

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4305 of 2018

Mst. Musrat AbbasPetitioner

Versus

Province of Sindh and others.....Respondents

Date of hearing: 31.05.2018

Mr. Ashfaque Ahmed Shah, Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition, the Petitioner has sought declaration to the effect that the impugned Notification dated 26.04.2018 issued by the Respondent No.1 is illegal, unlawful, without lawful authority, arbitrary, malafide, whimsical, capricious and of no legal effect and the same be set-aside/quashed.

2. Brief facts of the case are that Petitioner was appointed as Lecturer in BPS-17 vide appointment letter dated 08.05.1993, through Sindh Public Service Commission, in Directorate of College Education Karachi Region. Petitioner has submitted that she was promoted in BPS-19 through Departmental Promotion Committee on 18.05.2017 and was transferred and posted at Government Girls Degree college

Metrovile-I, but she was not allowed to resume the charge of the post, thereafter she had moved various applications for her transfer and posting at another college. Petitioner has submitted that Respondent No.1 vide letter dated 13.12.2017 posted Respondent No.4 as Associate Professor at Government Girls Degree College, Landhi and the Petitioner was also appointed and posted as Principal of the same college. Petitioner has submitted that the Respondent No.1 has issued impugned Notification dated 26.04.2018 and transferred her in Government Degree College, Landhi. Petitioner being aggrieved by and dissatisfied with the impugned transfer order has filed instant petition on 30.05.2018.

3. Mr. Ashfaq Ahmed Shah, learned counsel for the Petitioner has contended that the Petitioner has illegally been transferred from his place of posting vide Notification dated 26.04.2018, in violation of Judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Syed Mehmood Akhtar Naqvi Vs. Federation of Pakistan and other (PLD 2013 SC 195). Learned counsel has further contended that this is case of serious discrimination and the Petitioner has been politically victimized to accommodate the Respondent No.4. Per learned counsel, the Petitioner has not been allowed to complete her tenure of posting which is protected under the law. In support of his contention he relied upon the case of Tahir-Un-Nisa Assistant Professor, Government Degree College Muzaffarabad Vs. Imrana Rafee and others (1999 PSC 1955). He lastly prayed for suspension of impugned Notification dated 26.04.2018.

4. Upon query by this Court as to how the instant Petition is maintainable against the transfer and posting, which is terms and conditions of service, the learned counsel for the Petitioner reiterated his arguments and argued that the impugned Notification dated 26.04.2018 issued by the Respondent No.1 is clear violation of the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Anita Turab as discussed supra and this is a hardship case and this Court can hear and decide the matter on merits.

5. We have heard learned counsel for the Petitioner and perused the material available on record and case law cited at the bar.

6. Foremost point in the present proceedings is whether the Civil Servants can file a Writ Petition by invoking Constitutional Jurisdiction of this Court in respect of the terms and conditions of his service when there is a bar contained in Article 212 of the Constitution?

7. We are of the view that Article 212 of the Constitution ousts the jurisdiction of this Court in respect of the matters pertaining to terms and conditions of Civil Servants. The ouster clause under Article 212 of the Constitution is a Constitutional command, which restricts the jurisdiction of this Court under Article 199 of the Constitution on the subject which squarely falls within the exclusive domain of the Tribunals. The expression "terms and conditions" includes transfer and posting, we are fortified on this point by the decision of the Hon'ble Supreme Court in the case of Ali Azhar Khan Balouch and others v. Province of Sindh and others (2015 SCMR 456).

8. Admittedly, the Petitioner is a Civil Servant and her case falls within the ambit of Section 3 (2) of the Sindh Service Tribunals Act, 1973 which states that Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants as under Section 4 of the Service Tribunal Act a Civil Servant has a right to file an appeal against the impugned order adversely affecting the terms and condition of her service before the Tribunal subject to the qualification provided therein.

9. We are of the view that Government is entitled to order for transfer and posting of any civil servant as provided under section 10 of the Sindh Civil Servant Act 1973 and make rules in the interest of expediency of service and for removal of anomalies, if any, in service rules, which is essentially an administrative matter falling with the exclusive domain of the Government and interference with such matters is not warranted under the Constitutional Jurisdiction. Besides any vested right of a government employee is not involved in the transfer and posting matters. In the facts and circumstance, on this point, this Court has no jurisdiction to interfere by means of Writ. We are fortified on this issue by the decisions rendered by the Hon'ble Supreme Court in the case of Government of Khyber Pakhtunkhwa and others v. Hayat Hussain and others (2016 SCMR 1021).

10. Keeping in view the above mentioned facts and circumstances of the case, we do not see any infringement of right of the Petitioner, which could be called in question by way of a Writ Petition.

11. It is a well settled principle of law that a Civil Servant has no vested right to remain on a particular post forever or for a stipulated period. He can be transferred at any time under section 10 of the Sindh Civil Servant Act,1973. Reference may be made to the case of PEER MUHAMMAD v. GOVERNMENT OF BALOCHISTAN and others (2007 SCMR 54).

12. The case law cited by the learned counsel for the Petitioner is distinguishable from the facts and circumstances of the present case.

13. Considering the case of the Petitioner in the above perspective, we find no merits in the instant petition, which is dismissed in limine. However, Petitioner may seek appropriate remedy as provided under the law.

JUDGE

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