

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No. D-1357 of 2022
Constitution Petition No. D-1275 of 2022
Constitution Petition No. D-1356 of 2022
Constitution Petition No. D-1612 of 2022

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Petitioners (in C.P No.D-1612/2022)	Ghulam Shabbir & others Through Mr. Abdul Sattar Pirzada, Advocate along with Mr. Inzimam Sharif, Advocate.
Petitioners (in C.P No.D-1357/2022)	Altaf Hussain Khuhro & others Through Syeda Abida Bukhari, Advocate.
Petitioners (in C.P No.D-1275/2022)	Noor Hassan & others Through Syeda Abida Bukhari, Advocate.
Petitioners (in C.P No.D-1356/2022)	Zulfiqar Ali & another Through M/s Chaudhry Khalid, Rana Azamul Hasan Azeem, & Hasan Azeem Rana Advocates.
Respondent No. 1:	Federation of Pakistan Through Mr. S. Yasir Ahmed Shah, Assistant Attorney General.
Respondents/FBR:	Mr. Zafar Imam, Advocate Mr. Sadiqullah Kakar, Advocate holding brief for Mr. Imran Ali Mithani, Advocate for respondent.
Date of hearing:	23.11.2022.
Date of Order:	23.11.2022.

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Petitions, the Petitioners have primarily impugned Letter dated 25.02.2022 as well as Paragraph-3¹ of Notification dated 28.10.2015 pursuant to which it has been clarified by FBR that officers of Audit Cadre in Inland Revenue Department (petitioners herein) shall not be posted as Unit In-charge in field formations and shall not be assigned assessment related functions and duties.

¹ 3. It has further been clarified that the officer of this Cadre shall not be posted as Unit In charge in the field formations i.e. they shall not be assigned assessment related duties and functions.

2. Mr. Abdul Sattar Pirzada, learned Counsel appearing in one of the Petitions has contended² that the impugned Letter dated 25.02.2022 issued in continuation of Notification dated 28.10.2015 is without lawful authority and jurisdiction inasmuch it is in violation of Section 30 of the Sales Tax Act, 1990, Section 207 of the Income Tax Ordinance, 2001 and Section 29 of the Federal Excise Act, 2005. He has further argued that insofar as Notification dated 28.10.2015 is concerned, the Petitioners are only aggrieved to the extent of para-3 thereof, wherein, it is stated that the officers of Audit department shall not be posted as Unit In charge in fields formations, whereas, they shall not be assigned assessment related duties and functions, which according to him is discriminatory and Petitioners being Assistant Directors in the Audit department are also officers of Inland Revenue; hence, entitled and eligible to exercise all such powers as are otherwise conferred upon other officers of Inland Revenue Department. He further submits that in the Minutes of the Meeting dated 11.09.2015, there was no agenda item to this effect; hence the Notification dated 28.10.2015 to this extent is ultra vires and without lawful authority. He has also argued that FBR has no role in interpretation of any provision of the Act, and therefore, the impugned Letter as well as Para-3 of the Notification are liable to be set-aside. As to maintainability of these petitions learned Counsel has argued that since vires of law have been challenged, therefore, petitions are competent and the bar contained in Article 212 of the Constitution is not applicable. In support he has relied upon the cases reported as ***Umar Baz Khan through L.Rs. Vs. Syed Jehanzeb & Others (PLD 2013 SC 268)***, ***Ali Raza and 2 others Vs. Government of Pakistan through secretary Ministry of Kashmir Affairs and 4 others (2018 PLC (C.S.) 574)***, ***Messrs Hudabiya Paper Mills Ltd. Vs. National Accountability Bureau (PLD 2012 Lahore 515)***, ***Civil Aviation Authority, Islamabad & Others Vs. Union of Civil Aviation Employees & Another (PLD 1997 SC 781)***, ***Bahadur Khan & Others Vs. Federation of Pakistan through Secretary M/O Finance, Islamabad & Others (2017 SCMR 2066)***, ***Pakistan Tobacco Company Ltd. & Another Vs. Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad & 3 Others (1999 SCMR 382)***, ***Moazam Mian & 3 Others Vs. Secretary, Environmental Protection Department, Punjab, Civil Secretariat, Lahore and 2 Others (2005 PLC (CS) 303)***, ***Abdul Hameed Anjum & Others Vs. Federation of Pakistan & Others (PLD 2010 SC 857)***, ***Government of Baluchistan through Additional Chief Secretary Vs. Azizullah Memon & 16 Others (PLD***

² Duly adopted by all other learned Counsel.

1993 SC 341), *The Central Board of Revenue, Islamabad & Others Vs. Sheikh Spinning Mills Limited, Lahore & Others (1999 SCMR 1442)* and *The Commissioner Inland Revenue Zone-III, RTO-II, Lahore Vs. Messrs Hamza Nasir Wire & Others (2020 SCMR 1822)*.

3. On the other hand learned Counsel appearing for the Federal Board of Revenue submits that the impugned Letter as well as Notification are purely administrative in nature, whereas, they relate to the terms and conditions of service of the Petitioners; hence the Petitions are incompetent. He has further argued that FBR has the responsibility to oversee the administrative affairs; whereas, the impugned decision has been taken with consultation of Federation Public Service Commission, therefore, no case is made out. Learned Assistant Attorney General has adopted the arguments of learned Counsel for FBR.

4. We have heard learned Counsel for the Petitioners as well as Respondents and learned Assistant Attorney General and have also perused the record. At the very outset, we may observe that though learned Counsel for the Petitioners has contended that these Petitions are competent as vires of law have been challenged, and bar contained in Article 212 *ibid* is not applicable; however, on perusal of the record it appears that it is not so. The primary grievance of the Petitioners is in fact relates to their transfer and postings, pursuant to the impugned letter; however, before the impugned letter dated 25.02.2022 could be implemented in its letter and spirit, when the Petitioners posting in light thereof was in the offing, under the garb of a challenge to Notification dated 28.10.2015, instant petition has been filed and a restraining order is in operation since 15.3.2022. It further appears that while seeking the ad-interim order reliance has been placed on the case of *Commissioner Inland Revenue (Supra)*; however, the dicta laid down in the said case is of no help to the cause of the petitioners. In that case the Hon'ble Supreme Court was dealing a matter regarding jurisdiction of officers of Inland Revenue to issue a show cause notice under the Sales Tax Act, 1990. This has got nothing to do with the case of the Petitioners who are in fact seeking an order that they shall not be removed from their current posts in field formations and assessment related assignments. This on the face of it, is a matter of posting of the Petitioners and falls within the terms and conditions of a Civil Servant and the bar contained in Article 212 of the Constitution is fully applicable, and a petition in this regard is

incompetent³. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants⁴. In view of such position, petitions on the face of it do not appear to be maintainable, whereas, remedy, if at all, was by way of approaching the Service Tribunal.

5. Nonetheless, even otherwise on merits, the impugned letter is merely reiterating what has been stated in Notification dated 28.10.2015, wherein, the decision taken in the meeting of FBR's Board-in-Council held on 11.09.2015 was implemented, whereby, the Nomenclature(s) of the employees of Audit Department were revised and now they have been called as "Director, "Additional Director", "Deputy Director" and "Assistant Director" (Audit) instead of "Manager", "Additional Manager", "Deputy Manager" and "Assistant Manager" (Audit). To that extent, the Petitioners are not aggrieved as this part of the Notification is in fact in their favour. However, their grievance is in respect of Para-3 of the said Notification, which reads as under:

"3. It has further been clarified that the officer of this Cadre shall not be posted as Unit In charge in the field formations i.e. they shall not be assigned assessment related duties and functions."

6. The main argument of the Petitioners' Counsel was that this was never an agenda item for the said meeting nor any decision was taken in the meeting of the FBR's Board-in-Council and in support reliance has been placed on the Minutes of the Meeting in respect of Agenda Item No.3. However, we may state that for this no meeting of FBR's Board-in-Council was required as the meeting was in respect of change of Nomenclature of Petitioners and others, whereby, now they were to be called as *Directors* instead of *Managers*, whereas, the decision as above, was purely an administrative issue and for that no such authority or approval was required from the FBR's Board-in-Council; hence, the argument to this effect is misconceived and is hereby repelled.

³ Nazir Hussain v NWFP (1992 SCMR 1843)-Miss Rukhsana Ijaz v Secretary Education Punjab (1997 SCMR 167)

⁴ Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) at Para 150.

7. Even otherwise, the Petitioners are admittedly Civil Servants and perusal of Section 10⁵ of the Civil Servants Act, 1973, reflects that every Civil Servant shall be liable to serve anywhere within or outside the Province to any post under Government, Federal Government, or any Provincial Government or local authority, as the case may be. There isn't any concept of a vested right in posting of a Civil Servant who can be posted anywhere and cannot demand or seek posting or transfer at a place of his choice. It is not their right to seek a specific posting or assignment of assessment or field formation as contended. They could also be posted as Officers on Special Duty without any assignment, and this merely, without any other plausible cause, does not by itself give a cause of action to seek enforcement of any constitutional right. Being civil servants they are bound to obey the order of FBR and postings so assigned for which while entering into service they had agreed; hence seeking a person specific relief for some special posting or assignment is not *per-se* a right, which could be enforced through this Court. They will still remain Officers of Inland Revenue, even if they are not assigned any field formation or assessment related duties. In fact, they claim to be auditors; and therefore, it would be better if they remain as auditors, instead of any seeking an assessment related assignments.

8. In view of hereinabove facts and circumstances of this case, in our considered view, the petitions are incompetent, whereas, even otherwise no case for indulgence is made out; hence, by means of a short order passed in the earlier part of the day we had dismissed all these petitions and these are the reasons thereof. Office shall place copy of this order in all connected petitions.

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⁵ "10. Posting and transfers. ---Every Civil Servant shall be liable to serve anywhere within or outside the Province to any post under Government, Federal Government, or any Provincial Government or local authority, or corporation or body set up or established by any such Government.

Provided that nothing contained in this section shall apply to a Civil Servant recruited specifically to serve in a particular area or region:

Provided further, that, where a Civil Servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."