

# IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-1610 of 2018

**Present:-**

**Mr. Justice Adnan-ul-Karim Memon**  
**Mr. Justice Agha Faisal**

Syed Ghulam Abbas Shah ..... Petitioner

**V E R S U S**

Province of Sindh & others ..... Respondents

Date of hearing: **07.08.2018**

Syed Aamir Ali Shah Jeelani, Advocate for Petitioner.

Mr. Shahryar Mehar, AAG.

Ghulam Abbas Naich, respondent No.4 present in person.

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## **JUDGMENT**

**ADNAN-UL-KARIM MEMON-J.** Through the instant Petition, the Petitioner has asked for direction to the Respondents No. 4 to vacate the office of the Chief Inspector of Stamps, Board of Revenue, Sindh (BS-19) on the premise that he does not meet the qualification/criteria to hold the aforesaid post thus is not entitled to be posted on the aforesaid post, hence his posting is in violation of the dicta laid down by the Honorable Supreme Court of Pakistan in various pronouncements. Petitioner further claims that the Respondent No. 4 belongs to Ex-PCS Cadre, as such cannot be posted against the post of the Chief Inspector of Stamps, Board of Revenue, Sindh, which is a promotion post under Recruitment Rules framed vide Notification dated 29.09.2003. Petitioner has submitted that Respondent No.4 was appointed in the Respondent-department without adopting the legal and codal formalities as provided under the Recruitment Rules. Petitioner has added that the post of Chief Inspector of Stamps, Board of Revenue, Sindh is a

promotion post cannot be given to the Respondent No.4, who is outsider. Petitioner has asserted that the impugned Notification dated 21.02.2018 transferring the Petitioner and posting Respondent No.4 in his place is against the aforesaid Recruitment Rules as well as in violation of the Judgments passed by the Hon'ble Supreme Court of Pakistan on the issue of transfer and posting of cadre officials on non-cadre posts. Petitioner being aggrieved by and dissatisfied with the direct induction/posting of the Respondent No.4 in the Respondent-Department has filed the instant petition on 27.02.2018.

02. Upon notice the Respondents have filed their Para-wise comments in the Petition.

03. Syed Aamir Ali Shah Jeelani, learned counsel for the Petitioner has argued that the Petitioner had been working as Deputy Chief Inspector Stamps in BPS-18 Stamp Wing, Board of Revenue, Sindh Karachi and subsequently he was promoted as Chief Inspector of Stamps in BPS-19 by virtue of the order dated 13.08.2015 passed by the learned Sindh Service Tribunal; that the Petitioner has achieved the target of Revenue collection and during the posting of the Respondent No.4 this target has declined; that the Respondent No.4 cannot be posted in place of the Petitioner, which is in violation of law; that the post of the Chief Inspector of Stamp is a non-cadre post and no cadre officer can be appointed under the law. He lastly prays for allowing the instant petition.

04. Mr. Shahryar Maher, learned AAG has relied upon the para-wise comments filed on behalf of the Respondent No. 1, 2 and 3 and argued that the Petition in respect of transfer and posting of a civil servant is not maintainable under the law. He further added that the post of the Chief Inspector of Stamps can be filled by way of transfer from amongst the officers of DMG, Ex-PCS Cadre in BPS-19, thus this is the cadre post.

05. Respondent No.4 Ghulam Abbas Naich present in person has adopted the arguments of learned AAG and has submitted that he has been posted as Chief Inspector of Stamps Board of Revenue, Sindh by the order of the Competent Authority of Government of Sindh, which act is in accordance with the law and no violation of law has taken place. He lastly prays for dismissal of the instant petition.

06. We have heard learned counsel for the Petitioner, learned AAG and Respondent No.4 present in person, perused the material available on record.

07. Foremost point in the present proceedings is whether the Civil Servant 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?

08. We are of the considered 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 Service 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 Vs. Province of Sindh and others (2015 SCMR 456).

09. Admittedly, the Petitioner is a Civil Servant and his case falls within the ambit of Section 3 (2) of the Sindh Service Tribunals Act, 1973, which says that Tribunal shall have exclusive jurisdiction in respect of the matters relating to the terms and conditions of service of Civil Servants as under Section 4 of the Sindh Service Tribunal Act, a Civil Servant has a right to file an appeal against the impugned order

adversely affecting the terms and condition of their service before the Tribunal subject to the qualification provided therein.

10. We are of the view that Government is entitled to make rules in the interest of expediency of service and for removal of anomalies, if any, in Service Rules. It is for the policy makers to frame policy, which is essentially an administrative matter falling within 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 policy matters. The Government has every right to make rules to raise the efficiency of the services and in such case no vested right is denied to a party. 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 decision rendered by the Hon'ble Supreme Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Hayat Hussain and others (2016 SCMR 1021).

11. As regards the contention of the learned counsel for the Petitioner that the impugned transfer order has adversely affected the vested rights of the Petitioner, suffice it to say that per impugned letter dated 21.02.2018 Competent Authority has simply transferred the Petitioner from his posting and appointed a cadre officer as per Recruitment Rules as discussed supra.

12. Reverting to the plea taken by the learned counsel for the Petitioner that the post of the Chief Inspector of Stamps in BS-18 is a cadre post and a non-cadre officer cannot be appointed on the aforesaid post. Suffice it to say that the term 'Cadre' is defined in Fundamental Rule 9 (4) as under:-

***“Cadre means the strength of a service or a particular service sanctioned as a separate unit”***

13. To appreciate the aforesaid contention we deem it appropriate to have a glance at the Recruitment Rules notified on 20.09.2003 the post of Chief Inspector of Stamps is to be filled in the following order:-

Sr. No.	Name of Post and BPS	Method of Appointment	Qualification, Experience necessary for initial appointment	Age limit
1	2	3	4	5
1	Chief Inspector of Stamps (BPS-19)	Preferably by promotion from amongst the Deputy Chief Inspector of Stamps in BPS-18 having atleast twelve years service in BPS-17 above or such length of service as may from time to time be prescribed by the Government OR By transfer from amongst the Officers of DMG Ex-PCS Cadre in BPS-19.		

14. Looking at the term 'transfer' which has been used with posting in section 10 of the Sindh Civil Servants Act, 1973, which is reproduced as under:

***"10. Posting and transfer:- Every civil servant shall be liable to serve anywhere within or outside Pakistan, in any [equivalent or higher] post under the Federal Government, or any Provincial Government or local authority or a corporation or body set up or established by any such Government;***

***Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;***

***Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favorable than those to which he would have been entitled if he had not been required to serve."***

15. In the light of aforesaid legal position, the Notification dated 29-9-2003 issued by the Respondent No.1 to the effect that the Recruitment Rules in which method, qualification and other conditions for appointment in respect of post of the Chief Inspector of Stamps Board of Revenue, Sindh are laid down, which prima-facie allow the Competent Authority to post the civil servant belongs to Ex- PCS cadre. Thus, the contention raised by the learned counsel for the Petitioner is not tenable in the eyes of law.

16. 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 Writ Petition.

17. 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 as discussed *supra*. Reference may be made to the case of Peer Muhammad Vs. Government of Balochistan and others (2007 SCMR 54).

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

JUDGE

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