, Additional Advocate General Sindh raised the preliminary issue of maintainability of the instant petition, and argued that the Petitioner is a Civil Servant and he has remedy under Article 212 of the Constitution. He next contended that a Civil Servant cannot challenge the transfer order in the Constitution Petition; that this Hon'ble Court has no jurisdiction to entertain the instant Petition.

6. We have heard the learned counsel for Petitioner and learned AAG representing the Respondents Nos. 1 to 3 and Mr. Malik Naeem Iqbal learned counsel for the Respondent No.4 and perused the material available on record.

7. Admittedly, Petitioner is a Civil Servant and his service is governed under Sindh Civil Servants Act, 1973. Petitioner has challenged his transfer order, which falls within the ambit of terms and conditions of his Service. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, thus the jurisdiction of this Court is barred by the provisions of Sindh Service Tribunal Act, 1973 read with Article 212 of the Constitution.

8. Reverting to the question raised by the learned counsel for the Petitioner; that impugned Notification is in defiance of the terms of the Rule 3(2) of Sindh Servants (Appointment, Promotion and Transfer) Rules, 1974 and the transfer order of the Petitioner is based on mala fide. Record reflects that that the Petitioner was posted as Director (BS-19), Planning and Monitoring Cell, Agriculture, Supply and Prices Department, having additional charge of the post of Project Director (BS-19), Agro Export Processing Zone, Karachi.

9. We are of the view the expression "terms" and "conditions" includes transfer and posting, as provided under Section 4(b) of Sindh Service Tribunal Act, 1973. This view finds support from the case of Ali Azhar Khan Baloch v. Province of Sindh and others (2015 SCMR 456), Peer Muhammad v. Government of Balochistan and others (2007 SCMR 54), Secretary, Government of Punjab and others v. Dr. Abida Iqbal and others [2009 PLC (C.S.) 431] and Government of Khyber Pakhtunkhwa and others v. Hayat Hussain and others (2016 SCMR 1021).

10. Admittedly the Petitioner has no vested right to be posted against a particular post; hence, the question of infringement of his right does not arise. The provision as contained in Article 212 of the Constitution ousts the jurisdiction of all other Courts and orders of the Departmental Authority even though without jurisdiction or mala fide can be challenged before the Sindh Service Tribunal.

11. We have found that prima facie; there is serious discrepancy in the posting of Respondent No.4, admittedly he does not belong to Planning and Monitoring Cell, Agriculture, Supply and Prices Department/cadre, as admitted by Respondent No.2 in paragraph 6 of the comments.

12. Considering the case of the Petitioner in the above perspective, we find no merit in the instant Petition, which is dismissed accordingly along with pending applications. However, the Petitioner is at liberty to approach the proper forum as provided under the law.

ZC/M-1/Sindh Petition dismissed.