

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 1523 of 2021

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Anan Iqbal Chaudhry

Petitioner: Abdul Haq Massan through Mr. Ishrat Ali Lohar, Advocate.

Respondent-4: The Chairman, Market Committee, Hyderabad through Mr. Ashfaque Ahmed Korejo, Advocate

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing & decision: 07.12.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- The case of the petitioner is that he was appointed as Junior Clerk BPS 5 in Market Committee Nasirabad District Larkana in the year 1980; subsequently he was promoted as Sub Inspector BPS-8 in 1998 and Office Superintendent BPS-17 in 2015; that in 2019, he was selected and posted as Secretary Market Committee; and, vide letter dated 10.2.2021 respondent No.4 proposed his name and expressed no objection upon the posting of petitioner as Secretary Market Committee Hyderabad to the competent authority of Agriculture Supply and Prices Department, Government of Sindh; that on 8.9.2021 the petitioner assumed the charge of Secretary but on 13.9.2021, he received a letter from the office of respondent No.4 refusing to relieve him though the petitioner assumed the charge of said post and started working.

2. Upon query by this Court as to how the instant petition is maintainable against the transfer and posting which fall within the ambit of expression `terms and conditions of service of the civil servant. Mr. Ishrat Ali Lohar learned counsel for the petitioner has replied to the query and has submitted that the impugned transfer orders as discussed supra are tainted with malice, violative of natural

justice, malafide and is without lawful authority and beyond the Rules and regulations; that the respondents have thrice transferred the petitioner without any sound reasoning and in any public exigency; that the respondents have violated the fundamental rights of the petitioner which are protected under Articles 4,9,18 and 25 of the Constitution. Per learned counsel, the case of the petitioner falls within the ambit of the expression “Frequent Transfer from one place to another place” without completing his tenure of posting; that the transfer orders issued by the respondents violate the dicta laid down by the Hon’ble Supreme Court of Pakistan in the case of Syed Mehmood Akhar Naqi Vs. Federation of Pakistan, (PLD 2013 SC 195); that petitioner being eligible in all respects is entitled to completion of the minimum tenure of his posting as Secretary (BPS17), Market Committee. 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 are to be made due to exigency of service and not otherwise; that respondent No.4 is not competent authority to relieve, transfer and post the officers of BPS-17, therefore, he has no nexus under the rules of business of Market Committee; that the letter dated 13.9.2021 issued by respondent No.4 is nothing but harassment to the petitioner and creating disturbance to the working of the petitioner while discharging his duties; that on 27.9.2021 respondent No.4 again issued the office order whereby he recommended the case of the petitioner, to the competent authority, for transfer from the post of Secretary market Committee, which is malafide on the part of respondent No.4. He lastly prayed for declaring the letter dated 13.9.2021 and subsequent order dated 24.11.2021 being *void, ab initio*, and against the rules of business.

3. Mr. Ashfaque Ahmed Korejo, learned counsel for respondent No.4 has raised the question of maintainability of the instant petition and argued that the transfer and posting fall within the ambit of the expression “terms and conditions of service” and the petitioner 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. He emphasized that 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 case discussed supra.

4. We have heard the learned counsel for the parties and perused the material available on record.

5. First of all, we address the question of the maintainability of the instant Petition under Article 199 of the Constitution. Prima-facie, it appears that Market Committee is established in terms of Section 7 of the Agricultural Produce Market Act 1939 as amended up to date and Rules framed thereunder, which has statutory status and under section 27 of the Act 1939 rules are required to be framed by the Provincial Government, apparently the aforesaid rules have been framed. Respondent-department is performing functions in connection with the affairs of the Province within the meaning of Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution and therefore this Court has jurisdiction to entertain this Petition and decide the same on merits.

6. Petitioner who is also present along with his counsel has submitted that he is on the verge of retirement i.e. superannuation in the ensuing year; and, under the transfer policy, based on retirement year, he opted to remain on his last posting just for pensionary benefits, however, the respondent-department opted to accommodate someone else in his place and directed him to report to the office of Directorate General Agriculture Marketing Sindh Hyderabad vide letter dated 24.11.2021, attached with the application. We are of the view that unless there are compelling reasons, ordinarily, an employee should not be disturbed from the place of his/her posting, when he/she is on the verge of retirement. An employee should be given sufficient time, which may be of one and/or two years or so to plan peacefully his/her post-retirement life. This can be the legitimate expectation of an employee who has served the Department for the major part of his/her life. In the exceptional case, if the transfer in such case is felt necessary in the public interest, it must be kept in mind while giving the fresh posting that minimum inconvenience is caused to the concerned employee. Any transfer contrary to aforesaid principle will lead to inference that the order is malafide. In such a situation, we find a good reason to interfere with the orders of the transfer of the petitioner. Primarily based on fact that the transfer of petitioner, who is in BPS-17, at the behest of

chairman Market Committee Hyderabad is certainly void, as he was just posted by the Director-General Agriculture Extension Sindh vide order dated 7.9.2021.

7. Thus, keeping the above discussion, the instant petition is allowed and impugned letter dated 13.9.2021 and subsequent letter dated 24.11.2021, passed by the respondents, being in contravention of the policy decision of the Government of Sindh, is declared as illegal, malafide, and arbitrary, hence set aside.

9. Accordingly the instant petition is allowed and a writ of mandamus is issued accordingly.

JUDGE

JUDGE

Karar_hussain/PS*