

HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-3651 of 2018

Saleem Ahmed Siddiqi

.....Petitioner

Versus

Province of Sindh & 03 others

.....Respondents

Date of hearing: 15.04.2019

Date of order: 15.04.2019

Mr. Muhammad Arshad Khan Tanoli, Advocate for the Petitioner.

Mr. Sameer Ghazanfar, Advocate for Respondent No.4.

Mr. Abdul Jalil Zubedi, AAG.

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner is seeking direction to the Respondents to allow him posting in BPS-20, commensurate to his qualification and eligibility.

2. The basic grievance of the Petitioner is with regard to his posting and transfer order in BPS-20 on the premise that he has been made Officer on Special Duty (OSD) since January, 2018 without any posting order, in violation of the dicta laid down by the Hon'ble Supreme Court in the case of *Syed Mehmood Akhtar Naqvi and others vs. Federation of Pakistan & others* [PLD 2013 SC 195].

3. We queried from the learned counsel for the Petitioner whether he is getting salary without posting, he replied in affirmative. We posted another question to him as to how this Petition is maintainable against posting order, which falls within the terms and conditions of his service?

4. Mr. Muhammad Arshad Khan Tanoli, learned counsel for the Petitioner, in reply to the query, has argued that the Petitioner has been made as OSD which is a punishment under the Service Law without any fault on the part of Petitioner, thus the action of the Respondents is nullity in the eyes of law. He next argued that the public servant cannot be made OSD without posting under the law and dicta laid down by the Hon'ble Supreme Court in the case of *Mir Shahnawaz Mari vs. Government of Balochistan* [2000 PLC (C.S) 533]. He next argued that he is confining his submissions to the extent that he may be given a posting commensurate to his qualification. He further added that he would be satisfied if the directions are issued to the Respondents to issue posting order to the Petitioner. He next relied upon the unreported order dated 01.11.2018 passed by this Court in C.P No.D-6369 of 2018 [*re-Muhammad Akhlaq Baig vs. Province of Sindh & others*] and argued that under the similar circumstances, this Court has allowed the Petition with direction to the Secretary Sindh Local Government Department to give posting order to the Petitioner in the aforesaid Petition within thirty days, whereas the case of present Petitioner is identical to the case of *Muhammad Akhlaq Baig* as discussed supra. He lastly prayed for allowing the instant Petition.

5. Mr. Sameer Ghazanfar, learned counsel representing Respondent-KW&SB has referred to the Counter Affidavit filed on behalf of the

KW&SB and raised the question of maintainability of the instant Petition and argued that Respondent-KW&SB is not competent to post the Petitioner in BPS-20 as this is the prerogative of the Government of Sindh, however, he conceded that at present there are no Disciplinary Proceedings pending against the Petitioner. He lastly prayed for dismissal of the instant Petition.

6. Mr. Abdul Jalil Zubedi, learned AAG states that the Respondent-KWSB has not recommended the case of Petitioner for his transfer and posting in BPS-20, therefore, he has not been given his posting order. However, he added that if the Respondent-KW&SB recommends the case of petitioner for his transfer and posting, the Respondent No.1 will consider the recommendations, if any, made by KW&SB in accordance with law.

7. We have heard the learned counsel for the parties and have perused the material available on record and case law cited at the bar.

8. The pivotal question involved in the present proceedings is whether placing an officer as Officer on Special Duty (OSD) tantamount to penalizing him?

9. In our view, a civil/public servant cannot be made OSD if the competent authority is not satisfied with his performance, though the authority has the power to order his transfer but he cannot be penalized as has been done in the present case. The normal period of posting of a Government servant at a station on cadre post under Sindh Government Rules of Business, 1986 is three years, which has to be followed in the ordinary circumstances, unless for reasons of exigencies of services a

transfer before expiry of the said period becomes necessary in the opinion of the competent authority. We are cognizant of the fact that transfers and postings of Government servants is in the discretion of the Competent Authority, who has to pass such orders on administrative grounds only and not for political, or other extraneous consideration. The discretionary powers vesting in an authority are to be exercised judiciously and in reasonable manner. In the present case, the Respondents have posted him out to report to Karachi Water and Sewerage Board vide Notification dated 31.01.2018 and since then he has not been posted despite several requests made by him and allowing him to continue as OSD is contrary to the policy as well as the law laid down by the Hon'ble Supreme Court of Pakistan in the case of *Corruption in Hajj Arrangements* [PLD 2011 SC 963].

10. Record does not reflect that any Disciplinary proceedings are pending against him nor it is alleged anywhere in the pleadings that he has been made OSD in the public interest. In absence of contrary, we found force in the contention of the learned counsel for the Petitioner. It is seen from the facts that the Petitioner has been posted as OSD since January, 2018 which is more than one year; hence not giving any posting to the petitioner is violative of his service rights and against the spirit of law and dicta laid down by the Hon'ble Supreme Court as discussed supra, for which the respondents have to account for that for the simple reason that the Petitioner has been paid his salary without getting work from him which is against the Service Law.

11. We, therefore, under the circumstances dispose of this Petition by directing the Respondents to give posting to the Petitioner within [30]

days' from the receipt of this order and post him on the post commensurate to his qualification, eligibility and subject to availability of vacancy, strictly in accordance with law.

12. With these observations, the instant Petition along with pending Application[s] stands disposed of.

JUDGE

JUDGE

Nadir/-