

HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-8070 of 2017

Mir Mumtaz Ali Petitioner
Versus
Province of Sindh & others Respondents

Date of hearing: 03.09.2018

Mr. Zulfiqar ali Domki Advocate for the Petitioner.
Mr. Barrister Shahryar Mehar, AAG for the Respondents.

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner though the instant petition has sought declaration to the effect that the impugned order dated 21.11.2017 passed by the Respondent No.1 regarding his transfer and posting is illegal, unlawful and unconstitutional thus liable to be set aside.

2. The grievance of the Petitioner is with regard to his transfer and posting as Public Relation Officer (PRO) District Municipal Corporation (Central) Karachi against the vacant post vide order dated 21.11.2017 issued by the Respondent No.1. Petitioner has submitted that he was posted as Chief Officer in BPS-16 in Sindh Council Unified Grade Service Admin Branch, Chief Municipal Committee Rohri. Vide order dated 17.04.2017 and he performed his duties assigned to him with keen

interest and devotion without any complaint and all of a sudden the Respondent No.1 vide order dated 21.11.2017 transferred his service and posted him as Public Relation Officer in District Municipal Corporation (Central), Karachi. Petitioner being aggrieved by and dissatisfied with the impugned transfer order has approached this Court on 27.11.2017.

3. Notice has been served to the Respondents.

4. Mr. Zulfiqar Ali Domki, learned counsel for the Petitioner has contended that the impugned order dated 21.11.2017 is based on malafide intention in order to punish the petitioner, who refused to obey the illegal demands of his superiors; that Petitioner being eligible in all respect is entitled for completion of his minimum tenure of his posting as Chief Officer; that the impugned order is violative of section 24-A of the General Clause Act; that the impugned order does not reflect any reason of his transfer and posting of the Petitioner as Public Relation Officer; that the transfer and posting is politically motivated thus not sustainable in law; that the Petitioner was not at fault and some conspiracy was being hatched against him at that time and he was transferred; that the punishment awarded to him was harsh, which was based on the false accusation. He lastly prayed for allowing the instant petition.

5. Mr. Shahryar Mehar, learned AAG has raised the question of maintainability of the instant petition and argued that the matter relates to the terms and conditions of service of the Petitioner, therefore the instant petition is not maintainable under the law.

6. Upon query by this Court as to how the instant Petition is maintainable against the transfer and posting, the learned counsel for the Petitioner reiterated his arguments and argued that the Petitioner pointed out certain irregularities committed by the Respondents, which were reflected in the Audit and Inspection report of the Municipal Corporation Committee Rohri, District Sukkur for the financial year 2016-2017, therefore as a revenge the Petitioner had been transferred with malafide intention and ulterior motive. He further stated that this is a hardship case and this Court can hear and decide the matter on merits.

7. We have gone through the case file and have heard the learned counsel for the parties and have perused the material available on record.

8. Admittedly, the Petitioner is an employee of Sindh Local Government Board and his service falls within the ambit of Sindh Council Unified Grade Service Rules, 1982. Rule 11 provides that the members of the service shall be liable to be transferred from one Council to another Council by Secretary Local Government Board. On the above proposition of law, the principle has already been settled in the case of Peer Muhammad Vs Government of Balochistan & others 2007 SCMR 54. In the light of the aforesaid judgment of the Honorable Supreme Court of Pakistan, the objection of maintainability of the captioned constitution Petition is sustainable under the law. The transfer and posting of the Petitioner as a Public Relation Officer, District Municipal Corporation (Central) Karachi also appear to have been made by the Competent Authority as provided under Rule 11 of SCUGS Rules, 1982.

We are also fortified by the Judgment passed by this Court in the case of Fazal Ahmed Samtio Vs. Province of Sindh & others 2010 PLC (C.S) 215. 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.

9. We are cognizant of the fact that this Court cannot entertain the grievance of the Petitioner against transfer and posting of a Civil Servant/ Public Servant under Article 199 of the Constitution. Consequently, the instant Petition stands dismissed in limine alongwith the listed applications. However, the Petitioner may avail the appropriate remedy as provided to him under the law.

JUDGE

JUDGE

Shafi Muhammad P.A