

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon.

C.P. No.D-210 of 2019

Atam MalPetitioner

Vs.

Province of Sindh & others
.....Respondents

Date of Hearing: 06.02.2019

Mr. Bhagwan Das Bheel, advocate for the petitioner.

O R D E R

ADNAN-UL-KARIM MEMON-J: - Petitioner has called in question his transfer and posting orders dated 29.10.2018 issued by the Respondent-District Education Officer (Primary) District Umerkot.

2. The grievance of the Petitioner is with regard to his transfer and posting order. Petitioner has submitted that he has been performing his duties as Chowkidar at Government Boys Primary School Bhattaro, Taluka Umerkot on detailment basis and whereby he was directed to work on detailment basis at Government Boys Primary School Adhori Farm Taluka Umerkot till further orders. Petitioner being aggrieved by and dissatisfied with the impugned transfer order has approached this Court on 30.01.2019.

3. Mr. Bhagwan Das Bheel, learned counsel for the Petitioner has contended that the impugned transfer order dated 29.10.2018 is based on malafide intention. Per learned counsel the case of the Petitioner falls within the ambit of the expression "Frequent Transfer from one primary school to another primary

school” in violation of transfer policy as provided under section 10 of the Sindh Civil Servants Act, 1973, which provides as under:-

“Every civil servant shall be liable to serve anywhere within or outside the province in any post under Government, Federal Government or any Provincial Government or local authority, or 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 of region”

He next contended that the transfer order issued by the Respondent District Education Officer (Primary) District Umerkot is in violation of the dicta laid down by the Hon’ble Supreme Court of Pakistan in the case of Syed Mehmood Ahmed Naqvi Vs. Federation of Pakistan (PLD 2013 SC 195) and Zahid Akhtar Vs. Government of Punjab & others (PLD 1995 SC 530); that Petitioner being eligible in all respect is entitled to serve in a particular area of region recruited specifically; that the impugned transfer order is violative of section 24-A of the General Clause Act; that the impugned order does not reflect any reason of the transfer and posting of the Petitioner from one place to another on detailment basis; that the transfer and posting of the Petitioner is based on victimization thus not sustainable in law; that the Petitioner was not at fault when he was ordered to be transferred as such this Court can take cognizance of the matter. Learned counsel further added that during the entire service of the Petitioner, nothing adverse was observed against him; that the aforesaid act of the Respondent Department is against the basic principles of posting and transfer as discussed supra. Learned counsel argued that when the rules regarding posting has been specified in law such tenure of posting is required to be respected; that the transfer and posting is to be made due to exigency of service and not otherwise. He lastly prayed for allowing the instant petition. Learned counsel for the Petitioner, due to the urgency pointed out in the matter has argued that this Court can hear and decide the matter on merits.

4. Upon query by this Court as to how the instant Petition is maintainable against the transfer and posting, the learned counsel for the Petitioner argued that

the case of the Petitioner falls within the principles enunciated in the judgment of Hon'ble Supreme Court of Pakistan in the case of Syed Mehmood Ahmed Naqvi supra. He has further contended that due to untimely transfer and posting of the petitioner he is badly suffering. He lastly submitted that the petitioner being low grade employee is facing difficulty due to his transfer from one place to another place; therefore, this is a case of hardship.

5. We have heard the learned counsel for the Petitioner and have perused the material available on record.

6. 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?

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 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 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 his service before the Tribunal subject to the qualification provided therein.

9. Prima facie the last posting order of the Petitioner show that he was working on detailment basis in the office of District Education Officer (Primary) District Umerkot and he was transferred to work on detailment basis in GBPS Ahori Farm Taluka Umerkot till further order and now the petitioner has called in question the transfer order dated 29.10.2018 issued by the respondent/ Education Department in exigency of the service. Prima facie, the service of the Petitioner is not a tenure post to attract the dicta laid down by the Hon'ble Supreme Court of Pakistan in the cases discussed supra. The posting on detailment basis means utilization of service of an employee in any job for a temporary period in the public interest under any Department or office of the Government.

10. The impugned order dated 29.10.2018 clearly indicates that the Respondent Department issued transfer order to work on detailment basis at GBPS Ahori Farm Taluka Umerkot, which does not fall within the ambit of 'frequent transfer'. On the above proposition of law, the principle has already been settled by the Hon'ble Supreme Court of Pakistan in the case of Peer Muhammad Vs. Government of Balochistan & others 2007 SCMR 54.

11. It is a well settled now that a Civil Servant cannot claim a vested right on a particular post at a particular place. Therefore, the forum chosen by the Petitioner by invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law.

12. 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. Consequently, the instant Petition being meritless stands dismissed in *limine* along with the listed applications. However, it is for the petitioner to approach proper forum as per law.

JUDGE

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