

# IN THE HIGH COURT OF SINDH AT KARACHI

Suit -1049 of 2024 : Muhammad Nasser Janjua & Others  
vs. Federation of Pakistan & Another

For the Plaintiff/s : Mr. Khalid Jawed Khan, Advocate  
Mr. Ozair Qadir Shoro, Advocate

For the Defendants/s : Mr. Zia-ul-Haq Makhdoom,  
(Additional Attorney General)  
Ms. Rabia Khalid  
(Assistant Attorney General)

Mr. Altaf Hussain, Advocate  
Mr. Asadullah Jan, Advocate

Date/s of hearing : 08.08.2024

Date of announcement : 08.08.2024

## ORDER

**Agha Faisal, J.** The Government of Pakistan (Revenue Division) Federal Board of Revenue issued two notifications dated 03.07.2024<sup>1</sup>; *prima facie* for the transfer of officers of the Inland Revenue Service, admittedly civil servants. Twelve serving officers of the IRS have preferred this suit seeking to have their transfers deemed to be *akin to OSD*<sup>2</sup> and quashed. The office has raised the objection of maintainability *inter alia* as to how a matter pertaining to terms and conditions of service of civil servants may be agitated in a civil suit; in view of the bar contained in Article 212 of the Constitution as appreciated by the Supreme Court in *Ali Azhar Baloch*<sup>3</sup>. It is this question of maintainability that is to be determined herein.

### *General principles of the law*

1. Article 212<sup>4</sup> of the Constitution confers exclusive jurisdiction upon the service tribunals for adjudication of matters relating to terms and conditions of service of civil servants.

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<sup>1</sup> Copies whereof are annexed herewith in Schedule "A" and the same may read as an integral constituent hereof ("Impugned Notifications").

<sup>2</sup> As pleaded in paragraph 9 of the memorandum of plaint.

<sup>3</sup> Per *Amir Hani Muslim J* in *Ali Azhar Khan Baloch vs. Province of Sindh* reported as 2015 SCMR 456; reference is also made to *Contempt Proceedings against Chief Secretary Sindh* reported as 2013 SCMR 1752.

<sup>4</sup> 212. (1) Notwithstanding anything hereinbefore contained the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of (a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;

2. The superior courts have deprecated the assumption of such exclusive jurisdiction by other juridical fora; especially civil courts including a Judge of the High Court of Sindh exercising jurisdiction on the original side as a civil court per the CPC<sup>5</sup>. *Ali Azhar Baloch* makes specific reference to transfers and postings and includes the same squarely within the remit of terms and conditions of service<sup>6</sup>. The august Court concluded that the exercise of jurisdiction by way of suit filed by a civil servant with regard to terms and conditions of service was *violative of Articles 175, 212 and 240* of the Constitution<sup>7</sup>.

3. At this juncture, it is considered imperative to mention that the respective learned counsel are in unison in so far as the law, so cited, is concerned. Mr. Khalid Jawed Khan seeks to pivot his case for maintainability on the premise that the plaintiffs' predicament is unrelated to the terms and conditions of service, in respect whereof the bar in Article 212 applies.

#### *Respective arguments*

4. Mr. Khalid Jawed Khan articulated that the Impugned Notifications render the plaintiffs as OSD<sup>8</sup> and the same is impermissible per the law<sup>9</sup>. He placed reliance of section 4(1)(b) of the Service Tribunals Act 1973 to enunciate that transfers under scrutiny were covered in the proviso therein contained, hence, not amenable to adjudication before the tribunal.

5. Mr. Zia ul Haq Makhdoom and Mr. Malik Altaf Hussain insisted that the action under scrutiny was a simple transfer and not amenable for adjudication in a civil suit. It was stated that the Impugned Notifications make no mention of OSD, are relative to transfer orders of PAS officers to the Establishment Division between postings; and that under no circumstances could the Impugned Orders be imputed to be read as decisions of a departmental authority determining the fitness of a person to hold a post or be promoted therefrom. Mr. Malik Altaf Hussain unequivocally stated that the Impugned

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<sup>5</sup> Reference is made to paragraph 148 of *Ali Azhar Baloch* – “*In this background, all the Civil Courts, including a Judge (in Chambers) of High Court of Sindh, exercising jurisdiction on the original side as a civil court under C.P.C. cannot entertain a civil suit of a civil servant relating to the terms and conditions of his service...*”

<sup>6</sup> Reference is made to paragraph 150 of *Ali Azhar Baloch* – “*The expression 'Terms and Conditions' includes transfer, posting...*”

<sup>7</sup> Reference is made to paragraph 151 of *Ali Azhar Baloch* – “*We, for the aforesaid reasons, conclude that the exercise of jurisdiction by way of suit and Constitution petition filed by a civil Servant with regard to his terms and conditions of service is violative of Articles 175, 212 and 240 and the law.*”

<sup>8</sup> Officer on special duty.

<sup>9</sup> Reliance is placed on 2001 PLC CS 223 @ pages 233 & 235; 2024 PLC CS 833; 2024 PLC CS 65; 2015 SCMR 1006 @ paragraph 13; 2013 SCMR 1150 @ page 1395; and 2021 SCMR 1390 @ paragraph 5 on page 1395.

Notifications were appealable per section 4 of the Service Tribunals Act 1973 and the proviso cited was inapplicable in the instant case.

Mr. Zia ul Haq Makhdoom raised the specter of another jurisdictional defect and stated that since the defendants were impleaded as being in Islamabad, the Impugned Notifications were ostensibly issued in Islamabad; and even plaintiff numbers 2, 6, 8, 11 and 12 were stated in the plaint to be from or transferred from outside the territorial remit of this Court, therefore, the suit was also barred on account of manifest absence of territorial jurisdiction.

#### *Scope of determination*

6. Heard and perused. The matter of territorial jurisdiction is well settled in our jurisdiction; as may be denoted from the *Sandalbar case*<sup>10</sup> and recently expounded by *Syed Mansoor Ali Shah J* in the *A F Ferguson case*<sup>11</sup>. However, no further dilation in this respect is merited at this juncture since the matter is clichéd on the objection in so far as the bar in Article 212 of the Constitution is concerned.

7. The sole determinant issue before this Court is whether the present grievance of the plaintiffs could be adjudicated in a civil suit; in view of Article 212 of the Constitution, as interpreted by the Supreme Court from time to time including in *Ali Azhar Baloch*.

8. It is paramount to denote that the present determination is entirely with respect to the forum for adjudication of grievances of the plaintiffs and not with respect to the merit, or otherwise, thereof.

#### *Rejection of plaint*

9. Since this is a civil suit, therefore, a negative finding with regard to maintainability would give cause for rejection of the plaint. It is settled law that the question of whether a suit was likely to succeed or not was irrespective of whether or not the plaint ought to have been rejected<sup>12</sup>. It is often seen that while a plaint could not have been rejected, however, a suit was dismissed eventually for a variety of reasons. The seminal edict with respect to the

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<sup>10</sup> *Sandalbar Enterprises Pvt. Ltd. vs. Central Board of Revenue* reported as *PLD 1997 Supreme Court 334*.

<sup>11</sup> Order dated 27.02.2024 in *CIR LTO Karachi vs. A F Ferguson & Company & Others (Civil Petition 52 of 2024)* and connected matters.

<sup>12</sup> *Al Meezan Investment Management Company Limited & Others vs. WAPDA First Sukuk Company Limited & Others* reported as *PLD 2017 Supreme Court 1*.

evolution of law of rejection of complaints is perhaps the *Florida Builders case*<sup>13</sup> wherein the Supreme Court demarcated the anvil upon which the decisions in such matters ought to be rested. The guidelines distilled by the Court in such regard are reproduced below:

“Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the complaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the complaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the complaint prior to taking a decision.

Secondly, it is also equally clear, by necessary inference that the contents of the written statement are not to be examined and put in juxtaposition with the complaint in order to determine whether the averments of the complaint are correct or incorrect. In other words the court is not to decide whether the complaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the complaint appear to be barred by law.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the complaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the complaint is to be rejected, perhaps on the basis of the documents appended to the complaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the complaint.”

10. The Supreme Court concluded that the rejection of the complaint was merited *inter alia* when the suit appeared to be barred by law and the import of the word *appear* was deciphered to mean that if *prima facie* the court considered that it *appears* from the statements in the complaint that the suit was barred, then it should be terminated forthwith. The complaint, coupled with the submissions of the learned counsel, shall be subjected to the anvil so illumined by the Supreme Court.

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<sup>13</sup> Per *Saqib Nisar J in Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as *PLD 2012 Supreme Court 247*.

### *Contents of the plaint*

11. There is absolutely no cavil to the fact that the plaintiffs are civil servants. The Impugned Notifications clearly explicate that merely a transfer is contemplated therein, governed *inter alia* per section 10 of the Civil Servants Act 1973. Paragraph 9 of the memorandum of plaint unequivocally expresses that the Impugned Notifications pertain to transfer, however, such transfers may be considered to be akin to being made OSD.

12. At the very onset, it is imperative to record that there is no mention of OSD in the Impugned Notifications and nothing has been articulated before this Court to give the notifications any other meaning than that apparent from the plain verbiage thereof. It may also be a notable mention that the prayer clause is devoid of any constituent seeking a declaration that the impugned transfers be declared as being equivalent to having been rendered as OSD.

### *Service Tribunals Act 1974*

13. Section 4<sup>14</sup> of the Services Tribunals Act 1974 mandates that any civil servant aggrieved by an order made by a departmental authority in respect of any of the terms and conditions of his service, may appeal to the tribunal. Mr. Malik Altaf Hussain has categorically stated that the Impugned Notifications fall squarely within the remit thereof.

14. The proviso contained in section 4(1)(b)<sup>15</sup> *prima facie* pertains to decisions of a departmental authority determining fitness of a person to be appointed to or hold a particular post or to be promoted to a higher grade. Respectfully, no such determination is discernible from the Impugned Notifications, hence, reliance upon the proviso by the plaintiffs appears to be misconceived.

### *Conclusion*

15. In view of the foregoing, it is the deliberated view of this Court that the present grievance of the plaintiffs could not be adjudicated in a civil suit; in

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<sup>14</sup> Any civil servant aggrieved by any order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal to the Tribunal...

<sup>15</sup> no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher grade;

view of the bar contained in Article 212 of the Constitution, as interpreted by the Supreme Court from time to time; including in *Ali Azhar Baloch*<sup>16</sup>. It may suffice to conclude the requirements to be borne in mind for rejection of a plaint have been satisfied. Therefore, the plaint is hereby rejected per Order VII rule 11(d) CPC<sup>17</sup>.

Judge

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<sup>16</sup> Per *Amir Hani Muslim J* in *Ali Azhar Khan Baloch vs. Province of Sindh* reported as 2015 SCMR 456; reference is also made to *Contempt Proceedings against Chief Secretary Sindh* reported as 2013 SCMR 1752.

<sup>17</sup> 11. Rejection of plaint. The plaint shall be rejected in the following cases:

...

(d) where the suit appears from the statement in the plaint to be barred by any law.

## Schedule "A"

(TO BE PUBLISHED IN THE GAZETTE OF PAKISTAN PART-1)

**GOVERNMENT OF PAKISTAN  
(REVENUE DIVISION)  
FEDERAL BOARD OF REVENUE**

Islamabad 3-07-2024

**NOTIFICATION  
Transfer and Posting**

**No. 1653-IR-1/2024:** Transfers/Postings of the following BS-20 officers of Inland Revenue Service are made with immediate effect and until further orders:-

S. # (1)	NAME (2)	FROM (3)	TO (4)
1.	Mr. Kazi Afzal (Inland Revenue Service/BS-20)	Commissioner, (Rahim Yar Khan Zone) Regional Tax Office, Bahawalpur	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Bahawalpur)
2.	Mr. Mohammed Nasser Janjua (Inland Revenue Service/BS-20)	Commissioner, (Zone-V) Medium Taxpayers office, Karachi	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Karachi)
3.	Mr. Zahoor Ahmad Panwar (Inland Revenue Service/BS-20)	Commissioner, (Zone-III) Regional Tax Office I, Karachi	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Karachi)
4.	Dr. Tariq Ghani (Inland Revenue Service/BS-20)	Director-II, Directorate of Law, Karachi	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Karachi).
5.	Mr. Muhammad Abid (Inland Revenue Service/BS-20)	Commissioner, (Zone-1) Regional Tax Office, Sargodha	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Sargodha).
6.	Ms. Humaira Maryam (Inland Revenue Service/BS-20)	Commissioner, (WHT) Regional Tax Office, Lahore	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Lahore)
7.	Muhammad Naveed Akhtar (Inland Revenue Service/BS-20)	Commissioner, (Zone-I) Regional Tax Office, Lahore	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Lahore)
8.	Mr. Muhammad Ali (Inland Revenue Service/BS-20)	Director, Directorate of Internal Audit (Inland Revenue), Karachi	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Karachi)
9.	Mr. Naeem Babar (Inland Revenue Service/BS-20)	Commissioner Inland Revenue (Appeals-III), Lahore	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Lahore)
10.	Mr. Zulqarnain Ali Shaheen Haral (Inland Revenue Service/BS-20)	Commissioner, (Zone-II) Regional Tax Office, Gujranwala	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Gujranwala)
11.	Mr. Abdul Qadir Shaikh (Inland Revenue Service/BS-20)	Commissioner, (Zone-IV) Regional Tax Office II, Karachi	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Karachi)
12.	Pir Khalid Ahmed Qureshi (Inland Revenue Service/BS-20)	Commissioner, Inland Revenue Appeals-I Multan	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Multan)
13.	Mr. Muhammad Asim Khattak (Inland Revenue Service/BS-20)	Commissioner (Zone-IV) Corporate Tax Office, Karachi	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Karachi)
14.	Dr. Razi-ur-Rehman Khan (Inland Revenue Service/BS-20)	Commissioner Inland Revenue (Appeals) Sialkot	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Sialkot)
15.	Barrister Nowsherwan Khan (Inland Revenue Service/BS-20)	Commissioner, (Special Zone for Builders & Developers) Regional Tax Office, Islamabad	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad
16.	Mr. Fazli Malik (Inland Revenue Service/BS-20)	Commissioner, (Corporate Zone), Regional Tax Office, Peshawar	Chief (Admin Pool), Federal Board of Revenue (Hq), Islamabad (stationed at Peshawar)

All the above officers are hereby stand relieved from their duties with immediate effect and they will continue to draw their salaries from their previous office.

(TO BE PUBLISHED IN THE GAZETTE OF PAKISTAN PART-1)

**GOVERNMENT OF PAKISTAN  
(REVENUE DIVISION)  
FEDERAL BOARD OF REVENUE**

Islamabad 3-07-2024

**NOTIFICATION**  
Transfer and Posting

**No. 1654-C-1/2024;** Transfers/Postings of the following officers of the Pakistan Customs Service (BS-20) are made with immediate effect and until further orders:-

<b>S # (1)</b>	<b>NAME (2)</b>	<b>FROM (3)</b>	<b>TO (4)</b>
1.	<b>Dr. Akhtar Hussain (Pakistan Customs Service/BS-20)</b>	Collector, Collectorate of Customs, (Appeals), Islamabad	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad.
2.	<b>Mr. Muhammad Adnan Akram (Pakistan Customs Service/BS-20)</b>	Director, Directorate of Transit Trade, Lahore	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad
3.	<b>Ms. Iram Maqbool Aamir (Pakistan Customs Service/BS-20)</b>	Director General, (OPS) Directorate General of Law & Prosecution, Islamabad	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad
4.	<b>Mr. Malik Kamran Azam Khan Rajar (Pakistan Customs Service/BS-20)</b>	Chief, Federal Board of Revenue (Hq), Islamabad	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad
5.	<b>Mr. Khalid Hussain Jamali (Pakistan Customs Service/BS-20)</b>	Chief (PAC-Customs), Federal Board of Revenue (Hq). Islamabad	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad
6.	<b>Mr. Raza (Pakistan Customs Service/BS-20)</b>	Collector, Collectorate of Customs (Adjudication-1), Karachi	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad
7.	<b>Mr. Sami-ul-Haq (Pakistan Customs Service/BS-20)</b>	Director, Directorate of Post Clearance Audit (North), Islamabad	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad
8.	<b>Ms. Ambreen Ahmad Tarar (Pakistan Customs Service/BS-20)</b>	Chief (DRD & Exemptions), Federal Board of Revenue (Hq). Islamabad	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad
9.	<b>Mr. Amer Rashid Sheikh (Pakistan Customs Service/BS-20)</b>	Chief, Federal Board of Revenue (Hq), Islamabad	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad
10.	<b>Mr. Naveed Iqbal (Pakistan Customs Service/BS-20)</b>	Director, Directorate of Transit Trade, Gwadar	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad
11.	<b>Mr. Muhammad Ahsan Khan (Pakistan Customs Service/BS-20)</b>	Collector, Collectorate of Customs (Adjudication), Quetta	Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad

2. The above named officers stand relieved with immediate effect and are requested to send charge Relinquishment / Assumption to FBR immediately after Relinquishment / Assumption of charge for record and further necessary action

3. They will continue to draw their pay against supernumerary posts in their previous offices.