

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Adnan-ul-Karim Memon** and **Agha Faisal, JJ.**

Constitutional Petition D-1975 of 2015  
Syed Ashfaq Hussain

vs.

The Province of Sindh and Others

Constitutional Petition D-7665 of 2017  
Syed Ashfaq Hussain

vs.

The Province of Sindh and Others

For the Petitioner	Mr. Fiaz H. Shah, Advocate.
For the Respondents	Mr. Shahryar Mahar Assistant Advocate General
Date of hearing	07.08.2018

## **JUDGMENT**

**Agha Faisal, J:** By this common judgment we seek to determine the two subject petitions as they pertain to common questions of law and fact. The controversy in the said petitions was whether the Petitioner, common to both petitions, was rightfully repatriated to his parent department in pursuance of the judgment of the Honorable Supreme Court rendered in Criminal Original Petition No. 89 of 2011.

2. Mr. Fiaz H. Shah, learned counsel for the Petitioner, impugned the notification dated 20.03.2015 issued by the Government of Sindh Services, General Administration and Coordination Department ("**Impugned Notification**"), which stipulated as follows:

"In compliance to the directives dated 11.03.2015 passed by the Honourable Supreme Court of Pakistan during

hearing of CMA No.486/2013 in Criminal Original Petition No.89/2011 at Islamabad and with the approval of the Competent Authority, Syed Ashfaq Hussain Shah, Superintending Engineer (BS-19), Irrigation Department, presently posted as Project Director / Superintending Engineer, Prisons Works, Home Department, is hereby repatriated with immediate effect and directed to report to his parent Department i.e. Irrigation Department.”

3. Per learned counsel, the Petitioner was an employee of the Irrigation Department, Government of Sindh and was deputed as Superintending Engineer / Project Director, Prisons Works, Home Department vide Notification dated 20.10.2014. It was submitted that vide the Impugned Notification, the Petitioner was repatriated to his parent department on the basis of orders passed by the Honorable Supreme Court in Criminal Original Petition 89 of 2011.

4. It was contended that the Impugned Notification was illegal and without lawful authority as the Petitioner was entitled to remain at his post notwithstanding the above referred judgment of Honorable Supreme Court as his tenure was required to be sanctioned protection pursuant to the Anita Turab case, reported as PLD 2013 Supreme Court 195.

5. Mr. Shahryar Mahar, learned Assistant Advocate General, submitted the arguments on behalf of the respondents and stated that the petition was prima facie not maintainable as the same was baseless in law and meritless in facts. It was contended that the transfer and posting of a civil servant is the prerogative of the Government, which prerogative is to be exercised in due consonance with the law. Per learned counsel, the judgment of the Honorable Supreme Court in Criminal Original Petition 89 of 2011 clearly laid

down the law and required the repatriation of officers to their parent departments and in due conformity therewith the Petitioner was repatriated back to the Irrigation Department.

6. It was further contended that there was no vested right accrued in favour of the Petitioner whatsoever and that his posting at the Police Prisons, Home Department was also undertaken in exercise of discretion by the Government, without the Petitioner having any entitlement in respect thereof. The learned Assistant Attorney General, thus prayed that the subject petitions may be dismissed forthwith.

7. We have given due consideration to the arguments of the respective learned counsel and have also had the benefit of perusal of the documentation arrayed before us. It is primary for this Court to determine whether the Petitioner has pointed out any infirmity in the Impugned Notification which would merit interference by this Court in the exercise of its Constitutional Jurisdiction.

8. Learned counsel for the Petitioner has been unable to demonstrate any vested right by which his posting as Project Director, Police and Prisons Works, Home Department was required to be protected, notwithstanding the conclusive pronouncement of the Honorable Supreme Court requiring the contrary.

9. Learned counsel has further been unable to distinguish the judgment of Honorable Supreme Court in Criminal Original Petition 89 of 2011 and it is the considered opinion of this Court that the same was

applicable squarely in the present facts and circumstances. On the contrary it is the judgment in the Anita Turab's case which is distinguishable in the instant controversy.

10. It is an admitted fact that the parent department of the Petitioner is the Irrigation department, to which he was repatriated pursuant to the Impugned Notification, which in itself was issued in compliance of the pronouncement of the Honorable Supreme Court of Pakistan. The Petitioner has failed to substantiate any infirmity in the Impugned Notification and has also failed to demonstrate any grievance or detriment having been occasioned upon being repatriated to his parent department.

11. In view of the reasoning and rationale as delineated supra, this Court was of the opinion that the present Petitions are devoid of merit and hence the same, along with all listed applications, were dismissed vide our short order dated 07.08.2018.

12. These are the reasons for the aforesaid short order.

JUDGE

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