

HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6381 of 2018

Burkat Hussain Petitioner

Versus

Province of Sindh & others Respondents

Date of hearing: 06.09.2018

Mr. Masood A. Noorani Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner has impugned his transfer and posting order dated 29.08.2018 issued by the Respondent Worker Welfare Board, Sindh.

2. The grievance of the Petitioner is with regard to his transfer and posting order dated 29.08.2018. Petitioner has submitted that he has been performing his duties as School Teacher at Workers Model School Landhi with keen interest and devotion without any complaint of whatsoever nature and all of a sudden the Respondent No.2 vide order dated 29.08.2018 has transferred his service without assigning any reason. Petitioner being aggrieved by and dissatisfied with the impugned transfer order has approached this Court on 06.09.2018.

3. Mr. Masood A. Noorani, learned counsel for the Petitioner has contended that the impugned transfer order dated 29.08.2018 is based

on malafide intention. Per learned counsel the case of the Petitioner falls within the ambit of the expression "Frequent Transfer from one city to another city" without completing his tenure of posting; that the transfer order issued by the Respondents 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 for completion of his minimum tenure of his posting as a School Teacher posted at Workers Model School, Labour Square Landhi; 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; 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 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 principles 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 public servant appointed for a particular district is not required to be transferred to another district as provided under the law; 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 the entire case on merit.

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 reiterated his arguments and argued 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 this is a hardship case and this Court can hear and decide the matter on merits.

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

6. Admittedly, the Petitioner is an employee of Workers Welfare Board Sindh; therefore he is not a civil servant. The main grievance of the Petitioner is with regard to his frequent transfer and posting for which Petitioner in earlier round of litigation assailed his transfer and posting in Constitution Petition No. 2437 of 2011 and succeeded in obtaining interim order from the learned Division Bench of this Court at Sukkur vide order dated 26.08.2011.

7. Prima facie the last posting order of the Petitioner show that he was transferred to Workers Model School Landhi vide office order dated 01.03.2017 and the Petitioner now has called in-question the general order dated 29.08.2018 issued by the Respondent Department in exigency of the service.

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 order dated 29.08.2018 clearly indicates out that the Respondents issued general transfer and posting order of its employees, prima facie this is not a person specific transfer and posting, but several employees of School were directed to report their duties at their previous place of posting. 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.

9. In the light of the aforesaid judgment 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.

10. 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. The case law relied upon by the learned counsel for the Petitioner are not relevant to the facts and circumstances of the present case for the simple reason that the case of the Petitioner does not fall within the ambit of frequent transfer and posting. 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 alongwith the listed applications.

JUDGE

JUDGE

Shafi Muhammad P.A