

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Aftab Ahmed Gorar  
Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D-33 of 2022**

Pervez Ahmed Baloch  
Petitioner through : Barrister Zamir Husain Ghumro and  
Mr. Faizan Hussain Memon, advocate

Respondents  
Through : Mr. Ali Safdar Depar, AAG alongwith  
Ghulam Ali Birhmani, Additional Secretary (Services-  
I), SGA&CD.

Date of hearing  
& order : **24.01.2022**

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through this petition, the petitioner has called in question the vires of his posting order dated 01.01.2022 of respondent No.4 as Chairman Sindh Text Book Board (“STBB”), issued by the Chief Secretary Sindh.

2. Mr. Zamir Husain Ghumro, learned counsel for the petitioner, has contended that the impugned transfer order as discussed supra is based on malafide intention. Per learned counsel, the case of the petitioner falls within the ambit of the expression “Transfer” without completing his tenure of three years posting; that the transfer order issued by the respondents, violates 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** and *Zahid Akhtar Vs. Government of Punjab & others*, **PLD 1995 SC 530**; that the petitioner being eligible in all respect is entitled to complete the minimum tenure of his posting as Chairman, Sindh Text Book Board, Education Department, Government of Sindh; that the impugned transfer order is violative of section 24-A of the General Clauses 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 are based on victimization, thus not sustainable in law; that the petitioner was not at fault when he was ordered to be transferred lastly on 01.01.2022. Learned counsel argued that when the ordinary tenure of posting has been specified in the law, such tenure of posting is required to be respected; that Chairman, Sindh Text Book Board, appointed in BPS-19 is not required to be transferred as provided under section 4 of the Sindh Text Book Board Ordinance, 1970; that the transfer and posting are to be made due to exigency of service and not otherwise; that the Government of Sindh does not mean Chief Secretary or Chief Minister in terms of latest pronouncements in the cases of *Mustafa Impex v. Government of Pakistan*, **PLD 2016 SC 808** and *Karamat Ali v. Federation of Pakistan*, **PLD 2018 Sindh 8**; that the impugned notification dated 01.01.2022 was not issued in pursuance and compliance of Section (4) of the Sindh Text Book Board Ordinance, 1970; that it does not refer to any complaint or

recording of reasons for removing the petitioner and that it was without providing any opportunity of hearing. He lastly prayed for allowing the instant petition.

3. Mr. Ali Safdar Depar, learned AAG, has submitted that the petitioner is a 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 order adversely affecting the terms and condition of his service before the Tribunal subject to the qualification provided therein. Besides that, 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 Servants Act, 1973. He further argued that the grievance of the petitioner cannot be entertained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. He asserted that 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. He lastly argued that the case of Mustafa Impex is not applicable as the present case does not relate to any fiscal matter and promulgation of legislation, consequently, the instant petition being meritless is liable to be dismissed.

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

5. First and foremost the maintainability issue is to be resolved, in principle respondent No.4 has been asked to hold the present post as Chairman STBB under the impugned notification dated 01.01.2022, which post, primarily is in connection with the affairs of the Province of Sindh; and, is governed by the Sindh Text Book Board Ordinance 1970, thus this petition is maintainable under Article 199 (1) (b) (ii) of the Constitution.

6. The Sindh Text Book Board is a statutory body established in January 1971, through the Sindh Text Book Board Ordinance, 1970. Primarily, STBB is a body corporate and its main function is to provide free textbooks and other supplementary material, right from primary to Class X for all Public Sector Schools of the Sindh Province, whereas the Government has complete control over the affairs of STBB, thus falls within the ambit of Article 199(5) of the Constitution and this Court can look into the affairs of STBB including appointment for the post of Chairman.

7. The pivotal question involved in the present petition is whether the postings of petitioner and respondent No.4 as Chairman STBB was unlawful since the said post was never advertised and did not go through the competitive process, and; whether the posting of petitioners and subsequent of respondent No.4 as Chairman STBB could be construed as initial appointment, valid under the law and is in the Public Interest and is not hit by the judgments of the Honorable Supreme Court on the issue.

8. To go ahead with the aforesaid proposition, there is no dispute that the post of Chairman STBB is a Tenure Post in terms of section 4(a) of the Sindh Text Book Board Ordinance, 1970. Primarily, the appointment in the public sector is a trust in the hands of public authorities and it is their legal and moral duty to discharge their function as a trustee with complete transparency as per the requirement of law so that no person who is eligible to hold such post, is excluded from the process of selection and is deprived of his right of appointment in service. In principle, the Constitutional requirement, inter alia, enshrined in Article 18 of the Constitution which enjoins that

subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business includes the right of a citizen to compete and participate for appointment to a post in any Federal or a Provincial Government department or an attached department or autonomous bodies/corporations, etc. based on open competition, which right he cannot exercise unless the process of appointment is transparent, fair, just and free from any complaint as to its transparency and fairness. The above objective as enshrined in our Constitution cannot be achieved unless due publicity is made through a public notice for inviting applications with the aid of the leading newspapers having wide circulation; and if a person appointed to any office under the State without any advertisement is appointed in violation of the rights of other citizens to equality of opportunity in matters relating to appointment to any office under the State guaranteed to them under Article 27(1) of the Constitution, which provides that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence, or place of birth. The spirit of the said Article applies with equal force to appointments made in statutory bodies, autonomous bodies, and corporations owned and controlled by the Government. The Full Bench of the Hon'ble Supreme Court in the case of *Munawar Khan v. Niaz Muhammad*, 1993 SCMR 1287, raised a voice of concern in such a situation and held that in future, all appointments shall be made after due publicity in the area from which the recruitments had to take place. Law to the said effect was also laid down by the Hon'ble Supreme Court in the case of *Obaidullah v. Habibullah*, PLD 1997 SC 835. The Honorable Supreme Court in the case of *Lt. Col. (R) Muhammad Arif Zahid v. Azad Government of the State of Jammu and Kashmir*, 2018 PLC (C.S.) Note 136, a writ of quo warranto seeking the quashing of the appointment against the post of Director Armed Services Board for one year was allowed on the ground inter alia that the said post was not advertised before making the appointment. The Honorable Supreme Court in the case of *Muhammad Muneer Malik v. Allama Iqbal Open University*, 2016 PLC (C.S.) 896, has held that the object of inviting applications from candidates through advertisements was to make certain that all eligible interested candidates might have an opportunity to compete for appointment through a fair and transparent selection process. On the aforesaid proposition, we are supported by the decisions of the Honorable Supreme Court in the cases of *Watan Party & others v. Federation of Pakistan and others*, PLD 2012 SC 292, *Suo Moto Case No.24 of 2010*, 2014 SCMR 484, *Suo Moto Case No.16 of 2011*, Contempt proceedings against Chief Secretary, Sindh, and others, 2013 SCMR 1752 and *Muhammad Bachal Memon and others v. Syed Tarveer Hussain Shah and others*, 2015 PLC (C.S.) 767.

9. The contentions of learned AAG to the extent that this is a cadre post and only cadre officers could be appointed as Chairman, STBB, is meaningless for the reason that the candidate's qualifications and ability were not assessed in accordance with the law while making appointment on the subject post. Primarily, the term "Cadre" is defined in rule 9(4) of Fundamental Rules, 1922. The said Rule defines "cadre" to mean "the strength of the service or a part of the service sanctioned as a separate unit. Reliance is placed on the case of *Muhammad Bachal Memon and others vs. Syed Tan veer Hussain Shah and others*, **2014 SCMR 1539**.

10. In principle, the Civil Service of Pakistan (Composition and Cadre) Rules, 1954, defines Cadre post" means any duty post included in the Schedule, that is subject to the agreement made by and between the Federal Government and the Provincial Governments, so far as posting and transfer of

cadre officers are concerned. Initially, the posts of Chief Secretary, Additional Chief Secretary / Senior Member, Board of Revenue / Commissioners, Member, Board of Revenue / Administrative Secretaries, Deputy Commissioner / Additional Secretaries and Additional Commissioner / Deputy Secretaries and Assistant Commissioners and other relevant posts have been declared cadre posts and the cadre officers are required to be appointed/posted on the aforesaid posts subject to the approval of the Federal/Provincial Governments.

11. In the present case, the post of the Chairman, STBB, is to be filled by the Government of Sindh under the Sindh Government Rules of Business, 1986 read with Rule 4 of the Ordinance, 1970, therefore prima facie this post could not be construed to be a cadre post of an autonomous body. The Government of Sindh is competent to appoint Chairman and its members for three years and shall also be eligible for reappointment for one or more such terms, however, that is subject to the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of *Mustafa Impex* as discussed supra. Prima facie, the entire exercise conducted by the Government of Sindh for appointment of Chairman, STBB amongst the cadre officers through the summary for Chief Minister, Sindh, lacks legal backing, therefore, the posting of respondent No.4 as Chairman, STBB, is against the basic spirit of the law. They are required to fill the post in terms of section 4 of the Ordinance, 1970 by inviting applications from the aspirant candidates having qualification and experience of the subject post, besides that the Provincial Government officials could participate for appointment on the subject post as per their qualification and experience.

12. Coming to the main point, a distinction is to be drawn between an "irregularity" and an "illegality" in the process of making appointments against public posts. An appointment, whether permanent or contractual, made against a public post without issuing advertisements in newspapers for ensuring competition amongst the eligible candidates would certainly be illegal as distinguished from the irregular. Such illegality being a transgression of Article 18 of the Constitution cannot be regularized, be it under some policy or a provision in the service rules of a public sector or statutory body. Admittedly, the appointment of respondent No.4 was not preceded by the advertisement of the post to enable other eligible persons to be considered for recruitment against the post of Chairman STBB. The non-issuance of an advertisement to give opportunity for competition to other eligible persons was violative of the doctrine of equality embodied in Articles 25 and 27 of the Constitution. This fundamental deficiency in respondent No. 4's appointment process could not have been washed out or condoned by the Government of Sindh to sanctify his appointment.

13. In principle, the appointment made by the Government of Sindh on the subject post, without any advertisement or selection process cannot be considered to be a valid appointment for the simple reason that in public sector universities and institutions, before finalizing a fit candidate by the competent authority or Selection Board, the testimonials and antecedents of each candidate shall be considered under the prescribed benchmarks but to maintain a level playing field and evenhanded competition amongst all candidates, the qualification and competency in all fairness should be considered and adjudged under the qualification notified to apply in the advertisement and to extend any preference or favorable treatment, the settled terms and conditions cannot be disregarded. On the contrary, the selection process should be fair enough and attributes and if breached, the doctrine of legitimate expectation will come into sight for rescuing and ventilating the

sufferings of the candidates who were under the bona fide belief that their applications for appointment will be considered. The dictum laid down by the Honourable Supreme Court in the case of Government of Punjab through Secretary (S&GAD) Lahore and another vs. Zafar Maqbool Khan and others, **2012 SCMR 686**, explicitly show that the eligibility of a candidate had to be determined under the advertisement for the post, service rules governing the appointment and any amendment or instruction backed by the law.

14. We have noticed that the respondent-Government of Sindh has not adhered to the constitutional command to fill the subject post in terms of the ratio of the orders passed by this Court in C.P No.D-1301 of 2018, whereby direction was given to appoint Chairman Sindh Text Book Board permanently, unfortunately, the respondents continued to flout the orders and again and again posted the officer of their own choice, by resorting the cadre rules as discussed supra without a competitive process, prima-facie the reasons are obvious does not require to be repeated.

15. Learned AAG has submitted that though the relief claimed in the petition has virtually become infructuous on the premise that petitioner has been nominated for the Senior Management Course (SMC), commencing from 31.1.2022, and he has accepted to join Training for a certain period and the subject post could not be kept lying vacant for an indefinite period and insisted on the appointment of respondent No.4 for the subject post on the analogy that he has sufficient experience and says in the relevant field, which is in the public interest.

16. In view of the above, instant petition stands allowed, with directions to the Government of Sindh to de-notify the posting of respondent No.4 as Chairman STBB forthwith and make appointment against the said post after advertising the post and observing all the codal formalities as provided under the law. However, it is made clear that in the intervening period no Adhoc arrangement shall be made, so far as the posting of Chairman Sindh Text Book Board is concerned, in violation of section 4 of Sindh Text Book Board Ordinance 1970. The aforesaid exercise shall be undertaken within two weeks from today.

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