

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 1582 of 2023

Order with signature of Judge(s)

1. For order on Misc. No.7880/2023
2. For order on office objection No.04
3. For order on Misc. No.7881/2023
4. For order on Misc. No.7882/2023
5. For hearing of main case

27.03.2023

Mr. Muhammad Ali Waris Lari, Advocate for the petitioner

1. Granted. 3. Granted, subject to all just exceptions. 2, 4 & 5. The petitioner, representing himself to be an employee of Pakistan Railways, has assailed a notice of the respondent, Pakistan Railways, dated 21.03.2023 whereby he has been transferred from one station to another.

At the very onset, the learned counsel was confronted with respect to the issue of maintainability *inter alia* as raised vide the office objection, being as to how the petition was maintainable in view of the bar contained in Article 212 of the Constitution. No cogent response could be articulated by the counsel, who submitted that notwithstanding the applicable Constitutional bar, this Court ought to assume jurisdiction and adjudicate the *lis*, as it was the vested right of the petitioner to remain in any posting for a minimum period of three years. Reliance was placed on an interim order dated 16.08.2021 in CP D 4030 of 2021¹, wherein while recording that the *pari materia* petitioner was a civil servant, the Court was pleased to defer the question of maintainability and proceeded to suspend the relevant transfer order.

With utmost respect, it is observed that the interim order relied upon could not be demonstrated to have any binding effect per the *Multiline*² principles. Since the learned counsel has unequivocally represented the petitioner to be a civil servant and the issue of transfer / posting is intrinsically a constituent of the terms and conditions of service³, we have been assisted with no authority to enable us to assume jurisdiction in the manifest presence of a Constitutional bar.⁴

Article 199 of the Constitution contemplates the discretionary⁵ writ jurisdiction of this Court and the said discretion *may* be exercised in the absence of an adequate remedy. In the present matter no case has been set forth before us for invocation of the writ jurisdiction. In view hereof, this petition and listed application are hereby dismissed in *limine*.

J U D G E

J U D G E

Amjad/PA

¹ *Syed Zafar Qasim Zaidi vs. Chief Personal Officer & Others.*

² *Multiline Associates vs. Ardeshir Cowasjee* reported as 1995 SCMR 362.

³ *Ali Azhar Khan Baloch vs. Province of Sindh* reported as 2015 SCMR 456; at paragraph 150.

⁴ *Nazir Hussain vs. NWFP* reported as 1992 SCMR 1843; *Miss Rukhsana Ijaz vs Secretary Education Punjab* reported as 1997 SCMR 167.

⁵ Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.