

IN THE HIGH COURT OF SINDH, KARACHI

Before

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Amjad Ali Sahito

C.P No.D-369 of 2021

Malik Naeem Iqbal, advocate for the Petitioner
in C.P No.D-369 of 2021

Mr. Yousuf Moulvi, advocate for respondent No.3 in
C.P No.D-369 of 2021

Mr. Muhammad Arshad Khan, advocate for respondent
in C.P No.D-369 of 2021

Mr. Jawad Dero, Addl.Advocate General

Syed Arif Hussain, Director Anti-Corruption Establishment

C.P No.D-628 of 2021

Ms. Uzma Rafique, advocate for the Petitioner in
C.P No.D-628 of 2021

M/s M.M.Aqil Awan & Mr.Danish Rasheed advocates
For respondent No.3 in C.P No.D-628 of 2021

Ms. Leela Kalpana Devi, Addl.Advocate General

Mr.Ghulam Ali Brehmani, Additional Secretary, SGA&CD
Government of Sindh present

Syed Arif Hussain, Assistant Director, Enquiries and
Anti-Corruption Establishment Sindh present

Date of hearing : 03.06.2021

Date of Judgment : 13.08.2021

J U D G M E N T

AMJAD ALI SAHITO--J., By this common judgement, we intend to dispose of these petitions as common questions of law and facts are involved therein. The Petitioners have challenged the appointment of respondents No.3 in both the petitions, one of them was appointed as Director-II, Enquires & Anti- Corruption Establishment, Sindh, and the other was appointed as Deputy Director, Anti-Corruption Establishment, West Zone, Karachi, vide notifications dated 13.1.2021 and 06.04.2020 issued by the Respondent-Chief Secretary Sindh, inter alia, on the ground, that these appointments were made in violation of the criteria set forth by the Hon'ble Supreme Court of Pakistan in the cases of *Contempt Proceedings against Chief Secretary, Sindh and others, 2013 SCMR 1752* and *Ali Azhar Khan Baloch v. Province of Sindh, 2015 SCMR 456*.

2. Notices of the instant constitution petitions were issued to the respondents, they came forward along with their respectively replies/objections.

3. Mr. Naeem Iqbal, learned Counsel for the Petitioner in C.P.No.D-369 of 2021, and Ms. Uzma Rafiq learned counsel for the petitioner in C.P.No.D-628 of 2021 have contended that the purported appointments of Respondents No.3 in both the petitions were violative of the requisite procedure under the rules and in fact, they were extended favour by the competent authority. They emphasized that the Respondents No.3 in both the petitions have already served Anti-Corruption Department on deputation for more than one period, which is reflected from notification dated 27.04.2018, therefore, they could not have been appointed on deputation for the second time which act is not in conformity to the rules. It is further submitted that the appointment of Respondents No.3 are politically motivated and needs to be set aside. It was contended that posting honest officers to the public offices, would form the foundation of good governance which is the requirement of law. They averred that it is high time that standards ought to be set to develop a culture of accountability at all levels to cleanse our system and institutions from the evils of corruption, money laundering, loot, and plunder of national resources by a few, irrespective of their rank or status in the system.

4. Mr Malik Naeem Iqbal learned Counsel for the petitioner (C.P.D-369/2021) further argued that as per notification dated 19th April 2000, the method of appointment for the Director is by transfer from amongst the APUG (DMG/Ex-OCS) Officers. The Respondent Saadat Ali Yasin is an officer of the Police Service of Pakistan rather than the DMG group. It is argued that the postings of respondents No.3 have been made in violation and disregard of the benchmarks and parameters settled by the Honourable Supreme Court in the cases of *Contempt Proceedings against Chief Secretary, Sindh and others*, **2013 SCMR 1752** and

Ali Azhar Khan Baloch V. Province of Sindh, **2015 SCMR 456** and various other judgments. In this context, it has been argued that where the executive wing of the State has been vested with the discretion to make appointments/postings on administrative posts, such discretion is to be exercised in a manner that is fair, transparent, and under law. It has been demonstrated that respondents No.3 suffer from inherent disqualification as provided in the recruitment rules; and, they have been appointed by way of transfer from Police cadre to Administrative cadre based on favouritism, which has triggered the cause to the petitioners to approach this Court by urging that official respondents have violated the rules and law laid down by the Honourable Supreme Court in the aforesaid cases.

5. On the question of maintainability of these petitions, the Counsel for the petitioners argued that writ of quo warranto could be issued where it is found that any person holding any position in or related to the Government or performing functions directly, indirectly or incidentally in connection with affairs of the Federal or any of the Provincial Governments or any local authority has been appointed/posted on political basis against the law, otherwise lacks eligibility

6. Mr. Yousif Moulvi learned Counsel for respondent No.3 [Saadat Ali Yasin in C.P.No.D-369 of 2021], and Mr. M.M. Aqil Awan learned Counsel for respondent No.3 [Jam Zafarullah Dharjo in C.P.D-628 of 2021] mainly contended that the instant petition are not maintainable as the petitioners are not aggrieved person and this petition is liable to be dismissed on this sole ground; they further contended that the appointment of the both the respondents is not in violation to the judgment of the Hon'ble Supreme Court cited by the learned counsel for the Petitioner. That the respondent No.3 [Saadat Ali Yasin] who is presently a PSP Officer of Grade-19 has never been appointed, transfer, and promoted through Section 9-A Sindh Civil Servant Act, 1973, nor Rule 8-B 1974. That the petitioner is manipulating the term officer of Police Service of Pakistan with Officer of Police. The Officer of

Police means an Officer of Provincial Police Department [A non-cadre post) and not part of APUG (All Pakistan Unified Group); that the petitioner himself admitted that the respondent No.3 is an officer of Police Service of Pakistan (Police Service of Pakistan) is one of the Group of APUG; that this fact has not been denied by the petitioner that the respondent is a Grade-19 Officer of Police Service of Pakistan is one of the Group of APUG; that the petitioner admitted that the respondents No.3 in both the petitions could be deputed by respondent No.2 under Sindh Enquiries Anti-corruption Rules, 1993 but the same has to be in accordance with law and dicta laid down by the Hon'ble Supreme Court of Pakistan; that the appointment of the petitioner is based upon rotation policy issued by government of Pakistan, they lastly prayed that the instant petitions are frivolous may be dismissed with cost.

8. Mr. Jawad Dero AAG & Ms Kalpana Devi, Additional Advocate General for official respondents have opposed these petitions on the ground that under the recruitment rules notified vide notification dated 27.9.2017, the government, in exigency of service, is competent to fill the post of Deputy Director, Enquires & Anti- Corruption Establishment Sindh, amongst the officers of Provincial Administrative Service (PAS), Ex-PCS and Provincial Secretariat Service (PSS)/ Police officer BPS-18 by way of transfer, as such there is no illegality in the impugned notifications.

9. We have heard the learned counsel for the parties on the subject issue and examined the record, placed before us.

10. The appointments in question were claimed to have been made in the exercise of the power vested in the competent authority under the recruitment rules notified vide notification dated 19.04.2000 & 27.9.2017, which are reproduced as under:

“No: SOI (SGA&CD)-6/2/90(PT-II)
GOVERNMENT OF SINDH

SERVICES, GENERAL
ADMINISTRATION &
COORDINATION DEPARTMENT
Dated Karachi the 19th April, 2000.

NOTIFICATION

In pursuance of sub-rule (2) of rule 3 of the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974, the method of appointment to the post in the Enquiries & Anti-Corruption Establishment mentioned in column 2 of the Table below shall be as laid down against it in column-3, thereof:-

Sr. No.	Name of Post	Method of appointment
1.	2.	3.
1.	Director (Enquiries) (BPS-19).	By transfer from amongst the APUG (DMG)/Ex-PCS Officers.

CHIEF SECRETARY
GOVERNMENT OF SINDH”

“GOVERNMENT OF SINDH
SERVICES GENERAL
ADMINISTRATION &
COORDINATION DEPARTMENT
Karachi dated the 27th September,
2017.

NOTIFICATION

No:SOIII(S&GAD)POL-7-44/2017:- In pursuance of sub-rule (2) of rule 3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 with the approval of Competent Authority and in partial modification of this department's Notification No.SOIII(SGA&CD)-2/6/9/90(Pt-II) dated 22.02.2011, the method, qualifications and other conditions for appointment in respect of post of Deputy Director (BPS-18) in the Enquiries & Anti-Corruption Establishment, Services General Administration & Coordination Department, Government of Sindh, mentioned in column 1 of the table below, shall be as laid down in column 2, thereof:-

Table

NAME OF POST WITH BPS	METHOD OF APPOINTMENT

1.	2.
Deputy Director (BPS-18)	i) Fifty Percent by transfer from amongst the P.A.S./Ex-PCS/PSS/Police Officers of BPS-18; and ii) Fifty percent by promotion from amongst the Assistant Directors (Executive), Anticorruption Establishment, Sindh having five-year service as Assistant Director (BPS-17), on seniority cum fitness basis.
Director (Enquiries) (BPS-19)	By transfer from amongst the APUG (DMG)/Ex-PCS officers.

11. It is an admitted fact that Respondent No.3 (in C.P.D-369 of 2021) Saadat Ali Yasin who is appointed as Director as Director-II, Enquiries & Anti-Corruption Establishment, Sindh (hereinafter referred to as **ACE**) belongs to the Police Service of Pakistan and Respondent No.3 (in C.P.D-628 of 2021) and Jam Zafarullah Dharejo as Deputy Director ACE also belong to Police Service of Provincial. It is also not disputed that both of them were previously appointed in ACE as per detail provided to us by the official respondents on deputation as under;-

(1) Respondent No.3 Saadat Ali Yasin C.P No.D-369 of 2021.

DATE OF POSTING	PLACE OF POSTING
27-04-2018	Posted as Deputy Director (South Zone, Karachi. (Annexure-A)
10-7-2018	Posted as Deputy Director (Sukkar). (Annexure -"B")
19-10-2018	Deputy Director (Legal) Anti-Corruption Establishment. (Annexure-"C")
19-7-2019	Deputy Director (South Zone-Karachi). (Annexure-"D")
22-11-2019	Transferred and reported to Central Police Office Karachi (Annexure-"E")
13-1-2021	Posted as Director-II, Inquiries and Anti-Corruption Establishment Sindh. (Annexure-F)
18-01-2021	The copy of the order regarding the operation of the notification dated: 13-01-2021 was suspended

(2) Respondent No.3 Jam Zafarullah Dharejo C.P No.D628 of 2021.

DATE OF POSTING	PLACE OF POSTING
27-04-2018	Jam Zafarullah Dharejo, An Officer of Provincial Police (BS-18) Awaiting Posting. Is posted with immediate effect and until further orders as Deputy Director Anti-Corruption Establishment Larkana (Annexure-A)
10-7-2018	Jam Zafarullah Dharejo was transferred (Annexure-“B”)
Second Tenure – 18-01-2019	The services of Jam Zafarullah Dharejo, Superintendent of Police (BS-18) awaiting posting in CPO Sindh, are transferred with immediate effect and placed at the disposal of Inquiries & Anti-Corruption Establishment Sindh for further posting as Deputy Director, Anti-Corruption Establishment, subject to availability of post in the share of care/police officers. (Annexure-C).
20-02-2019	Posted as Deputy Director (Larkana) Zone. (Annexure-D)
07-11-2019	Posted as Deputy Director (Sukkar) Zone. (Annexure-E)
11-11-2019	Reported to the office of Chairman Enquiries and Anti-Corruption Establishment Sindh. (Annexure-F)
06-04-2020	Jam Zafarullah Dharejo, Superintendent of Police (BS-18), presently waiting for posting is hereby posted as Deputy Director Anti-Corruption West Zone. (Annexure-G)
03-02-2021	Since the interim order has already been passed in CP No. 369/2021, the operation of the notification dated 06-04-2021 in CP No. 628/2021 shall also remain suspended (Annexure-H)

12. Both these Police Officers were appointed to ACE at times as reflected hereinabove which is inconceivable. The principles laid down in the judgement of the Hon’ble Supreme Court in the cases of ***Contempt Proceeding against Chief Secretary, Sindh and others 2013 SCMR 1752, and Ali Azhar Khan Baloch V. Province of Sindh 2015 456 and Civil MISC Application No.1500 of 2015*** have been wilfully violated. Such action of the

competent authority ex-facie is contemptuous. No justification has been furnished by the Government of Sindh for appointing these officers on deputation for more than six terms in ACE, except that competent authority has the power to appoint on deputation such an explanation reflects that powers were exercised with malice. What was the reason that such Police Officers were being appointed in ACE on deputation on regular basis in violation of the rules of deputation as propounded by the Hon'ble Supreme Court is unanswered? Such an act on the part of the competent authority shows that favours were extended to these officers. The Honourable Supreme Court in **Civil MISC application No.1500 of 2015** in the aforesaid proceedings has observed as follows;

“We are shocked to see the copy of the notification of Saifullah Phulpoto, issued by the I.G.P Sindh. His name finds mention in the judgment of this Court reported as Contempt Proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752), and this Court further observed the manner in which he was extended favours by the competent authority and or other officials within the department. After the said judgment, Saifullah Phulpoto was denotified and repatriated to the police department. Again he has now been sent on deputation to the Anti-Corruption Establishment, Sindh. Deputation of a Civil Servant has been permissible normally for three years not beyond it”.

13. We are surprised to see that both/Respondent No.3 in both petitions belongs to the police group but they were posted as Deputy Director in Anti-Corruption establishment, Sindh on different dates from 24.07.2018 to January 2021. Learned counsel for the petitioners argued that the posting of the Respondents are based on political considerations. We have scanned the material available on the record; we are stunned to see that the Respondents were posted six times as Deputy Director in the Anti-Corruption department. In view of the dictum laid down by the Hon,ble Supreme Court in the case cited supra (**2013 SCMR 1752**), we are of the considered view that posting of such nature should be discouraged and respect should be given to the law and rules to minimize the unrest amongst the officers of the

department, who suffer and being deprived of their lawful right to promotion or otherwise.

14. The law about appointing on deputation is clear in the case of Muhammad Arshad Sultan and another's V. Prime Minister of Pakistan, Islamabad, and others, (PLD 1996 SC 771) Honourable Supreme Court, has defined “**deputation**” in the following terms;-

“Deputationist” to be a government servant who is appointed or transferred through the process of selection to post in a department or service together with different from the one to which he permanently belongs. Such a government servant continues to enjoy his status so long as he holds the new post in an office or temporary capacity but ceases to be regarded as such either on confirmation in the new post or on reversion to his substantive post. The department interpretation referred to by the said tribunal is having the effect of statutory rules has still been retained, as is evident from the ESTA code (1983 edition) in chapter 3, part 2 as on page 217. The court has also accepted the aforesaid definition of the term deputation in the Islamic Republic of Pakistan V. Israr UL Haq and others PLD 1981 SC 531.

15. The posting and transfer under Section 10 of the Civil servant Act, 1973 authorize the competent authority to transfer within the cadre and not out of cadre as the provision of Section 10 of the Act has to be read with a rider that the terms and conditions of services shall not be changed by such an order. It may be observed that the term 'transfer' has been interpreted by the Honourable Supreme Court in the cases reported as Contempt Proceedings against Chief Secretary, Sindh and others, **2013 SCMR 1752**, and Ali Azhar Baloch and others vs. Province of Sindh and others, **2015 SCMR 456**, and held that `the appointment by transfer can only be ordered if a civil servant is eligible and qualifies for his transfer under Rule 3(2) of the Sindh Civil Servant (Appointment, Promotion & Transfer) Rules, 1974 of the department to which he is to be transferred, read with Rules 4, 7 and 8 of the Rules, which prescribe conditions laid down for such

appointments by transfer to such posts; that a civil servant who is to be appointed by transfer has to appear before the Departmental Promotion Committee or the Provincial Selection Board which will consider his eligibility, qualification and such other conditions applicable to the post as laid down in the recruitment rules of the department to which his transfer is to be ordered . We have noticed that Rule 9(1) of Sindh Civil Servant (Appointment, Promotion, & Transfer) Rules, 1974, speaks of appointment by transfer to be made from amongst the persons holding appointments on regular basis mentioned in column-2 of the table given under the Rule. Therefore, the word 'person' would relate to the officers, who civil servants and mentioned in column-2 of the table are given under Rule 9(1). The word 'person' could not be given meaning beyond the scheme of the Sindh Civil Servant Act, 1973 and Rules of 1974'.

16. The Honourable Supreme Court further held that 'Rule 9(1) does not empower the Government or Selection Authority defined under the Act to appoint a civil servant or any other person by transfer to any other cadre, service or post without his eligibility, qualifications and the conditions laid down under Rules 3(2), 4, 6, and 8 of the Rules. Section 8 of the Act makes the class of civil servants for the proper administration and such class is not interchangeable at the whims of the Selection Authorities and/or the Government to extend favours to their blue-eyed. There is no discretion given under Section 5 of the Act to appoint any person in Civil Service against a Civil Post in a manner other than prescribed by the Rules. Rule 9(1) cannot be used as a tool to allow horizontal movement of a civil servant from his original cadre to another cadre against the scheme of the Act and the Rules of 1974. The term 'transfer' has to be interpreted in its common parlance and is subject to the limitations contained in Rules 3, 4, 6, 7, and 8 of the Rules, 1974. The post of Director is required to be filled as per notification dated 19.04.2000 and since the word Police Officer is not mentioned in the recruitment rules, therefore, the respondent Saadat Ali Yasin an officer of Police Services of Pakistan (BS-19) is not entitled to hold the post of

Director-II Enquiries and Anticorruption Establishment Sindh on the premise that APUG cadre since has abolished and the officer from PSP cadre is not entitled to be inducted in Provincial Anticorruption Establishment as Director (Enquiries) BPS-19. On the aforesaid proposition, we are guided by the decisions of the Hon'ble Supreme Court in the cases of Muhammad Karim V. Director, Health Services, **1987 SCMR 295** and Masood Ahmed V. Taj Muhammad Baloch, **1999 SCMR 755** has held that Section 10 does not authorize the competent authority to transfer a civil servant out of cadre.

17. During arguments, learned counsel for the respondents submitted that they have not completed their tenure while posted as Deputy Director, Enquiries & Anti-corruption Establishment Sindh. Before completing their tenure both officers were transferred. Suffice it to say that, depositions did not have any vested right to remain in the post forever or for a stipulated period and he/she cannot force official respondents to complete his/her tenure. He/she can be repatriated to the parent department at any time. The Honourable Supreme Court in the case of S. Masood Abbas Rizvi V. Federation of Pakistan (**2014 SCMR 799**), has held that;-

4..... It is a settled principle that a deputationist does not have any vested right to remain on the post as depositions forever or for a stipulated period, he could be ordered to be repatriated to the parent Department at any time without assigning any reason. This issue was raised in the case of Dr. Shafiur-Rehman V. C.D.A Islamabad through the Chairman and others ("2010 SCMR 378) wherein this Court has held that a deputationist does not have vested right to continue for the stipulated period.

18. Reverting to the arguments of the learned counsel for the respondents that their tenure for a posting must be respected and could not be varied, this assertion is misconceived, for the reason that firstly the respondent-department has failed to show valid reasons by requisition of their posting in Provincial Anti-Corruption establishment, Sindh which action on their part is

judicially reviewable. Besides the above, there is no protection of the alleged vested right of the respondents to remain on administrative/cadre posts. Therefore, any further discussion on this aspect of the case will be a futile exercise. On the aforesaid proposition, we are fortified with the decision of the Honourable Supreme Court in the cases of Jamshaid Gulzar versus Federation of Pakistan, **2014 SCMR 1504**, Syed Liaqat Shah versus Vice-Chancellor, University Of Engineering and Technology, Peshawar and others, **2019 PLC (C.S.) 74** and decisions of the learned Division Bench of Lahore High Court, Lahore, in the case of Prof. Dr. Asad Aslam Khan and others versus the Government of Punjab through Secretary Specialized Health Care and Medical Education Department, Civil Secretariat, Lahore, and 11 others, **2021 PLC (C.S.) 304**.

19. Principally, the posting of the officer on deputation on different departments would never improve the system within the department, as the deputationists on expiry of his deputation period would join his parent department. Such an officer even otherwise, is not accountable and the department in which he is appointed would ultimately suffer. Additionally, those who are eligible and are likely to be promoted in the department are deprived of their lawful right to promotion which is a permanent cause of heart burning to the cadre officers. Reliance is placed on the case of Muhammad Bachal Memon and others v. Syed Tanveer Hussain Shah and others, **2014 SCMR 1539**.

20. In the light of the judgements of Hon'ble Supreme Court in the cases of **Contempt Proceeding against Chief Secretary, Sindh and others 2013 SCMR 1752**, and **Ali Azhar Khan Baloch V. Province of Sindh 2015 456 and Civil MISC Application No.1500 of 2015**, we hold that Respondent No.3 Saadat Ali Yasin in C.P.D-369 of 2021 and Respondent No.3 Jam Zafarullah Dharejo in C.P-628 of 2021 were deputed in ACE in violation of the criteria set forth by the Hon'ble Supreme Court of

Pakistan in the cases cited supra Rules and Law. Consequently, these petitions are allowed and the impugned notification No. SOIII (S&GDA) POL-48/2018 dated 13.01.2021 and impugned Notifications No. SOIII (S&GDA) POL_7-34/2018 dated 06th April 2020 issued by the Respondent-1 Department are set aside forthwith.

J U D G E

J U D G E