

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2508 of 2018

Aftab Muhammad Khan Petitioner

Versus

Federation of Pakistan & others Respondents

Date of hearing: 09.04.2018

Mr. Abdul Salam Memon Advocate for the Petitioner.
Mr. Muhammad Arshad Khan Tanoli, Advocate for the Respondent
No.3.
Shaikh Liaquat Hussain, Assistant Attorney General.

ORDER

ADNAN-UL-KARIM MEMON, J:- The Petitioner seeks declaration that the impugned Notification issued by the Respondent No.2 dated 28.03.2018 for transfer of the Petitioner from the post of Registrar of Trade Marks (BS-19) and posting of the Respondent No.3 (BS-18) in place of the Petitioner is illegal.

2. Brief facts of the case as per averments of the parties are that Petitioner is a BPS-19 officer of Secretariat group, and was transferred and posted as Director, Intellectual Property Organization on deputation basis vide Notification dated 07.07.2015. Petitioner has averred that he was further transferred

and posted as Registrar of Trade Marks (BPS-19), Trade Marks Registry Karachi vide Notification dated 01.07.2016 and assumed the charge on 12.07.2016. Petitioner has submitted that the Respondent No.2 has issued the impugned Notification dated 28.03.2018 by transferring him to report to Intellectual Property Organization Head office at Islamabad and on his place Respondent No.3, who is BS-18 officer has been posted, which is in violation of the Judgment rendered by the Hon'ble Supreme Court of Pakistan. Petitioner being aggrieved and dissatisfied with the impugned Notification dated 28.03.2018 has filed the instant petition on 30.03.2018.

3. Upon notice, Respondent No.3 has filed statement dated 09.04.2018 along with certain documents which are taken on record, copy whereof has been supplied to the learned counsel for the Petitioner.

4. Mr. Abdul Salam Memon, learned counsel for Petitioner has contended that the Respondent No.3 who is a BS-18 officer has been posted and transferred as Registrar of Trade Marks which is a grade 19 post on his Own Pay & scale (OPS); that the said transfer order is made vide Notification dated 28.03.2018, which is in violation of the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Province of Sindh & others Vs. Ghulam Farid & others (2015 PLC C.S 151); that the impugned Notification dated 28.03.2018 is ultra vires the Provision of the Constitution of the Islamic Republic of Pakistan 1973; that as per law the post of Registrar Trade Mark, which is a tenure post hence the Petitioner is required to remain on such posting for the

period of three years, which tenure has not yet been completed; that the impugned Notification dated 28.03.2018 is issued is also in violation of the Judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Anita Turab (PLD 2013 195); that the Respondents have exercised the powers in an illegal manner in violation of law; that the official Respondents have facilitated Respondent No.3 with ulterior motives; that the official Respondents are bound by law to treat the Petitioner in accordance with law; that the official Respondents have opted to treat the Petitioner in a discriminatory manner, which is against the established provisions of the law and the Constitution; that due to the illegal, unlawful, discriminatory and bias attitude of official Respondents, the Petitioner is adversely effected and has been deprived from his legal / lawful right of posting. He lastly prayed for allowing the petition.

5. Mr. Muhammad Arshad Khan Tanoli Advocate has filed vakalt nama on behalf of the Respondent No.3 as well as a statement dated 09.04.2018 along with certain documents and argued that in compliance of the order of this Court the Respondent No.3 is now posted as Deputy Registrar of Trade Marks, Registry Karachi with immediate effect and until further orders vide Notification dated 02.04.2018; that the instant Petition has become infructuous due to the change in the circumstances of the case. He lastly prayed that the instant petition may be disposed of as the purpose of filing the Petitioner has been served as the Respondent No.3 has been released from the post of

Registrar Trade Marks BS-19 and has been posted in his actual grade i.e. BS-18.

6. Shaikh Liaquat Hussain, Assistant Attorney General, has endorsed the view taken by the learned counsel for the Respondent No.3.

7. We have heard learned counsel for the parties and have also perused the material available on record and the case law cited at the bar.

8. As per record the Petitioner is a BPS-19 officer of Secretariat group, and was transferred and posted as Director, Intellectual Property Organization on deputation basis vide Notification dated 07.07.2015 and was further transferred and posted as Registrar of Trade Marks (BPS-19), Trade Marks Registry Karachi vide Notification dated 01.07.2016. The perusal of record clearly depicts that the deputation of the Respondent No.2 has been revoked as Registrar of Trade Marks BS-19 vide Notification dated 28.03.2018.

9. The documents submitted by the learned counsel for the Respondent No.3, prima facie show that the posting order of the Respondent No.3 has been cancelled and he has been posted as Deputy Registrar of Trade Marks (BS-18), Trade Marks Registry, Karachi in his own grade i.e. BS-18.

10. We are of the considered view that order passed by this Court on 30.03.2018 whereby we have suspended the operation of Notification dated 28.03.2018, has been complied with in its letter

and spirit, therefore the Petitioner is no more aggrieved against the transfer and posting of the Respondent No.3 in BS-19. Learned counsel for the Petitioner has emphasized that merely transfer of the Respondent No.3 to his original position does not redress the grievance of the Petitioner and he asserted that Petitioner is required to serve as Registrar Trade Marks. We do not agree with such assertion of the learned counsel for the Petitioner for the simple reason that the requisition of services of a government employee on deputation is the prerogative of the competent authority. Reliance is placed on the case of Shafiq-ur-Rehman Afridi vs. CDA (2010 SCMR 378).

11. The issue raised in the instant Petition is of transfer and posting.

12. To address the issue of transfer and posting, admittedly, Petitioner is a Civil Servant and his service is governed under Civil Servants Act, 1973. The Petitioner has challenged his transfer order, which falls within the ambit of terms and conditions of his Service. Section 3(2) of the Service Tribunal Act provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants, thus the jurisdiction of this Court is barred by the provisions of Sindh Service Tribunal Act, 1973 r/w Article 212 of the Constitution.

13. The provision as contained in Article 212 of the Constitution ousts the jurisdiction of all other Courts and orders of the Departmental Authority even though without jurisdiction or

malafide which would be challenged before the Federal Service Tribunal.

14. We are of the view the expression “terms” and “conditions” include transfer and posting, as provided under Section 4(b) of Sindh Service Tribunal Act 1973.

15. Considering the case of the Petitioner in the above perspective, we find no merit in the instant petition, which is dismissed along with the pending applications.

Karachi

Dated:-09.04.2018

JUDGE

JUDGE

Shafi Muhammad P.A