

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Salahuddin Panhwar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 1215 of 2020

Bansi Malhi and Ghulam Mustafa

Khoso

Petitioners

through : Mr. Salahuddin Ahmed, advocate.

Respondent No.1

through : Mr. Abdul Wahab Baloch, DAG.

Respondents No.2 & 3

through : Mr. Ali Safdar Depar, AAG.

Respondents No.4

: Aijaz Ahmed Shaikh present in person.

C.P. No. D- 1555 of 2021

Muhammad Rashid Bohio

Petitioner

through : Mr. Salahuddin Ahmed, advocate.

Respondent No.1

through : Mr. Abdul Wahab Baloch, DAG.

Respondents No.2 & 3

through : Mr. Ali Safdar Depar, AAG.

Malik Naeem Iqbal, advocate for
Intervener alongwith Muneer Ahmed
Shaikh.

Date of hearing : **23.09.2021**

Date of judgment : **23.09.2021**

JUDGMENT

ADNAN-UL-KARIM MEMON, J. Through this judgment, this Court shall dispose of the captioned petitions, as the question of law and facts involved therein is similar.

2. In both the petitions, primarily, the common grievance of the Petitioners is against the issuance of notifications dated 09.12.2019 and 26.2.2021 by the respondent-Establishment Division, whereby the

direction was given to the Police Service of Pakistan Officers (PSPO), who were not pleaded as parties to the Petition bearing No D-1555 of 2021, serving in the Province of Sindh to report to the Establishment Division, basically they were also posted outside the Sindh Province.

3. Mr. Salahuddin Ahmed, learned Counsel for the Petitioners, has contended that the issue of maintainability of the petitions on the ground of locus standi is covered by the ratio of judgments of this court rendered in the cases of Karamat Ali v. Federation of Pakistan **PLD 2018 Sindh 8** and Muhammad Jibran Nasir and five others v. Federation of Pakistan and others **2021 P L C (C.S.) 179** which judgments were affirmed by the Honorable Supreme Court in Civil Appeal No.149/2018 vide order dated 22.3.2018; and, extensively read the paragraphs of the judgments as discussed supra just to demonstrate his point of view that the transfer orders of PSPO/Civil Servants issued by the respondent-establishment vide notifications dated 09.12.2019 and 26.2.2021, violate the Rotation Policy dated 05.08.2020 and the dicta laid down by the Hon'ble Supreme Court of Pakistan in the case of Syed Mehmood Akhar Naqvi Vs. Federation of Pakistan, **PLD 2013 SC 195**.

4. The learned counsel argued that the PSPO being eligible in all respects are entitled to completion of the minimum tenure of their posting as per notification dated 05.08.2020 / Rotation Policy issued by the competent authority, however, at the same time the petitioner in C.P. No. D-1555/2021, has also attacked clauses 16, 18, and 13(a) to (c), 13(d) (iii), and 15(b) and (c) of the Rotation Policy 2020 being unreasonable, contrary, and in violation of object and purpose of the Policy. The learned counsel further argued that when the ordinary tenure of posting has been specified in law/policy as discussed supra such tenure of posting is required to be respected in all respect; that the transfer and posting are to be made in exigency of service and not based on political motivation as appears in the case in hand more particularly in C.P. No. D-1215/2020.

5. To strengthen his contentions, he has also referred to clause 5(c) of the policy decision made on 05.08.2020 that regulates the rotation of PSPO serving for a long continuous period at one geographical location. He then referred to clauses 13(a), (c), and (f), and

submitted that the current PSPO who has served for 10 years or more in any of the Provincial Government shall be transferred to other Province in three phases spending over six months each and starting with the PSPO who has the longest tenure of service in the Provincial Government. He emphasized that the aforesaid proposition and policy that there are quite a few PSPO who have served more than the term of those who were transferred under the impugned notifications. He further added that in all fairness the officers at serial No.1 to 7 as disclosed in the list (page 37 in C.P. No. D-1555/2021) should have been taken into consideration being served for 17 to 22 years whereas the rest of the officers have served less than the aforesaid officers as mentioned in the above list, hence, the policy has been violated and no discretion vest with the Federal Government to flout their policy; that the impugned notifications have been issued without lawful authority, capriciously and arbitrarily as well as in contradiction with clause 13 (f) which provides the mechanism of transfers; that the provision of Rotation Policy 2020 to the extent of clauses 16 and 18 are unreasonable, discriminatory and contrary to the purpose and objectives of the policy in so far as they seemingly allowed the Federal Government unbridled powers of transfers in respect of officers with less than 10 years of service and officers belonging to BS-21 and above. In support of his contention, he has relied upon the judgments of the Hon'ble Supreme Court in the cases of Zahid Akhter v. Government of Punjab through Secretary Local Government and Rural Department Lahore **PLD 1995 SC 530** and Haider Ali v. DPO Chakwal & others **2015 SCMR 1724**.

6. It is further urged that under Article 240 of the Constitution and arrangement envisaged by the Police Service of Pakistan (Composition Cadre and Seniority) Rules 1985, the appointment and terms of service of PSP officers in a province are necessarily mattered that have to be settled collaboratively by the Federal Government and Provincial Government and decision in this respect is to be taken in consultation by the Federal Government with Provincial Government concerned; therefore, the terms of their service must be respected by both the Governments and in case of their whimsical treatment by one government the other has good ground to object. It is further urged that the Provincial Government was not taken into confidence and was not

consulted by the Federal Government before taking the impugned decision of transfer of PSP Officers. In addition to the above, it is further urged that the impugned action of the transfer of respondent No.4 in C.P. No. D-1215/2020 violates the direction of the Provincial Election Commissioner, whereby a ban was imposed on any posting or transfer in the constituency viz. PS-52 Umarkot II, where he was serving as Superintendent of Police, however, he admitted that much water has flown from the bridge and certain changes have occurred in the meanwhile, but in principle, he supported the rotation policy to the extent as discussed supra and emphasized that the dicta laid down by the Hon'ble Supreme Court vide order dated 22.03.2018 passed in Civil Appeal No.149/2018 in the case of *Karamat Ali and others*, supports the cases of the petitioners. He lastly prayed for allowing the instant petitions as prayed in the larger interest of the public at large of Sindh.

7. Mr. Abdul Wahab Baloch, learned DAG has opposed the petitions on the ground that in service matters, except for a writ of quo warranto, the private party/petitioners have no locus standi and they are not the aggrieved person to call in question the transfer and posting of PSP Officers / Civil Servants from Federation to the Provinces; that there are series of decisions of the Honorable Supreme Court laying down the principles to be followed. He further pointed out that there is a clear bar under Article 212 of the Constitution, as such the petitioners ought not to have a concern with transfer and posting matters, which is the exclusive domain of the competent authority to make the transfer and posting in exigency of service. He further argued that the petitioners are relying on a policy that cannot be enforced in Constitutional jurisdiction. He next argued that it is the prerogative of the respondent-Establishment Division to decide where to transfer the Civil Servants who are bound by terms of their service to accept the postings. Furthermore, the respondent-Establishment Division can transfer the Civil Servants / PSP Cadre Officers for Administrative reasons. He also pointed out regarding posting of PSP Cadre officers to the Province and if the same affected any of their service rights, the affected civil servant could not maintain a Constitutional petition under Article 199 of the Constitution, for the reasons discussed supra. He prayed for dismissal of the instant petitions being not maintainable under the law.

8. The learned AAG supported the stance of the learned Counsel for the Petitioners and argued that although the police officers are Civil Servants and issues raised in the instant petitions could only be decided in Constitutional jurisdiction, therefore, the bar of jurisdiction under Article 212 of the Constitution will not come in the way of the petitioners to secure the ends of justice. He further argued that respondent Establishment Division failed and neglected to consult the Provincial Government about the transfer and posting of the PSP Officers serving in the Province of Sindh. He further added the Provincial Government has no complaint against the transferred officers; therefore, the action taken by the Federal Government is based on political victimization just to impose their officers upon the Provincial Government in violation of rotation policy. Prima-facie, the analogy as put forward by the learned AAG is misconceived for the simple reason that in case of any dispute between the Federal Government and a Provincial Government in respect of any matter, which is apparent in the present case, Article 184(1) of the Constitution of Pakistan, 1973, provides the remedy to any of the said Governments to move to the Honorable Supreme Court.

9. We have heard learned counsel for the parties at some length and have perused the record and case-law cited at the bar.

10. To our understanding, this is a simple case of Transfer and Posting of PSPO/Civil servants and their case falls within the ambit of Section 3(2) of the Service Tribunals Act, 1973 which says that Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, including disciplinary matters; as under Section 4 of the Service Tribunal Act, a Civil Servant has a right to file an appeal against the orders adversely affecting his terms and condition of service before the Tribunal, subject to the qualification provided therein; and, to maintain constitutional petition, it is a mandatory requirement that petitioners should show the existence of a legal right which has been violated, however, in the present case, they have completely failed to demonstrate the same. In our view, a Civil Servant has no vested right to remain on a particular post for indefinite period. He can be transferred at any time under

Section 10 of the Civil Servant Act, 1973, and this is the reason, we asked the learned counsel for the petitioners to satisfy this Court about the maintainability of the captioned petitions. On the subject, we are guided by the decisions of the Honorable Supreme Court, which are authoritative and have binding effect, rendered in the cases of the Islamic Republic of Pakistan v. Safdar Mehmood **PLD 1983 SC 100**, Syed Afzal Ahmad Hydari Vs. Secretary Ministry of Defence Production Division, **1991 SCMR 477**, I.A. Sherwani and others v. Government of Pakistan **1991 SCMR 1041**, Miss Rukhsana Ijaz v. Secretary, Education Punjab, **1997 SCMR 167**, Ahmad Salman Waris v. Nadeem Akhtar **PLD 1997 SC 382**, Asadullah Rashid v. Haji Muhammad Muneer & others, **1998 SCMR 2129**, Khalid Mahmood Wattoo v. Government of Punjab **1998 SCMR 2280**, Superintending Engineer, Highways Circle, Multan v. Muhammad Khurshid **2003 SCMR 1241**, Tasleem Jan and others v. Muhammad Zaman and Others **2005 SCMR 695**, Peer Muhammad v. Govt. of Balochistan **2007 SCMR 54**, Syed Arshad Ali v Pakistan Telecommunication Company Ltd. **2008 SCMR 314**, Contempt proceedings against Chief Secretary, Sindh and others **2014 PLC (CS) 82**. Ali Azhar Khan Baloch v. Province of Sindh, **2015 SCMR 456**, National Assembly Secretariat Vs. Manzoor Ahmad **2015 PLC (CS) 666**: Fida Hussain Shah Vs Government of Sindh **2017 PLC (C.S.) 1229** and unreported order dated 01.07.2021 passed in **Civil Petition No.1097-L of 2020** (Chief Secretary Govt. of the Punjab, Lahore, etc. v. Ms. Shamim Usman).

11. Admittedly, the Police Officers, though not arrayed either as Petitioners or Respondents in Constitutional Petition No.1555/2021, on whose behalf a grievance has been shown through instant petition by the stranger. Petitioner sought relief in this petition cannot be granted under the garb of Public interest litigation, more particularly in service-related matters of civil servants. The service law provides the remedy to the officers who were transferred prematurely, ex-facie in violation of the Rotation Policy.

12. To our understanding, there is a bar of jurisdiction of Article 212(2) of the Constitution in the cases in hand. The Honorable Supreme Court in the recent judgment dated 21.05.2021 titled as 'Khalilullah Kakar Vs. PPO Balochistan' passed in Civil Appeal

No.909/2020 etc., has held that Article 212 of the Constitution specifically places an embargo on all other courts except the Service Tribunal to assume jurisdiction. It is now established that any *lis* relating to terms and conditions of service is within the domain of administrative courts and tribunals established under Article 212 and even if the element of malafides, ultra vires, or Coram non-judice is pressed into, the same can be entertained and decided by the said courts in its jurisdiction. There is no denial to this fact that bare reading of the said Article is of significant importance especially concerning its exclusive jurisdiction to entertain matters relating to terms and conditions of service. Hence, in all eventualities, any petition relating to terms and conditions of service is to be dealt with by administrative Courts and Tribunals specifically established for its adjudication in pursuance of Article 212 of the Constitution. As a general principle, the framers of the Constitution while inserting the said provision have ousted the jurisdiction of other courts including this Court under Article 199 of the Constitution. Reference may be made to the case of Peer Muhammad v. Government of Baluchistan and others, **2007 SCMR 54**.

13. The Honorable Supreme Court in the case of Muhammad Sajjad v. Federation of Pakistan and others **2021 SCMR 1064** has held that the Transfer of an employee/public servant falls within the ambit of terms and conditions of service, which includes transfer and posting. The petitioners have failed to point out that their fundamental rights have been infringed. Transfer and posting are part of conditions of service and it is for the authority to determine where a civil servant is to be posted. The respondent-Establishment Division which is the competent authority and parent department of the PSPO has exercised powers while issuing the impugned notifications of transfer and posting of the PSP officers and the same could not be termed as without jurisdiction or lawful authority.

14. Under the service jurisprudence, the service matters are essentially between the employer and the employee and it would be for the competent authority to decide as per the Service Rules and there is no question of any public interest involved in such matters as portrayed by the petitioners. We may hold that Section 10 of the Civil Servants

Act 1973, and Rule 10 of the Police Service of Pakistan (Composition Cadre and Seniority) Rules 1985, provide transfer and posting of the civil servants/PSP officers to different Provinces and the competent authority can withdraw any such officer of Federal government before the expiry of their tenure limitation, additionally, Rotation Policy cannot restrict the process of the competent authority from withdrawing any civil servant/PSP officer from the Provincial governments at any time on administrative grounds/ valid reasons.

15. The case law cited by the learned counsel for the Petitioners will not be helpful to him, as the facts and circumstances of the present case are distinguishable from those cases, for the reasons discussed in the preceding paragraphs.

16. For what has been discussed above, these petitions having no merit are accordingly dismissed along with pending applications.

17. These are the reasons for our short order dated 23.9.2021, by which we have dismissed these petitions.

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