

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry &
Mr. Justice Arbab Ali Hakro.

C.P. No. D - 4657 of 2023

[Ubaidullah Qazi v. Federation of Pakistan and others]

Petitioner : Ubaidullah Qazi son of Faiz Muhammad Qazi through Syed Shoa-un-Nabi, Advocate.

Respondent 1 : Federation of Pakistan, Finance Division through M/s. Kazi Abdul Hameed Siddiqui, D.A.G. & Sara Malkani, Assistant Attorney General for Pakistan.

Respondent 2 : Chairman/Judge Appellate Tribunal, Local Councils (Sindh) through Mr. Kafeel Ahmed Abbasi, Additional Advocate General Sindh.

Respondent 3 : Faisal Rana son of Rana Abdul Qayum through Mr. Kazim Hussain Mahesar, Advocate.

Date of hearing : 04-09-2024

Date of order : 04-09-2024

ORDER

Adnan Iqbal Chaudhry J. - The Petitioner prays for a writ to enforce judgments of the Supreme Court of Pakistan in *Contempt Proceedings against the Chief Secretary Sindh* (2013 SCMR 1752), followed by *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456), and thus to repatriate the Respondent No.3 from the Finance Division of the Federal Government to his parent department *viz.* the Appellate Tribunal Local Councils, Government of Sindh.

2. The Petitioner was appointed in the Finance Division of the Federal Government. The Respondent No.3 was appointed in the Appellate Tribunal Local Councils, Government of Sindh [ATLC]. In

2014, on the joint request of the Respondent No.3 and the Petitioner, they were swapped by way of an arrangement referred to as “*mutual transfer*”, i.e. the Respondent No.3 was transferred from the ATLC to the Finance Division, and the Petitioner from the Finance Division to the ATLC.

3. In 2017, the Respondent No.3 sought absorption in the Finance Division. When that did not happen, he requested repatriation to the ATLC. The Finance Division therefore asked the ATLC to repatriate the Petitioner so that it could repatriate the Respondent No.3. However, the erstwhile Chairman ATLC replied that the Petitioner was reluctant, and therefore the ATLC would have no objection if the Respondent No.3 is absorbed by the Finance Division. It appears that at such time the Petitioner was seeking his own absorption in the ATLC, but that did not bear fruit as the Services, General Administration & Coordination Department of the Government of Sindh was of the view that such absorption would be contrary to the pronouncement of the Supreme Court in *Contempt Proceedings against the Chief Secretary Sindh* (2013 SCMR 1752).

4. Eventually, in 2023, the Petitioner requested the ATLC that if he cannot be absorbed then he may be repatriated to the Finance Division. Therefore, the ATLC repatriated the Petitioner and called upon the Finance Division to repatriate the Respondent No.3. However, this time, the Finance Division declined, contending that the Respondent No.3 had already been absorbed in the Division and posted to a Development Authority on deputation (up till 10.11.2024). Resultantly, the Finance Division did not allow the Petitioner to rejoin the Division. The Petitioner was thus left in no-man’s land, without a salary, hence this petition.

5. Heard learned counsel and perused the record.

6. Both the Petitioner and the Respondent No.3 are civil servants, the first of the Federal Government, and the latter of the Sindh Government. We have not come across any provision in the Civil

Servants Act, 1973, or for that matter in the Sindh Civil Servants Act, 1973 that contemplates a 'mutual transfer' at the instance of civil servants. Nevertheless, the question presently relevant is to the absorption of a civil servant in the transferee department.

7. As per the comments of the Finance Division, the mutual transfer of the Petitioner and the Respondent No.3 was a past and closed transaction as both had been absorbed in their respective transferee departments. However, the ATLC denies that fact. As per the comments of the Chairman ATLC, the Petitioner was never absorbed in the ATLC and was serving "*merely as a posting on mutual transfer basis*". It is also not the case of the Petitioner that he was absorbed in the ATLC. In fact, that was the very reason he asked to be repatriated from the ATLC.

8. As regards the Respondent No.3, though it is contended by the Finance Division that he was absorbed in that Division sometime after 2017, no order of such absorption is placed on the record. But, even assuming there was such an absorption, it could only have taken place under section 11A of the Civil Servants Act, 1973 *i.e.* where a civil servant is rendered surplus as a result of reorganization or abolition of a Division, department, office or post. Clearly, that provision was not attracted to the Respondent No.3 who was admittedly serving the Finance Division on a mutual transfer.

9. *Pari materia* to section 11A of the Civil Servants Act, 1973 is Rule 9-A in the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. In *Contempt Proceedings against the Chief Secretary Sindh* (2013 SCMR 1752) it was held by the Supreme Court that a civil servant cannot be absorbed in a department beyond the purview of Rule 9-A, and Provincial statutes that were enacted to regularize absorptions contrary to Rule 9-A were struck down as unconstitutional. The same *ratio* would apply to an absorption contrary to section 11A of the Civil Servants Act, 1973. Admittedly, the absorption of the Respondent No.3 in the Finance Division was

after the above mentioned pronouncement of the Supreme Court, in fact, even after that was reiterated in *Ali Azhar Khan Baloch*. Therefore, the argument of the Finance Division that the Respondent No.3's absorption is a past and closed transaction and so the Petitioner too should be absorbed in the ATLC, is at best an argument of convenience that has nothing to do with the law.

10. In view of the foregoing, we allow the petition by directing the Secretary, Finance Division of the Federal Government to repatriate the Respondent No.3, Mr. Faisal Rana, to his parent department *viz.* the Appellate Tribunal Local Councils, Government of Sindh; and allow the Petitioner, Mr. Ubaidullah Qazi to rejoin the Finance Division as has already been repatriated by the Appellate Tribunal Local Councils, Government of Sindh.

JUDGE

JUDGE