

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

## **C.P No.D-4538 of 2016**

Riaz Ahmed Bhutto and others.....Petitioners

Versus

Province of Sindh and others.....Respondents

-----  
**Date of hearing: 31.05.2017**

Mr. Abdul Mujeeb Pirzada, Advocate for the Petitioners.

Mr. Abdul Jalil Zubedi, A.A.G. with Mr. Asadullah Addl: Secretary,  
Schools, Education Department, Government of Sindh.

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON,J:-**

Through the instant Petition, the Petitioners have sought declaration that two impugned letters bearing No.PS/AS(S-I) Misc/E&L/2016, dated 19.05.2016 and No.PS(AS-I) Misc/E&L/2016 dated 20<sup>th</sup> June, 2016 respectively issued by the Respondent No.3 are 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 Petitioners were appointed Primary School Teacher (PST), Junior School Teacher (JST) and Higher School Teacher (HST) respectively. However, only HSTs (BS-16) were allowed to

work as Supervisor on Primary School side cadre under the repealed Recruitment Rules notified on 20.03.1989. It is further asserted by the Petitioners that they are Supervisors of Primary School Education Cadre in their respective Union Councils under Rule 3 (1) and (2) of Sindh Civil Servants (Appointment Promotion and Transfer) Rules, 1974 and are serving for the last several years. It is asserted by the Petitioners that they have been spared and ordered to be posted for teaching in School vide above specified impugned letters/orders. Petitioners further added that Competent Authority has introduced IT-based mechanism to improve the quality of education in Province of Sindh. Under the said IT based setup around 200 Monitoring Assistants in 15 Districts are hired to visit the Schools to take biometric attendance of school teachers, student enrolment, census and other relevant data on daily basis under the supervision of Chief Monitoring Officers (CMO). Per Petitioners, the impugned letters have made previous mechanism of monitoring the schools through Supervisors and HST Teachers redundant. It is further asserted by the Petitioners that the impugned action of the Respondents to accommodate their blue eyed persons has circumvented the entire legal procedure causing undue burden on the Provincial Economy. Otherwise the proposed assignments of the Monitoring Assistants can be beneficially added to the charter of duties of the Supervisors. It is further asserted by the Petitioners that the post of Supervisor is permanent and Petitioners are performing their duties on separate and independent posts besides the job description of Petitioners is quite different than that of the teaching cadre, therefore, the complete action of the Respondents is in violation of Sindh Civil Service Rules Manual and Sindh Primary

Education Act, 1947. The Petitioners feeling aggrieved by and dissatisfied with said orders have filed the instant Petition.

3. Mr. Abdul Mujeeb Pirzada, learned counsel for the Petitioners has argued that post of Supervisor, Primary Education is statutory post and protected under Sindh Primary Education Act, 1947. He next contended that Petitioners are working as Supervisors across the Province of Sindh and have sufficient expertise in their respective fields. Therefore, such post cannot be reduced on flimsy grounds. He next contended that government is competent to introduce I.T. based mechanism to improve the quality of education in the Province but for running the said mechanism Supervisors could be properly utilized having vast experience of monitoring and supervising of schools. He next contended that the impugned Letters have adversely affected the fundamental rights of the Petitioners. He next contended that Petitioners belong to administration cadre and are working on separate posts with different job descriptions and charter of duties and their salaries are also different from High School Teachers/teaching cadre. He next contended that the impugned Letters are issued in violation of Section 24 of the General Clauses Act. He further added that Respondents are not doing their duties properly in accordance with law. He next contended that impugned Letters are against Article 10-A of the Constitution as well. He next contended that posts held by the Petitioners cannot be abolished by the Respondents because the same have been created by Sindh Primary Education Act, 1947. Besides, for abolition of the posts in question Competent Authority was not approached under the Sindh Rules of Business, 1986. The Deputy Secretary (Schools)/Additional Secretary (Schools) has no power

to issue impugned letter/order dated 20.06.2016 which is in violation of Article 129, 130 (6), 132, 137, 138 and 139 of the Constitution. Learned counsel has concluded his arguments by submitting that policy has to be framed by Chief Executive of the Province and not by any other Forum. In support of his case, learned counsel for the Petitioners has relied upon the case of ALI AZHAR KHAN BALOCH and others v. PROVINCE OF SINDH and others (2015 SCMR 456), MUHAMMAD AMIN MUHAMMAD BASHIR LIMITED v. GOVERNMENT OF PAKISTAN and others (2015 SCMR 630), PLD 2013 Karachi 236, AMERICAN INTERNATIONAL SCHOOL SYSTEM v. Mian MUHAMMAD RAMZAN and others (2015 SCMR 1449).

4. Mr. Abdul Jalil Zubedi, learned AAG representing Respondents has raised preliminary issue of maintainability of the instant Petition and argued that the Petitioners are Civil Servants who were initially appointed as PST/JST/HST and not Supervisors. He next contended that to initiate monitoring system in Government Schools a separate Directorate General is established for monitoring and evaluation, and services of Assistants Monitors and Chief Monitoring Officers are hired on contract basis and they are performing their duties in the field to the best of their abilities. He next contended that the posts of PST/JST/HST have been renamed and re-designated as Senior Elementary Teacher/Secondary School Teacher/Elementary Teachers/Junior Elementary Teachers/ Senior Early Childhood Teachers and Early Childhood Teachers respectively under modified Recruitment Rules vide Education and Literacy Department's Notification dated 14.10.2014. He next contended that after hiring the services of Assistants Monitors and

Chief Monitoring Officers the attendance of teachers has improved significantly in Government Schools, therefore, the contentions of Petitioners are unjustified. He next contended that the posts of Supervisors under the newly notified Recruitment Rules have been renamed and they will work as HST because they were initially appointed as Teachers and not as Supervisors. He next contended that the Petitioners were not appointed in separate cadre of Supervisors but they were initially appointed in teaching cadre. He next contended that this is a simple case of transfer and posting of teachers from one place to another in a routine manner. He has concluded his arguments by saying that directions are issued to all the Directors of Schools Education vide Letter dated 19.05.2016 that HSTs who are working as Supervisors may be posted as Teachers in the Schools on need basis for uplift of public sector education which needs dedicated and timely efforts at their end. In addition, said Supervisors have been allowed to draw their salaries from their original place of posting till necessary arrangements are made in consultation with the Finance Department for re-designation of the post of Supervisor.

5. We have heard learned counsel for respective parties, 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 Petitioners are Civil Servants and their 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 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 orders adversely affecting the terms and condition of their service before the Tribunal subject to the qualification provided therein.

9. 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 policymakers 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 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. As regards the contention of the learned counsel for the Petitioners that the impugned Letters have adversely effected the vested rights of the Petitioners, suffice it to say that per impugned letter/order dated 20.06.2016 Competent Authority has observed that number of Supervisors (1400) are in excess as compared to the available vacant posts of HST who can be posted/adjusted and draw salaries at their original place of posting till necessary arrangements are made for creation/re-designation of the posts of SPE in consultation with Finance Department.

11. During the course of arguments, learned A. A. G. invited our attention to Notification dated 14-10-2014 issued by the Respondent No.2 (Government of Sindh, Education and Literacy Department) to the effect that the recruitment policy in which method, qualification and other conditions for appointment in respect of posts in Education Management Cadre (School Executive Service, School Management Service, and School Finance Service) are laid down. Thus, the contentions raised by the learned counsel for the Petitioners are not tenable in the eyes of law.

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

13. 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).

14. The case law cited by the learned counsel for the Petitioners are distinguishable from the facts and circumstances of the present case.

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

16. These are the reasons for our short order dated 31.05.2017, dismissing the instant petition alongwith pending application(s).

JUDGE

JUDGE