

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No. 126 of 2014

Date	Order with signature of Judge
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1. For order on office objection/reply
2. For order on CMA No 1164/2014
3. For Kathca Peshi
4. For Order on CMA No 1165/2014

23.9.2015

Mr. Choudhry Waseem Akhter Advocate for the Appellant

Through instant appeal order dated 17.03.2014 passed in Suit No 43 of 2014 by a learned Single Judge of this Court, has been impugned, whereby, the plaint in the Suit has been rejected under Order 7 Rule 11 CPC.

Counsel for the appellant submits that the appellant who being an Ex-employee of Respondent No.1 ("PIAC") and a citizen of Pakistan was aggrieved by the transfer letter dated 26.11.2013, through which respondents No. 2 to 5 were nominated and approved for posting abroad, as the same was opposed to public policy and good governance, besides being discriminatory. Counsel further submits that pursuant to Administrative Order 18 of 1997, issued by Respondent No.1, an employee which is due to retire within three years from the date of intended foreign posting / transfer, was not eligible for being considered for such posting. Per Counsel such order of posting was challenged by filing Suit, wherein, the plaint has been rejected. Counsel submits that the same is not sustainable as the appellant being a citizen of Pakistan has every right to agitate the misdoings of respondent No.1, in view of the dicta laid down by the Hon'ble Supreme Court in the case of **Dr. Akhter Hussain Vs. Federation of Pakistan & Others (2012 SCMR 455)** and by this Court in the case of **Arif Majeed Vs. Karachi Grammar School (2004 CLC 1029)**.

We have heard the Counsel at some length and have perused the record. At the very outset we had confronted the Counsel as to maintainability of Suit and the legal character of the appellant and the relief being sought in terms of Section 42 of the Specific Relief Act, which in fact has also prevailed upon the learned Single

Judge in rejecting the plaint, to which the Counsel could not satisfactorily reply, except referring to the case of *Dr. Akhter Hussain (Supra)*.

It is pertinent to observe that for seeking relief from this Court through a Declaratory Suit, (as the appellant/plaintiff has sought), in terms of Section 42 of the Specific Relief Act, a person, having any legal character or right to any property may institute a Suit against any person denying or interested in denying his title to such character or right and the Court may in its discretion give a declaration to that effect. The appellant in the instant matter does not fall within the ambit of Section 42 of the Specific Relief Act, so as to seek a declaration from this Court, as admittedly, no legal right as to character or property, exists in his favor. Neither the appellant is an aggrieved person, nor, it is the case of the appellant that any fundamental right of the appellant or of any other aggrieved person has been infringed upon, whereas, instant proceedings are also not under the Constitutional jurisdiction of this Court. At the most, and without prejudice to the case of Respondent No. 2 to 5, and, subject to law, the appellant's case may be of a writ of Quo Warranto, but not of a declaratory Suit under Section 42 of the Specific Relief Act. Much stress has been laid by the Counsel for the appellant on the case of *Dr Akhter Hussain (Supra)* which in fact was a case under Article 184(3) of the Constitution, whereas, even in that case the Hon'ble Supreme Court has been pleased to hold that where a legal wrong or injury is caused to a person by reason of violation of any Constitutional or legal right or without authority of law and such person is by reason of poverty, helplessness or disability or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for appropriate direction(s). However, in the instant matter, it is not the case of appellant that such relief is being sought for someone else, who otherwise has a legal right or character and is unable to seek relief for some reason. Therefore, reliance on the case of *Dr. Akhter Hussain (Supra)* is misconceived and is hereby repelled.

Moreover, the learned Single Judge, while rejecting the plaint has also dilated upon the merits of the case and has come to the conclusion that even otherwise, there is no illegality in the transfer letter dated 26.11.2013 impugned through instant

proceedings, as respondents No. 2 to 5 were even otherwise eligible for such posting.

In view of hereinabove facts and circumstances of the instant case, we are of view that the impugned order being unexceptionable does not require any interference, whereas, the appellant has failed to point out any illegality and or perversity in the impugned order which could compel us to exercise any discretionary relief in favor of the appellant so as to upset the same. Accordingly instant appeal being misconceived in law and facts is hereby dismissed in limine with all pending applications.

JUDGE

JUDGE