

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**CP. No. D-2805 of 2022**

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Date \_\_\_\_\_ Order with Signature(s) of Judge(s) \_\_\_\_\_

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**Direction**

For orders as to maintainability of this petition

**11.05.2022**

Malik Naeem Iqbal, advocate for the petitioner alongwith petitioner  
Mr. Ali Safdar Debar, AAG along with DSP Raza Mian on behalf of IG Sindh  
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This matter was fixed on 09.05.2022 when notices were directed to be issued against the respondents as well as AG for today.

Learned AAG has put his appearance and requested time to file comments. The adjournment sought by the learned AAG has been strongly objected to by learned counsel for the petitioner on the premise that the Inspector General of Police, Sindh, has no competence to issue the office order dated 26.04.2022; and, it is the parent department i.e. Home Department, Government of Sindh to issue the policy direction in this regard. It is, *inter-alia*, contended that the impugned office order is ultra vires to the law and ratio of the judgment dated 04.11.2015 passed by the Hon'ble Supreme Court of Pakistan in the case of *Gul Hassan Jatoi and others v. Faqeer Muhammad Jatoi and others*, **2016 SCMR 1215**.

At this stage, we asked the learned counsel as to how this petition is maintainable under Article 199 of the Constitution on the premise that the impugned order dated 26.04.2022 issued by the IGP Sindh, prima facie, complies with the judgments passed by the Hon'ble Supreme Court of Pakistan in the cases of Crl. Org. Petition No.89/2011, **2013 SCMR 1752** and *Ali Azhar Khan Baloch v. Province of Sindh and others*, **2015 SCMR 456**.

Learned counsel replied to the query and submitted that with the consent of both the Inspector Generals of Police Islamabad and Sindh, the petitioner's service was mutually transferred to Sindh Police vide office order dated 14.7.1998. Thereafter petitioner continued to serve in Sindh Police and got a promotion and seniority up to the level of Inspector. Learned counsel further submitted that the entire police establishment under the Police Act, 1861 and rules framed thereunder as one police force. He also referred to the Rule 1.5 of Police Rules, 1934 and submitted that all police officers appointed or enrolled in Pakistan General Police District constitute one police force and are liable to, and legally empowered for police duty anywhere within the Province and that is why the concurrence was given for the transfer of the services of the petitioner from one police force to another police force, thus no illegality was committed in the appointment of the petitioner by way of transfer from Capital Territory Police to Province of Sindh Police, which is in consonance of the judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of *Gul Hassan Jatoi* supra. Learned counsel further submitted that the principle of locus poenitentia appears to be in favor of the petitioner.

We also asked the learned counsel to satisfy this Court about the observation of the learned Sindh Service Tribunal vide judgment dated 01.12.2020 in Service Appeal No.724/2019 that these transfers; and, so-called arrangements are alien to the law governing the police establishment i.e. Police Order 2002 and Police Rules, 1934. He submitted that the learned Tribunal has already dealt with the point in question in paragraph 30, thus no further deliberation is required on the part of this Court. Learned counsel referred to various documents attached with the memo of the petition and submitted that the impugned order is illegal, malafide, unconstitutional, without jurisdiction, arbitrary, discriminatory, and in violation of principles of natural justice, equity and fairness. Learned counsel referred to Section 190 of Sindh (Repealed) of Police Act, 1861 and revival of Police Order 2002 (Amendment) Act, 2019, and submitted that IGP is not empowered to make correspondence with the Federal Government, save in accordance with law as provided under Section 12 of the Police Act. In support of his contentions, he relied upon the case of IGP Lahore and others v. Mushtaq Ahmed Waraich, **PLD 1985 SC 159**, and submitted that the Civil Servants Act and rules framed thereunder are not *ipso facto* applicable to the case of police personnel. He lastly submitted that transfer of the petitioner was made on compassionate grounds, thus unilateral action on the part of IGP Sindh without the concurrence of the Home Secretary Government of Sindh and Federal Government is illegal and violates Section 12 of the Police Act and Section 24-A of the General Clauses Act as well as the same is in contravention of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. He prayed for suspension of the impugned office order.

At this stage, we asked him whether the petitioner has been relieved from the present posting, he has submitted he has not relinquished the charge yet.

To consider whether the impugned order aligns with the judgments passed by the Hon'ble Supreme Court of Pakistan in the case of CrI. Org. Petition No.89/2011, Ali Azhar Khan Baloch and Gul Hassan Jatoi; and, whether IGP Sindh is empowered to issue the impugned order under Section 12 of the Police Act, 1861, or it is for the Government of Sindh to repatriate the services of the petitioner to the Capital Territory Police of Islamabad; and, whether police establishment is indivisible force and inter se transfer is permissible under rule 1.5 of Police Rules, 1934; and, whether the repatriation of the petitioner to Islamabad Police after 24 years of service in Sindh Police attracts the principle of locus poenitentia and the same is within the parameters set forth by the Hon'ble Supreme Court of Pakistan in the aforesaid cases. Let comments be filed by the respondents. In the meanwhile, if the petitioner has not been relieved from the present posting, the impugned order to the extent of petitioner shall be kept in abeyance.

To come up **after two (02) weeks**.

**J U D G E**

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