

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –1202 of 2021

Aftab Alam

Versus

Province of Sindh and 3 others

Date of hearing & order : 24.03.2021

Dr. Rana Khan, advocate for petitioner.

Mr. Jawad Sarwana, advocate for respondents 2 to 4

Mr. M. Aziz Rana, Law Officer SESSI.

ORDER

ADNAN-UL-KARIM MEMON, J. – This petition is primarily directed to the validity of the posting/transfer order dated 18.12.2020, whereby the assignment of Administrator SS Hospital Landhi was given to the petitioner. This petition is virtually against the transfer and posting order of the petitioner. It is stated on behalf of the petitioner that, basically the impugned transfer order in respect of the petitioner is issued by the Director Administration for Commissioner Sindh Employees' Social Security Institution, in complete violation of Regulation No. 10 of Sindh Employees' Social Security Institution (Revised) Service Regulation 2006. She emphasized that in place of the petitioner a Junior Officer in Grade-17 has been posted which violates the transfer policy and the judgment passed by the Hon'ble Supreme Court of Pakistan in Own Pay Scale cases. She further argued that the impugned transfer order amounts to a change of cadre which has to be done under the provisions of regulations and not otherwise as discussed supra. At this juncture, we confronted her with the office order dated 12.02.2021 issued by respondent-SESSI (attached with the written reply on behalf of respondent-SESSI). She submits that she is not aware of this office order, however, the petitioner who is also present in Court submits that in principle he has no grievance against his transfer and posting, however, his only anxiety is about posting of a junior officer in Own Pay Scale (OPS) in respondent-SESSI. If this is the only point involved in the matter, we would like to address this issue with the consent of the parties.

2. To appreciate further on the issue of OPS, we have inquired from the learned counsel representing the respondent-SESSI to show us any provision of law and or rule under which a Provincial Civil Servant / Public Servant can be appointed on OPS basis. He submitted that in exigencies, the Government makes such appointments as a stopgap arrangement.

3. This practice of appointment on an OPS basis has always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self-respect and dignity of the Civil / Public Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of nature, if allowed to be vested in the Competent Authority, will offend valuable rights of the meritorious Civil / Public Servants besides blocks promotions of the deserving officers. In this respect the law empowers the Competent Authority to appoint a Civil / Public Servant on acting charge and current charge basis, it provides that if a post is required to be filled through promotion and the most senior Civil / Public Servant eligible for promotion does not possess the specific length of service, the appointment of the eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board. Further that an appointment on an acting charge basis shall be made for vacancies lasting for more than 6 months and vacancies likely to last for less than six months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any purposes including seniority, nor it confers any vested right for regular appointment. In other words, an appointment on a current charge basis is purely temporary in nature or a stopgap arrangement, which remains operative for a short duration until a regular appointment is made against the post. It is crystal clear that there is no scope of the appointment of a Civil /Public Servant on an OPS basis except in exigencies appointment on an acting charge basis can be made, subject to conditions contained in the relevant Rules.

4. In our view, posting/transferring a Civil / Public servant on his pay and scale (OPS) is not legally permissible. Our view is supported by the decisions rendered by the Honorable Supreme Court in the case of Province of Sindh & others v. Ghulam Fareed & others [2014 SCMR 1189] and Khan Muhammad vs. Chief Secretary Baluchistan and others (2018 SCMR 1411).

5. The above discussion leads us to an irresistible conclusion that the appointment/posting of Civil / Public Servant on OPS/additional charge basis, is violative of law and public interest as a result thereof the instant petition is disposed of with the direction to the competent authority of respondent-SESSI to comply with the ratio of the decisions passed by the Honorable Supreme Court in the cases of Province of Sindh & others v. Ghulam Fareed & others [2014 SCMR 1189] and Khan Muhammad vs. Chief Secretary Baluchistan and others (2018 SCMR 1411) in its letter and spirit and avoid making the transfer and posting on own pay scale in future, however, subject to conditions as enumerated in the aforesaid judgments of the Hon'ble Supreme Court. Consequently, the office order dated 18.12.2020 issued by the Respondent-SESSI to the extent of respondent No.4 is set aside. Resultantly, the pending Application[s] are disposed of.

6. Let a copy of this order be communicated to the Chief Secretary, Sindh, Secretary Labor Department, Government of Sindh, and Commissioner SESSI for information and compliance.

J U D G E

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Shahzad