

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-363 of 2022

Muhammad Khan
Petitioner through : Mr. Qaim Ali Memon, advocate

Respondent No.1
Through : Mr. Ali Safdar Depar, AAG

Respondents 2 & 3 : Mr. Waleed Khanzada, advocate

Respondent No.4 : Mr. Abdul Samad Memon, advocate

Date of hearing
& order : **01.03.2022**

ORDER

The case of the petitioner is that he is a Public Servant and working as Deputy Director Taxes in Karachi Water and Sewerage Board (**KW&SB**), has called in question his transfer and posting order vide notification dated 19.1.2022, *inter-alia*, on the ground that his case explicitly falls within the ambit of the decision of Hon'ble Supreme Court rendered in the case of *Syed Mehmood Akhtar Naqvi and others v. Federation of Pakistan and others* **PLD 2013 SC 195**, which has binding effect under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

At this stage, we confronted him with him that public servants can be transferred and posted by the competent authority, whereas the petitioner has simply been directed to report for duty to Deputy Managing Director (PRG) Karachi, KW&SB.

Mr. Qaim Ali Memon, learned counsel in reply to the query has submitted that the tenure of the public servant has been protected in the *Aneeta Turab case* (**PLD 2013 SC 195**), thus no exception could be taken to that effect.

We again asked him that transfer and posting fall within the ambit of terms and conditions of service and every public servant is liable to serve in terms of the posting order. He emphasized that the case of the petitioner is based on political victimization as well as within the ambit of the term of frequent transfer, therefore, he cannot be saddled with such transfer within the shortest period. He prayed for allowing the instant petition.

Mr. Abdul Samad Memon learned counsel representing the private respondent has controverted the stance of the petitioner with the assertion that every public servant is liable to serve anywhere within the Province, where the installations of Karachi Water and Sewerage Board are situated. Furthermore, the competent authority is empowered

to transfer and post any officer on administrative grounds and in the public interest. Per learned Counsel respondent, KW&SB has no statutory rules of service, thus the petition is not maintainable. He prayed for dismissal of the instant petition.

Learned AAG is of the same view as taken by the learned counsel for the private respondent.

Mr. Waleed Khanzada, learned counsel for KW&SB has supported the impugned office order dated 19.01.2022 and prayed for dismissal of this petition.

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

There is no cavil to the proposition that the Constitutional petition is not maintainable before this Court, so far as the terms and conditions of a public servant are concerned; and this Court assumes its jurisdiction through the law and not otherwise. The Honorable Supreme Court in the case of *Ali Khalilullah Kakar v. Provincial Police Officer*, **2021 SCMR 1171** has settled the aforesaid proposition.

We, in the circumstances of the case, by following the ratio of the judgments passed by the Hon'ble Supreme Court of Pakistan in the cases of *Khalilullah Kakar v. Provincial Police Officer* supra, *Khan Muhammad v. Chief Secretary Government of Baluchistan, and others* **2018 SCMR 1411** and *Ali Azhar Khan Baloch v. Province of Sindh* **2015 SCMR 456** direct the Sindh Government to adhere to all the principles as laid down by the Honorable Supreme Court on the subject issue of transfer and posting of officers having the security of tenure of service at the particular station of posting.

In view of the above facts and circumstances of the case, this petition is held to be not maintainable in terms of the ratio of the judgment passed by the Hon'ble Supreme Court rendered in the case of Khalilullah Kakar (supra).

The petition stands disposed of in the above terms.

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Nadir*