

# HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Aziz-ur-Rehman**

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

**C.P No.D-1826 of 2019**

Syed Muzaffar Ali Jafri

.....Petitioner

Versus

Province of Sindh & 02 others

.....Respondents

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**Date of hearing: 08.04.2019**

Mr. Muhammad Nishat Warsi, Advocate for the Petitioner.

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## **ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Petitioner has impugned his frequent transfer and posting orders issued by the Respondent-Health Department w.e.f. 2004 to 2018.

2. The basic grievance of the Petitioner is with regard to his transfer and posting orders as discussed *supra* and stoppage of his salary w.e.f. 28.11.2018. Petitioner has submitted that he has been performing his duties as Regional Drug Inspector (BPS-19), Health Department, Sukkur Region, with keen interest and devotion without any complaint of whatsoever nature and all of a sudden, the Respondents vide order dated 28.11.2018 has transferred his service to report to Health Department, Government of Sindh without assigning any reason and paying salary. Petitioner being aggrieved by and dissatisfied with the impugned frequent transfer orders and non-payment of salaries has approached this Court on 16.3.2019.

3. Upon query by this Court as to how the instant Petition is maintainable against the transfer, posting and salary issues which fall within the ambit of expression `terms and conditions` of service of civil servant.

4. Mr. Muhammad Nishat Warsi, learned counsel for the Petitioner has contended that the impugned transfer orders as discussed supra are based on malafide intention. Per learned counsel the case of the Petitioner falls within the ambit of the expression "Frequent Transfer from one city to another city" without completing his tenure of posting; that the transfer orders issued by the Respondents are in violation of the dicta laid down by the Hon'ble Supreme Court of Pakistan in the case of Syed Mehmood Akhar 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 for completion of his minimum tenure of his posting as Regional Drug Inspector (BPS-19), Health Department, Sukkur Region; that the impugned transfer orders are violative of section 24-A of the General Clause Act; that the impugned orders do not reflect any reason of the transfer and posting of the Petitioner; 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 lastly on 28.11.2018 and on this account the family of the Petitioner has badly suffered as such this Court can take cognizance of the matter. Learned counsel further added that during the entire service of the Petitioner, he has been frequently transferred from one place to another place which reflects from the record; that the aforesaid act of the Respondent-Department is against

the basic principle of posting and transfer. Learned counsel argued that when the ordinary tenure of posting has been specified in law such tenure of posting is required to be respected; that due to frequent transfers of the Petitioner, the education of his children is suffering, which cannot be compensated at any cost; that any civil servant appointed in BPS-19 is not required to be transferred frequently as provided under the law; that the transfer and posting is to be made due to exigency of service and not otherwise; that the salary of the petitioner has been withheld since 28.11.2018 which is the only source of income of the petitioner and that cannot be withheld. He lastly prayed for allowing the instant petition. Learned counsel for the Petitioner, due to the urgency pointed out in the matter has argued the entire case on merit.

5. We posted another question to the learned counsel with regard to the order dated 20.5.2018 passed by the Hon'ble Supreme Court of Pakistan in Human Rights Case No.8991-S/2017 and Human Rights Misc. Applications No.105/2017, 135/2018, 163/2018, 177/2018 and 178/2018 and Civil Misc. Applications No.203-K/2018 and 568-K/2018 and explanation issued to him by the Respondent-Department vide letter dated 03.09.2018. For convenience sake, an excerpt of the order dated 20.5.2018 is reproduced as under:-

**“At this juncture Mr. Tariq Memon, Advocate appeared and complained that the Sindh Drug Testing Laboratory has been dysfunctional since October, 2017 on account of which proper testing of drugs in the Province has come to a half. Thus, it is not possible to assess whether hospitals are being provided with genuine and valid medicinal supplies which are to be provided to patients free of cost. Besides that, it is this Laboratory which determines, upon a referral by the Drug Inspectors, whether drugs sold in the open market are spurious or sub-standard. Therefore a very important function relatable directly to the proper performance of**

**hospitals and the health sector in general is not being performed. Let this Laboratory be made functional by all means within a period of two months from today, otherwise the Secretary Health (if he is posted to another place, then the incumbent in his position) will be personally held responsible for not performing his duty.**

The learned counsel for the Petitioner reiterated his arguments and argued that he replied to the aforesaid explanation with cogent reasons, therefore, nothing is available on the record against the petitioner. He next submitted that the case of the Petitioner falls within the principles enunciated by the Hon'ble Supreme Court in the case of Zahid Akhtar supra and Anita Turab supra. He has further contended that he is victim of departmental intrigues, his salary has been withheld, therefore, this is a hardship case and this Court can hear and decide the matter on merits. Be that as it may, we are only confined to the factum as to whether this Court has jurisdiction under Article 199 of the Constitution to dilate upon the service issues of the Petitioner.

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

7. Admittedly, the Petitioner is 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 Sindh Service Tribunal Act a Civil Servant has a right to file an appeal against the impugned orders adversely affecting the terms and condition of his service before the Tribunal subject to the qualification provided therein. In our view, 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].

8. In view of the foregoing, we are clear in our mind that the case of the Petitioner does not fall within the ambit of frequent transfer and posting as asserted by him. The impugned transfer order dated 28.11.2018 clearly indicate that the Respondents issued transfer order, prima facie, the only directions has been issued to the Petitioner to report to Health Department, if the Petitioner is aggrieved against the aforesaid transfer order, he has to approach proper forum as provided under the law.

9. Reverting to the issue of salary of the Petitioner, suffice it to say, that the Hon'ble Supreme Court in the case of *Punjab Text Book Board, Lahore and others vs. Muhammad Akhtar Sheerani* [PLD 2001 SC 1032] has clearly held at Paragraph-1040 that the jurisdiction of this Court is barred under Article 212(2) of the Constitution:-

**“We respectfully disagree with the dictum that the objection raised on behalf of the petitioners therein to the effect that the High Court has no jurisdiction to entertain the matter in relation to salary of the employees as it has a direct nexus with the terms and conditions of service of the employees in view of the bar imposed under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 was a technical objection. In our considered view the objection to the jurisdiction of the High Court to entertain a writ petition raised on behalf of the petitioners therein, was not technical in nature but going to the very root of the case. This Court has repeatedly held that the Service Tribunal alone is the appropriate forum having jurisdiction to deal with matters relating to the terms and conditions of service of civil servants in view of the bar contained in Article 212 of the Constitution. To this extent we respectfully overrule the above dictum.”**

10. In the light of the aforesaid judgments of the Honorable Supreme Court of Pakistan, the grievance of the Petitioner cannot be entertained

under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973.

11. It is a well settled law that the transfer and posting falls within the ambit of expression “terms and conditions of service” and the Petitioner 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. 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. Consequently, the instant Petition being meritless stands dismissed in *limine* along with the listed application[s]. However, the Petitioner is at liberty to approach the proper forum under the law, if so advised.

**JUDGE**

**JUDGE**

**Nadir/-**