

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. **D -3981** of 2018

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI.
MR. JUSTICE ZULFIQAR AHMAD KHAN.

Ashfaq Ahmed Mallah

Vs.

Province of Sindh & others

Petitioner: through Mr. Amir Ali Shah Jeelani,
advocate.

Respondents: through Mr. Muhammad Ali Lakhani,
advocate.

Mr. Saifullah, AAG.

Date of Hearing: 28.06.2019.

Date of Order: 28.06.2019.

ORDER

Aqeel Ahmed Abbasi, J:- Through instant petition, the petitioner has impugned Notification dated 10.06.2019, issued by the Chief Secretary Sindh, whereby, respondent No.4, namely, Imran Aslam, Municipal Commissioner (BS-19), SCUG, Administration Branch, District Municipal Corporation, Korangi, has been transferred and posted with immediate effect as Municipal Commissioner (BS-19), District Municipal Corporation, Malir, in place of petitioner, namely, Ashfaq Ahmed Mallah, an officer of Administration Branch SCUG (BS-19), has been transferred and directed to report to Sindh Local Government Board.

2. Learned counsel for the petitioner argued that such transfer and posting has been made under political influence, with malafide intention, as according to learned counsel, earlier, petitioner was not given any posting and was posted at District Municipal Corporation, Malir, recently vide Notification dated 04.03.2019, however, without any reason or justification, he has been against directed to report to Sindh Local Government Board.

3. Notice of instant petition was issued to the respondents on 12.06.2019 for 28.06.2019, however, on 20.06.2019, petitioner filed an urgent application under Order XXXIX Rule 1 & 2 CPC along with application under Section 3 & 4 of the Contempt of Court Act, and also annexed copy of another Notification dated 19.06.2019, whereby, according to learned counsel for the petitioner, petitioner has once again been transferred/posted as Municipal Commissioner (BS-19), District Municipal Corporation, Korangi. Notices on such applications were issued for today's date i.e. 28.06.2019, whereas, its operation was suspended till next date.

4. Pursuant to Court notice, Mr. Muhammad Ali Lakhani, has shown appearance on behalf of the respondent No.4 and submits that comments have already been filed, whereas, advance copy has been supplied to learned counsel for the petitioner. Mr. Saifullah, learned AAG submits that comments on behalf of respondents No.1 & 2 along with annexures have also been filed, whereas, copy thereof has been supplied to the learned counsel for petitioner.

5. Learned counsel for the respondent No.4 submits that instant petition is misconceived and not maintainable, as according to learned counsel, the same has been filed by concealing the material facts, whereas, petitioner's terms of service are regulated by

Sindh Local Government Act, 2013 read with Sindh Local Councils Employees (Services) Rules, 2017, according to which, petitioner is not entitled to challenge the Notification of transfer/posting on flimsy grounds. It has been further submitted by the learned counsel for respondent No.4 that there is no malafide on the part of the respondents nor there is any political consideration while issuing the transfer/posting Notifications as referred to hereinabove, whereas, infact, there were several complaints received against the petitioner, which were placed before the Water Commission constituted pursuant to directions of the Hon'ble Supreme Court, and on the basis of such complaints, the Water Commission directed the respondents to transfer the petitioner from such post and to post some suitable officer as Municipal Commissioner, District Municipal Corporation, Malir. Learned AAG supported the contention of learned counsel for respondent No.4 and submitted that material facts have been concealed by the petitioner, whereas, there is no malafide on the part of respondents No.1 and 2 while issuing impugned Transfer/Posting Notifications, as according to learned AAG, through subsequent Notification dated 19.06.2019 petitioner has now been given posting as Municipal Commissioner (BS-19), District Municipal Corporation, Korangi, therefore, there is no grievance which could be pressed by the petitioner who cannot claim a particular posting of his choice. It has been prayed that petition is not maintainable, which is liable to be dismissed.

6. While confronted with hereinabove factual and legal position, learned counsel for the petitioner could not dispute such facts, however, submits that petitioner has been transferred from his previous post in a short period of time on political consideration.

7. We have heard the learned counsel for the parties and perused the record with their assistance. It appears that petitioner has not disclosed the entire facts, whereas, nothing has been produced to support the allegation that the petitioner is being victimized on political consideration, whereas, as per comments filed on behalf of respondents, it seems that Government of Sindh has taken cognizance of the recommendation of the Water Commission constituted as per directions of the Hon'ble Supreme Court on the basis of various complaints received against petitioner, and thereafter, the petitioner has been transferred from District Municipal Corporation, Malir to District Municipal Corporation, Korangi. Moreover, mere Transfer/Posting of Civil Servant or an employee of Statutory Corporation cannot be challenged unless there are strong grounds to establish malafide or political victimization.

Accordingly, petition stands dismissed along with listed applications.

JUDGE

JUDGE