

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

C.P No.D-1930 of 2021

(Imdad Ali vs. Province of Sindh & Ors)

Before:-

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Petitioner : Through Mr. Amjad Hussain Rajpar,
Advocate.

Date of hearing & Order: 09.12.2021

O R D E R

ADNAN-UL-KARIM MEMON, J: The petitioner is aggrieved of and hence has challenged the Notification dated 30.11.2021 issued by Secretary School Education and Literacy Department Government of Sindh whereby certain transfer and postings of officers of BPS-17 have been made. Petitioner has premised his case the analogy that Election Commission of Pakistan, has imposed the ban, inter alia, on transfer and postings of Assistant Registration officers, supervisors, and verifying officials appointed for the periodical revision of Electoral Rolls 2021-2022, till complete their respective assignments.

2. Mr. Amjad Hussain Rajpar learned Counsel for the petitioner, in the instant petition, inter alia, contended that the impugned Notification has been issued in violation of Articles 219 and 220 of the Constitution, Sections 4 of the Elections Act, 2017, and directives of Election Commission of Pakistan vide Notification dated 5.11.2021, which is not permissible. It was further contended that the purpose of Notification, as has been mentioned, is to ensure periodical revision of Electoral Rolls 2021-2022, however, the respondent department abruptly transferred the officers of BPS-17 to frustrate the aforesaid process, for political consideration.

3. Arguments advanced by learned counsel for the petitioner have been heard and the documents placed on record examined with his assistance.

4. As noted above, the petitioner is aggrieved of Notification dated 30.11.2021 issued by Secretary School Education and Literacy Department Government of Sindh, however in the presence of ban imposed by the Election Commission of Pakistan, on transfer and postings as discussed supra.

5. The Notification dated 5.11.2021 states that the same has been issued under Article 219 of the constitution read with Sections 4, of the Elections Act, 2017. The bare reading of the above provision of the Constitution of Islamic Republic of Pakistan, 1973 and the Elections Act, 2017, shows that one of the important functions of the Election Commission is to conduct fair, free, and just elections. The Commission, to perform this constitutional and statutory function, can issue such directions and pass such orders as are required for the purpose. The reasons, cited in the impugned Notification for issuance of the same and imposition of ban on transfer and postings of Assistant Registration Officers, Supervisors, and Verifying officials appointed for the periodical revision of Electoral Rolls 2021-2022, till complete their respective assignments.

6. The upshot of the above discussion is that Election Commission has the power to issue such directions and pass orders as are required for holding fair, just, honest, and free elections. However, there is no substantial complaint on behalf of the Election Commission of Pakistan on record, which amount to misuse of authority by the Provincial Government, in making transfer and posting of the officials of BPS-17 in exigency of service, which resulted in the stoppage of completion of the existing assignments, that have come to a halt; however, that has not been demonstrated by the petitioner to that extent.

7. Coming to the issue, primarily under Section 10 of the Sindh Civil Servants Act, 1973 posting and transfer, being the terms and conditions of service, same could not be challenged before High Court in its Constitutional jurisdiction.

8. For the reasons recorded hereinabove, the instant petition is dismissed in limini being hit by Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 with no order as to costs.

JUDGE

JUDGE