

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-3133 of 2013

Date

Order with signature of Judge

Present :

1. Mr. Justice Ghulam Sarwar Korai

2. Mr. Justice Nadeem Akhtar

1. For Katcha Peshi :

2. For orders on Misc. No.21365/2013 (Stay) :

Date of hearing : 30.07.2013.

**Petitioner : Shahab Mazhar Bhalli through
Mr. Abdul Salam Memon, Advocate.**

Respondents : Nemo.

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ORDER

NADEEM AKHTAR, J. – The petitioner is the Deputy Inspector General (BS-20) PSP Officer, and is serving as DIGP Traffic Hyderabad since 22.03.2013. Through this Constitutional Petition, he has impugned the Notification dated 30.04.2013 issued by respondent No.1 / Government of Pakistan, Cabinet Secretariat, Establishment Division, whereby he has been transferred and his services are placed at the disposal of the Government of Khyber Pukhtunkhwah till further orders. The petitioner has also impugned the order dated 08.07.2013 issued by respondent No.1 directing him to report for duty to the Government of Khyber Pukhtunkhwah within three days, failing which disciplinary proceedings under E&D Rules of Government Servants Act, 1973, would be initiated against him.

2. It has been stated by the petitioner that he has served for about 29 years under the Federal Government, Government of Sindh, Federal Constabulary and the Punjab Government, and he is the second senior most BS-20 officer to be promoted in BS-21 in the upcoming Board to be held in September 2013. The petitioner assumed the present charge of DIGP Traffic Hyderabad on 22.03.2013, that is, prior to the tenure of the Caretaker Government which was from 26.03.2013 to 04.06.2013. The main ground urged on behalf of the petitioner was that the impugned Notification and the order passed in pursuance thereof, transferring him and placing him at the disposal of the Government of Khyber Pukhtunkhwah, are void, illegal and of no legal effect, as the same were issued and passed by the Caretaker Government. In support of this submission, the learned counsel for the petitioner relied upon the judgment delivered on 12.06.2013 in Constitution Petition No.30/2013 (*Khwaja Muhammad Asif V/S*

Federation of Pakistan and others) by the Hon'ble Supreme Court, and specifically referred to paragraph 30(a) thereof, which is reproduced below :-

“30. Thus, at the touchstone of the parameters laid down in the paras supra about the powers of the Caretaker Cabinet / Government, it is declared and held as under :-

(a) The orders of appointment / deputation, transfers as well as postings, etc., of civil servants and Chief Executive Officers of statutory bodies, autonomous / semi-autonomous bodies, corporations, regulatory authorities, etc., made by the Caretaker Cabinet / Prime Minister are hereby declared to be void, illegal and of no legal effect w.e.f. date of issuance of notifications respectively, except the transfers and appointments of senior government officers including the Chief Secretaries and IGP of any of the Provinces during the election process.

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3. In the case of *Khwaja Muhammad Asif* (supra), it was held *inter alia* by the Hon'ble Supreme Court that according to the settled and accepted norms / practice, the Caretaker Government (Prime Minister and Cabinet) is required to perform its functions to attend the day-to-day matters which are necessary to run the affairs of the State and also to watch the national interests in any eventuality in the absence of an elected Government. It was further held that the Caretaker Government is not authorized to make decisions / appointments having effect on the working / policies of the future Government, which is likely to take over after the elections ; it is not vested with the authority to take decisions concerning the affairs of the Government, which are bound to preempt the scope and sphere of activity, powers and jurisdiction of an elected Government ; and, a Caretaker Government possesses limited powers and authority particularly in view of the fact that when it is appointed, there is no National Assembly in place and thus the important aspect of accountability is absent.

4. As the impugned Notification was issued on 30.04.2013 and the impugned order was passed on 08.07.2013, there is no doubt that the same were issued and passed by the Caretaker Government. In view of the declaration given by the Hon'ble Supreme Court in the case of *Khwaja Muhammad Asif* (supra), the impugned Notification and the order, on the face of it, are void, illegal and of no legal effect. In fact, the same have been issued and passed in violation of the judgment delivered by the Hon'ble Supreme Court.

5. Resultantly, this petition is allowed with no order as to costs, and the impugned Notification dated 30.04.2013 and the impugned order dated 08.07.2013 are hereby declared as void, illegal and of no legal effect.

Judge

Judge
