

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-1196 of 2023

Before:

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Zubair Ahmed son of Rahim Bux Mahar,
through Mr. Ali Gul Abbasi, Advocate.

Respondents : Province of Sindh and 5 others,
through Mr. Zulfiqar Ali Naich, AAG.

Date of Hearing & Order : 15.05.2025.

ORDER

Abdul Hamid Bhurgri, J.,- Through this petition, the petitioner seeks following reliefs:-

(a) To direct the respondent No.02 (Secretary, Social Welfare Department) & respondent No.03 (Secretary. Department of Empowerment of Persons with Disabilities) to implement upon Summary No.SOI(DEPD)/TR/SY(0450) (2020 Karachi dated 5th October, 2020 approved by Chief Minister, Sindh and letter No.F.PA/DIR/ADMIN/DG-SW/2020 Karachi dated 6th January, 2020, in its letter and spirit, in accordance with law as the DEPDP (Department of Empowerment of Persons with Disabilities) may function properly.

(b) To restrain the respondents not to take any adverse action/order against the petitioner with regard to his service, till final decision of the instant petition.

(c) To award the costs.

(d) To grant any other equitable relief, which this Hon'ble Court deems fit and proper under the circumstances of the case in favor of the petitioner.

2. The case of petitioner is that he is performing duty and posted as Assistant Director Rehabilitation Center Physically Handicap Children (RCPHC) since 05.08.2016 with DDO Code (SY450) as Social Welfare Officer work for the Rehabilitation of Special Children. Consequent upon the 18th Amendment in Constitution of Pakistan, the Special Education Ministry was devolved in provinces. After the devolvment, the Act was passed by the Provincial Assembly named as "THE SINDH EMPOWERMENT OF PERSONS WITH DISABILITIES ACT" 2018".

Pursuant to that Act, correspondence was made between the Deputy Director RCPHC and the Deputy Director Ghotki (HQ) to handover the codes of RCPHC to the DEPD along with all human resources & assets of two codes i.e. (1) Deputy Director RCPHC, Sukkur (SY0451) & second (2) Assistant Director @ RCPHC (SY0450). The Secretary Social Welfare Department handed over 18 Codes vide order dated 24.12.2018 from all over the Sindh except code of petitioner (SY0450). According to the petitioner several correspondence were made for handing over of the DDO code (SY0450) from Social Welfare Department to DEPD. On 05.10.2020 the Secretary DEPD Government of Sindh wrote a summary for approval from Chief Minister Sindh, which was duly approved, which clearly reflects that cost center of petitioner (SY0450) Assistant Director RCPHC, Sukkur including employees working under the said cost center may be transferred to DEPD. The petitioner contends that surprisingly Secretary Social Welfare department issued a letter dated 03.12.2020 regarding transfer of costs centre (SY0450) from Social welfare department Sukkur to DEPD but the name of petitioner was missing while two persons namely Abdul Waheed Mangi, BPS-16 and Muhammad Yakoob, driver BPS-05 were transferred, which was endorsed by the DEPD vide order dated 03.02.2021. He further contended that the respondent No.5 has written various letters to the respondent No.2 to implement upon the approved summary in order to smooth carrying of functions and affairs of the DEPD Sukkur. The petitioner states that in case summary passed by Chief Minister Sindh is not implemented in its letter and spirit the affairs of DEPD Sukkur centre will be affected badly. He prays that the petition be allowed.

3. The respondents filed their comments. The respondent No.5 filed his comments and categorically stated that the name of petitioner is not included in the order dated 18.01.2021 issued by Social Welfare Department, the order was annexed along with the comments. The respondents No.2 and 6 have filed their comments and stated that petitioner was not posted as Assistant Director RCPH but he was posted as Assistant Director Social Welfare Taluka Sukkur, the notification is annexed as Annexure 'A' with the comments. The respondents No.2 and 6 have further contended as follows:-

The Government of Sindh had in year 2018-19 established a new specialized department for persons with special needs. This department has been named as "Department for Empowerment of Persons with Disabilities" (DEPD). According to decision of the Government all Rehabilitation Center for Handicapped Mentally Children (RCMHC) and Rehabilitation Center for Physically Handicapped (RCPH) functioning under the department were required to be transferred Department to the for Empowerment of Persons with Disabilities (DEPD) along with assets and liabilities including human resource. The insistence of the petitioner to transfer him, to the Department for Empowerment of Persons with Disabilities (DEPD) does not cover under the referred decision as he being a gazetted officer legitimately belongs to Social Welfare Department and not to the Rehabilitation Center for Physically Handicapped (RCPH) and Rehabilitation Center for Handicapped Mentally Children (RCMHC). Only the Human Resource belonging to those centers was liable to be transferred to Department for Empowerment of Persons with Disabilities (DEPD) alongwith facilities. The matter of DDO Code wise moveable and non-moveable fundamentally between Social items pertain Welfare Department and DEPD and this applicant does not being a aggrieved party thus invoking court's jurisdiction for achieving vested interest must invite punitive action against him by the court of law as department.

The respondent No.6 has further contended in the comments that Social Welfare department has taken correct decision in accordance with law and only the officials belonging to the RCMHC and RCPH were transferred to DEPD retaining the services of the officers back in the department, who were not employees of the facility. In the end they prayed for the dismissal of the petition.

4. The counsel for the petitioner submits that the petitioner has been discriminated as he has not been transferred by the official respondents as per summary approved by the Chief Minister. He contends that this is against the article 25 of the Constitution whereby, no discrimination can be made by the official authorities. He further contends that department also requested for transfer of the petitioner even then it has not been implemented. In the end he prays that the petition may be allowed as prayed.

5. Learned Assistant Advocate General contended that the petitioner is not aggrieved person as he being a gazetted officer

legitimately belongs to social welfare department and not to Rehabilitation Centre for physically handicap RCPH and rehabilitation centre for mentally handicap children RCMHC as per the policy only the human resource belonging to those centre were liable to be transferred to department for empowerment of persons with disabilities DEPD along with facilities. He further contended that the matter of DDO code was moveable and non-moveable items, fundamentally pertains to inter departmental issue and the petitioner cannot claim any vested right by invoking the jurisdiction of this Court. He prayed that the petition be dismissed.

6. We have heard learned counsel for the parties and have gone through material available before this Court.

7. The petitioner has approached this Court asserting that a summary was moved by the competent department to the Chief Minister for transferring his services, along with those of certain other individuals, to the Social Welfare Department. He contends that despite such movement of the summary, no final action has been taken, and he seeks implementation of the same through this petition. The official respondents, in their comments, have denied any actionable grievance and stated that the matter is purely administrative in nature and pertains to inter-departmental correspondence, which does not confer any enforceable right upon the petitioner.

8. It is a well-settled principle of law that no writ lies for the enforcement of administrative proposals, internal summaries, or inter-departmental communications that have not culminated in a final, notified decision. The Constitutional Jurisdiction of this Court under Article 199 of the Constitution is limited to enforcement of vested legal rights and cannot be invoked to compel the implementation of incomplete or discretionary administrative process. Mere movement or internal approval of a summary does not by itself confer any justiciable right capable of enforcement through constitutional remedies.

9. It is further observed that matters relating to the posting and transfer of government servants from one department to another fall within the exclusive domain of the executive and are governed by administrative

policy and discretion. Unless such action is shown to be discriminatory, malafide, or in violation of statutory rules, the same cannot be made subject to judicial review. In the present case, the petitioner has not demonstrated any legal entitlement to be transferred, nor has he pointed to any rule or notification creating a vested right in his favour. The Court cannot substitute its judgment for that of the competent authority in such matters, particularly when no final order or notification has been issued.

10. For the foregoing reasons, this petition, being devoid of any enforceable legal right and involving disputed questions not amenable to writ jurisdiction is not maintainable under Article 199 of the Constitution. Accordingly, the petition stands dismissed along with listed applications, if any.

Judge

Judge

Irfan/PS