

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Constitutional Petition No. D –2395 of 2021

Abdul Basit

Versus

The Secretary Sindh Worker Welfare Board and 02 others

Date of hearing & order : 21.04.2021

Malik Altaf Hussain, advocate for the petitioner.

Mr. Samiullah Soomro, advocate for the respondent/ Workers Welfare Board Sindh.

Mr. Ali Safdar Debar, AAG along with Muhammad Bachal Rahupoto, Secretary, Sindh Worker Welfare Board, Shehla Kashif, Director (Admn.) and Khalid Hussain Khokhar, respondent No.3 present in person in C.P. No.D-2395/2021.

ORDER

ADNAN-UL-KARIM MEMON, J. – This petition is primarily directed to the validity of the posting/transfer order dated 02.04.2021, whereby the assignment of look after charge of the post of Director (Finance) in BPS-19 in Workers Welfare Board Sindh (WWBS) for the period with effect from 31.3.2021 to 31.7.2021 till full-fledged post of Director (Finance) WWBS was given to the respondent No.3. The aforesaid petition is virtually against the transfer and posting order of the private respondent on Own Pay Scale basis. It is stated on behalf of the petitioner that, basically the impugned assignment/ order in respect of the private respondent is issued by the Secretary, WWBS, in complete violation of law and the orders passed by the Hon'ble Supreme Court as well as this Court. He emphasized that in place of the petitioner a Junior Officer in Grade-18 has been posted which violates the judgment passed by the Hon'ble Supreme Court of Pakistan in Own Pay Scale cases. He further argued that the impugned posting order amounts to a change of cadre which has to be done under the provisions of law and not otherwise as discussed supra. Per learned counsel, his only anxiety is about posting of a junior officer in Own Pay Scale (OPS) in respondent-WWBS. If this is the only point involved in the matter, we would like to address this issue with the consent of the parties.

2. To appreciate further on the issue of OPS, we have inquired from the learned AAG to show us any provision of law and or rule under which a Provincial Civil Servant / Public Servant can be appointed on an OPS basis. He submitted that in exigencies, the Government makes such appointments as a stopgap arrangement for a limited period. In this regard, he referred to the office order dated 02.4.2021 (page 33) and argued that the private respondent has been assigned to look after the day to day work of the vacant post of Director (Finance) in BPS-19, WWBS for the period with effect from 31.3.2021 to 31.7.2021 as stopgap arrangement till full-fledged posting of Director (Finance) WWBS in the light of Rule 8-A (i) of Sindh Civil Servants (Appointment, Promotions & Transfer) Rules, 1974. He prayed for dismissal of the instant petition.

3. Mr. Samiullah Soomro learned counsel representing the respondents 1 & 2 has adopted the arguments of learned AAG, however, he added that only one officer of the respondent-department is working in BPS-19, and due to exigency of service and matters relating to finance which are sensitive, as such the private respondent was allowed to look after the affairs of the Finance Department till further orders. We are not satisfied with the assertion of the learned counsel for the simple reason that if the senior officer is available, he could have been appointed to look after the affairs of the respondent-department; and, junior officer ought not to have been given such sensitive post to deal with the financial affairs of the respondent-department in a cursory manner and violation of the law.

4. This practice of appointment on an OPS basis has always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self-respect and dignity of the Civil / Public Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of nature, if allowed to be vested in the Competent Authority, will offend valuable rights of the meritorious Civil / Public Servants besides blocks promotions of the deserving officers. In this respect the law empowers the Competent Authority to appoint a Civil / Public Servant on acting charge and current charge basis, it provides that if a post is required to be filled through promotion and the most senior Civil / Public Servant eligible for promotion does not possess the specific length of service, the appointment of the eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board. Further that an appointment on an acting charge basis shall be made for vacancies lasting for

more than 6 months and vacancies likely to last for less than six months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any purposes including seniority, nor it confers any vested right for regular appointment. In other words, an appointment on a current charge basis is purely temporary in nature or a stopgap arrangement, which remains operative for a short duration until a regular appointment is made against the post. It is crystal clear that there is no scope of the appointment of a Civil /Public Servant on an OPS basis except in exigencies appointment on an acting charge basis can be made, subject to conditions contained in the relevant Rules.

5. In our view, posting/transferring a Civil / Public servant on his pay and scale (OPS) is not legally permissible. Our view is supported by the decisions rendered by the Honorable Supreme Court in the case of Province of Sindh & others v. Ghulam Fareed & others [2014 SCMR 1189] and Khan Muhammad vs. Chief Secretary Baluchistan and others (2018 SCMR 1411).

6. The above discussion leads us to an irresistible conclusion that the appointment/posting of Civil / Public Servant on OPS/additional charge basis, is violative of law and public interest as a result thereof the instant petition is disposed of with the direction to the competent authority of respondent-Workers Welfare Board Sindh to comply with the ratio of the decisions passed by the Honorable Supreme Court in the cases of Province of Sindh & others v. Ghulam Fareed & others [2014 SCMR 1189] and Khan Muhammad vs. Chief Secretary Baluchistan and others (2018 SCMR 1411) in its letter and spirit and avoid making the transfer and posting on own pay scale in future, however, subject to conditions as enumerated in the aforesaid judgments of the Hon'ble Supreme Court. Consequently, the office order dated 02.04.2021 issued by the respondent-WWBS is set aside. Resultantly, the pending Application[s] are disposed of.

7. Let a copy of this order be communicated to the Chief Secretary, Sindh, and the Secretary Sindh Worker Welfare Board for information and compliance.

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