

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 7189 of 2019
(Muhammad Sharif Kalhoro V/S Province of Sindh and 03 others)

Date of hearing
& decision : 21.02.2020.

Mr. Ali Asadullah Bullo, advocate for the petitioner.

Mr. Noor Alam Khatri, advocate for respondent No.4.

Mr. Hakim Ali Shaikh, Addl: AG alongwith Abdul Samad Shaikh, Focal Person for legal matters, Agriculture Department, Government of Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. : Petitioner has impugned his frequent transfer and posting order dated 04.11.2019 issued by the respondent No.2-Agriculture Supply and Prices Department, Government of Sindh.

2. The basic grievance of the petitioner is with regard to his frequent transfer and posting orders with effect from the month of April, 2019 to November, 2019. Petitioner has submitted that he had been performing his duties as Secretary (BPS-17), Market Committee, Karachi, with keen interest and devotion without any complaint of whatsoever nature and all of a sudden, the respondent No.2 vide order dated 04.11.2019 transferred him to Market Committee, Ghotki, without assigning any reason. Petitioner being aggrieved by and dissatisfied with the impugned frequent transfer orders has approached this Court.

3. Upon query by this Court as to how the instant petition is maintainable against the transfer and posting which fall within the ambit of expression `terms and conditions` of service of civil servant, Mr. Ali Asadullah Bullo, learned counsel for the petitioner has contended that the impugned transfer orders as discussed supra are tainted with malice, violative of natural justice and malafide ; that the respondents have thrice transferred the petitioner without any sound reasoning and in any public exigency ; that the respondents have violated the fundamental rights of the petitioner which are protected under Articles 4,9,18 and 25 of the Constitution. 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** ; that petitioner being eligible in all respects is entitled for completion of his minimum tenure of his posting as Secretary (BPS-

17), Market Committee, Karachi. 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. 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 the transfer and posting is to be made due to exigency of service and not otherwise. He lastly prayed for allowing the instant petition.

4. 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**.

5. 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.

6. 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. On the aforesaid proposition, the recent decision dated 16.1.2020 of the Hon'ble Supreme Court passed in Criminal Appeal No.622 of 2019 is clear in its terms.

7. 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 along with the listed application(s). However, the petitioner is at liberty to approach the proper forum under the law, if so advised.

JUDGE

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