

# IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

## **C.P No.D-2513 of 2021**

Asif Ali Unar & 02 others

Versus

Province of Sindh and 02 others.

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**Date of hearing & order: 09.04.2021**

Mr. Muhammad Riaz, advocate for the petitioners.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.** The petitioners have filed this petition under Article 199 of the Constitution, wherein they have challenged the notification dated 30.03.2021 in respect of posting and transfer of District Food Controllers (DFCs) and Assistant District Food Controllers (ADFCs) in Food Department, Government of Sindh.

2. The petitioners have objected to the impugned notification on the ground, *inter alia*, that the impugned notification is illegal based on malafide intention to replace them from the subject post to accommodate others for disbursement of wheat. Per learned counsel, the Commissioned Officers were supervising the wheat disbursement in their areas but shockingly according to the notification rankers were appointed on the posts of Commissioned Officers. Resultantly, the purpose of impugned notification is just to usurp the huge amount or kickbacks in the disbursement of wheat in the areas. He prayed for allowing the instant petition.

3. We have heard learned counsel for the petitioners on the maintainability of the instant petition and perused the material available on record.

4. We are of the view that Article 212 of the Constitution ousts the jurisdiction of this Court in respect of the matters about terms and conditions of Civil Servants. The ouster clause under Article 212 of the Constitution is a Constitutional command, which restricts the

jurisdiction of this Court under Article 199 of the Constitution on the subject which squarely falls within the exclusive domain of the Sindh Service Tribunal (SST). The expression “terms and conditions” includes transfer and posting. Admittedly, the Petitioners are Civil Servants and their case falls within the ambit of Section 3 (2) of the Sindh Service Tribunals Act, 1973 which says that the 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 Service Tribunal Act a Civil Servant has a right to file an appeal against the impugned order adversely affecting his/her terms and condition of service, before the learned SST subject to the qualification provided under the law. *Prima facie*, we do not see any infringement of the right of the Petitioners, which could be called in question by way of Writ Petition, in terms of Section 10 of the Sindh Civil Servant Act, 1973. On the aforesaid proposition, our view is supported by the decision of the Hon’ble Supreme Court of Pakistan in the case of *Khan Muhammad v. Chief Secretary, Government of Balochistan Quetta and others*, **2018 SCMR 1411**.

5. Before parting with this order, we may observe that the transfer and posting is the prerogative of the respondent department as provided under Section 10 of the Sindh Civil Servants Act, 1973. However, the petitioners have raised the hue and cry in the matter with the assertion that their transfer and posting is based on malafide intention to accommodate the beneficiaries to usurp the huge amount or kickbacks in the disbursement of wheat in their respective area. If this is the factual position of the case, the Chief Secretary, Sindh, and Secretary Food Department, Government of Sindh, are directed to look into the affairs of disbursement of wheat in the Province of Sindh personally and ensure that the wheat is disbursed strictly under the law; and, not otherwise, if any of the officials of the Food Department is found indulged in any kickbacks or financial scams, for the subject disbursement in their respective Districts, strict and prompt action shall be taken against the delinquent officials. The Chief Secretary is further directed to assign the posting to those officers in their respective Districts, who are qualified and eligible for the subject posts and not otherwise, however, if found contrary to the law, the action shall be taken against them under Article 204 of the Constitution.

6. Considering the case of the Petitioners in the above perspective, we find no merit in the instant petition, which is dismissed in *limine*. However, the petitioners may seek appropriate remedies as provided under the law.

Let order of this Court be transmitted to the Chief Secretary Sindh and the Secretary Food Department, Government of Sindh, for compliance through MIT-II of this Court.

JUDGE

JUDGE

Nadir/PA