

HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-5866 of 2019

Faisal Memon Versus Province of Sindh & 02 others

Date of hearing: 19.09.2019

Date of short order: 19.09.2019

Mr. Mukesh Kumar Khatri, advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- The basic grievance of the Petitioner is with regard to his surrendering of look after charge for the post of Regional Director BPS-19 in Sindh Katchi Abbadis Authority (SKAA) vide office order dated 23.5.2019 on the premise that the same charge has been assigned to Respondent No.3 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].

2. We queried from the learned counsel for the Petitioner that the post of Regional Director (SKAA) is in BPS-19, whereas petitioner is Deputy Director in BPS-18, he replied in affirmative. We posted another question to him as to how this Petition is maintainable against relinquishment of look after charge of Regional Director (SKAA), which falls within the terms and conditions of his service? He has no reply.

3. Mr. Mukesh Kumar Khatri, learned counsel for the Petitioner has argued that the Respondent No.3 has no administrative experience for the post of Regional Director, therefore, he is not entitled to assume the same charge; that the Respondent No.3 belongs to Engineering Cadre cannot be posted in

administrative cadre; that the Respondent No.3 is also in BPS-18 and holding the charge of BPS-19 which is also against the law and dicta laid down by the Hon'ble Supreme Court in its various pronouncements; that this is a case of frequent transfer and posting, thus falls within the principles enunciated by the Hon'ble Supreme Court in the case of Anita Turab supra. In support of his contention, he relied upon the case of AD Khowaja in which the principle of transfer and posting is set at rest; that the aforesaid action of the Respondent-department is in violation of Articles- 4, 10-A and 25 of the Constitution; that Respondent No.3 is junior to the Petitioner cannot be posted in place of Petitioner thus the action of the Respondents is nullity in the eyes of law. He next argued that the public servant cannot be posted under a junior officer. He next argued that he is confining his submissions to the extent that he may be given the same posting. He lastly prayed for allowing the instant Petition.

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

5. The pivotal question involved in the present proceedings is whether the Petitioner cannot be relieved of the look after charge for the post of Regional Director in BPS-19 (SKAA)?

6. In our view, there is no concept of look after charge to be given to a junior officer; however, there is concept of acting charge/current charge and additional charge of the post to be given to the senior most officer of the department if the eligible person is not available.

7. We have noticed that earlier Petitioner was repatriated to his parent department (SKAA) by the order of Hon'ble Supreme Court in Crl. Org. Petition No.89/2011, however, he managed to get himself promoted in BPS-18 vide Notification dated 22.5.2018 in the Respondent-department as Deputy Director (Audit & Accounts) and succeeded in getting higher post in BPS-19 as Regional Director, Sindh Katchi Abadi Authority vide letter dated 27.2.2019. We do not appreciate this practice of the department which causes heart burning of the

senior officers in the department. We are cognizant of the fact that 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 but in the present case the posting of the Petitioner is not a cadre post to claim the benefit of Rules of Business, 1986 as discussed supra. The 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.

8. In the present case, the Respondents have posted Respondent No.3 who is also in BPS-18 who has been assigned the work to look after the charge of the subject post. Apparently the Respondent-Department has ignored and circumvented the law by assigning the work to look after the charge of higher post. Section 10 of Sindh Civil Servant Act, 1973 does not permit to appoint a civil/public servant to look after the work of higher post. In this instance, the Respondent-department seems to have encouraged a culture of ad-hocism in making such posting orders, which has no legal recognition. The said posting amounts to playing a fraud on the law.

9. Keeping in view the abovementioned facts and circumstances of the case, we do not see any infringement of the right of the Petitioner, which could be called in question by way of writ petition. In our view, government 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 the law.

10. In view of the foregoing discussion, we do not find any merit in the instant Petition which is dismissed in limine along with listed application[s].

11. Before parting with this order, we hope that the respondent-department, will learn to honor, revere and respect the law and the obligations it casts upon

them. It is also hoped that they will strongly desist from entrusting such offices to adhoc.

12. These are the reasons of our short order dated 19.9.2019, whereby we have dismissed the instant Petition. Let a copy of this order be communicated to the Chief Secretary, Sindh for information and compliance.

JUDGE

JUDGE

Nadir/-