

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –5659 of 2018

Muhammad Sajjad V/S Federation of Pakistan & 02 others

Constitutional Petition No. D –3597 of 2018

Abdul Rauf Khan V/S Pakistan through Secretary Ministry of Defence,
Government of Pakistan & 02 others

Date of hearing & order: 11.03.2020

Mr. Rommel Barkat associate of Mr. Abdul Wahab Baloch, advocate for the petitioners.

Petitioner Muhammad Sajjad (CNIC No.42501-1466981-7) is present in C.P. No.D-5659 of 2018.

Petitioner Abdul Rauf Khan (CNIC No.42101-6516387-3) is present in C.P. No.D-3597 of 2018.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. We intend to dispose of the captioned petitions by way of this single order as the aforesaid petitions have same circumstances, questions of law and facts.

2. Petitioners questioned their transfer and posting orders issued by the respondent-Cantonment Board by invoking Constitutional Jurisdiction of this Court asserting that the post against which the petitioners were appointed was/is a non-transferable under Sub-Rule (I) of Rule 5 of the Pakistan Cantonment Servants Rules, 1954.

3. At the outset, we directed learned counsel for the petitioners to satisfy this Court with regard to maintainability of these petitions in view of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Tariq Iqbal and others v. D.G. Military and Cantonments Department, Ministry of Defence and others, **2018 SCMR 335**. The petitioners, who are present in Court, submit that they have simply called in question the vires of Rule-5(I) of the Pakistan Cantonment Servants Rules, 1954. We are not satisfied with their reply for the reason that this Court, under the similar circumstances after hearing the parties, through a consolidated order dated 01.06.2017 passed in C.Ps. Nos. D-5661/2014, 4531/2014, 4532/2014, 5468/2014, 4790/2013 and

7751/2015, rejected the petitioners' above stand by holding that the posts held by them were transferable. The aforesaid common order was impugned before the Hon'ble Supreme Court in the case of Tariq Iqbal (supra) whereby their above plea was discarded in the following terms :

“Resultantly on 7th April, 2015, the letter dated 4th November, 2011 was withdrawn and it was declared that the policy in respect of transferable categories of Cantonment servants, declared vide letter dated 3rd November, 1999, shall hold the field.

14. For what has been discussed above, no case for leave is made out. These petitions, as a consequence, are dismissed. Leave is declined.”

4. We have noticed that petitioner Muhammad Sajjad also filed Civil Review Petition No.23-K/2018 before the Hon'ble Supreme Court of Pakistan in C.P. No.384-K/2017, but the same was dismissed vide order dated 07.06.2018 and thereafter he has again approached this Court on 01.08.2018 for the same relief which is barred under Order II Rule 2 CPC and also under the principle of res judicata.

5. In C.P. No.D-3597 of 2018 issue is the same as discussed supra. Since the issue of transfer and posting from one Cantonment Board to another Cantonment Board has already been settled by the Hon'ble Supreme Court in the case of Tariq Iqbal (supra), these petitions are not maintainable.

6. Adverting to the plea raised by the petitioners to declare Rule 5(1) of the Pakistan Cantonment Servants Rules, 1954, as ultra vires the Cantonments Act, 1924, suffice it to say, the Hon'ble Supreme Court of Pakistan has already held in paragraph 12 of the case of Tariq Iqbal and others (supra) as under:

“12. It is also important to note that the Petitioners have never challenged the vires of Rule 5 of the Rules of 1954 and for the first time before this Court have simply contended that since clause (c) of subsection (2) of section 280 requires that the rules for the purposes of appointment, control, supervision, condition of service, transfer, suspension, removal, dismissal and punishment of servants of Boards need to be published and, therefore, any change brought therein needs to be published. Suffice is to observe that Pakistan Cantonments Servants Rules, 1954 were duly published in accordance with requirement of subsection (1) of section 280 and no change in the said rule has been questioned nor it has been brought to our notice. It is only the exercise of power by the Director now Director General ML&C under Rule 5 of the Rules, 1954 and the question as to whether the powers so conferred on the Director, Military Land and Cantonments inter alia, to issue service policy, provide cadres declare posts as transferable or not are intra vires of clause (3) of subsection (2) of section 280 or not, nor the provisions of Rule 5(1) which confer such powers on the Director, Military Land and Cantonments were ever questioned. On the contrary the entire case of the petitioners is based on Annexure I and III issued by the Director General ML&C in pursuance of Rule 5(1) of Rules of 1954. The contention thus fails.” (Emphasis added)

7. In view of the law laid down by the Hon'ble Supreme Court as discussed above, no further deliberation is required by this Court. The petitioners have failed to point out any provision of law and/or Constitution that is hit by Rule 5(1) of the Pakistan Cantonment Servants Rules, 1954. This being the legal position of the case, these petitions are hereby dismissed along with pending application(s) with no order as to costs.

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