

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-335 of 2023

Dr. Muhammad Masood

Petitioner: Through Mr. Ali Asadullah Bullo, advocate

Respondents No.1 & 2: Through Mr. Abdul Jalil Zubedi, AAG

Date of hearing

& Decision: 27.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through the captioned petition, the petitioner has called in question the vires of the notification dated 6.1.2023 whereby he has been transferred from Jinnah Post Medical Centre Karachi and posted to District Hospital Jacobabad, inter-alia on the ground that the aforesaid decision of the Secretary Health Government of Sindh is illegal based on malafide intention, more particularly against the wedlock policy introduced by the Sindh Government to facilitate the posting of husbands and wives at the same station.

2. Mr. Ali Asadullah Bullo learned counsel for the petitioner argued that the petitioner is performing his duty as a Medical officer in Jinnah Post Medical Centre Karachi (JPMC) (BS-17). He joined the Government Service in the year 2017 after passing a competitive examination through Sindh Public Service Commission. It was further contended that the wife of the petitioner is also a Government servant and Medical Officer, at the Health Department, Government of Sindh, and his entire family is living in Karachi. Petitioner narrated his ordeal and submitted that on 6.1.2023 all of a sudden the petitioner came to know that he was transferred and posted at District Hospital Jacobabad, though he was undergoing specialization training at JPMC. Learned counsel further argued that the posting order was issued totally in disregard of section 10 of the Sindh Civil Servants Act, 1973 and rules framed thereunder, and the wedlock policy of the Government of Sind. As per learned counsel, the transfer order was issued with

mala fide intention only to victimize the petitioner and to disturb his peace of mind and the entire family; the transfer of the petitioner from JPMC to District Hospital Jacobabad is neither in the public interest nor for any valid reason; that under Section 24-A of the General Clauses Act, the respondents were bound to communicate to the petitioner the reasons for deviation from the wedlock policy of Government of Sindh, hence the petitioner could not approach the Sindh Services Tribunal (SST) for seeking appropriate relief, hence he has rightly approached to this court under Article 199 of the Constitution. He further argued that under the normal course, three months' notice ought to be given to the Civil servant before transferring from one station to another so that he could be able to plan his affairs. He emphasized that once the competent authority issued a wedlock policy, it is their responsibility to implement and adhere to such policy guidelines so that the benefit could be given to such civil servants who are covered under the wedlock policy. He added that its implementation cannot be left at the whims and volition of the competent authority to bestow this benefit or advantage on pick and choose basis, while the such type of guidelines or policy should be implemented across the board without any discrimination. Learned counsel quoted that many persons in the health department were given the benefit of the wedlock policy, which has not been denied and in the case of the petitioner, his spouse has been forced to be transferred to Jacobabad Hospital in utter violation of the principle of natural justice. He prayed for setting aside the impugned notification to the extent of the petitioner.

3. At this juncture, we reminded the learned counsel that a civil servant cannot claim any particular post at a particular station as a vested right and he could be transferred under section 10 of the Sindh Civil Servants Act, 1973, even otherwise the transfer and posting are terms and conditions of service. Learned counsel replied to the query and submitted that the petitioner is not claiming any vested right against any particular post at a particular station but he only wants the implementation of a wedlock policy in his case which was introduced keeping in view the socio-economic problems and hardships faced by husbands and wives in Government Service due to posting at different locations. He asserted that this facility was extended through policy decisions to such class of Government servants also, to be able to serve at the place of residence of their spouses, irrespective of whether such spouses are employed with the

Government, private sector, or even unemployed. He lastly submitted that Article 35 of the Constitution of Pakistan which as the principle of policy it is provided that the State shall protect the marriage, the family, the mother, and the child and according to the wedlock policy elucidated or roaming around this principle of policy which is intended to ensure the benefit of a family and it also advances social good. He however, agreed to the principle that unless there are insurmountable hurdles, which are not in the present case, requests of the husband and the wife to be posted at one station are required to be considered by the competent authority with an element of compassion and kindness.

4. Learned AAG argued that the question of transfer and posting is one of the terms and conditions of the service which is amenable to the jurisdiction of the Sindh Service Tribunal and the constitutional jurisdiction of this court is barred under Article 212 of the Constitution. He further argued that a civil servant cannot claim for appointment or posting to any particular post as a matter of right. He further argued that under the Sindh Civil Servant Act, 1973 the right of appeal and representation is provided against any such transfer order but without exhausting the remedy, the petitioner could not approach this court directly. Learned AAG referred to the comments filed by the department and argued that to invoke the constitutional jurisdiction of this court, the petitioner was supposed to wait for 90 days which is provided under the law for the decision on his appeal or representation, if any, by the competent authority. Learned AAG contended that the policy decision based on the wedlock policy is a non-statutory instruction that cannot be enforced through constitutional jurisdiction. He added that to maintain a constitutional petition it is a mandatory requirement that the petitioner should show the existence of a legal right that has been violated, which the petitioner has failed to point out. Per learned AAG the petitioner has no vested or legal right to claim a particular posting at a particular station under section 10 of the Sindh Civil Servants Act, 1973.

5. In so far as the jurisdiction of this Court under Article 199 of the Constitution is concerned it is open-ended but subject to certain limitations prescribed therein, one of which is regarding the availability of other adequate remedies to the aggrieved party. There is no cavil to the legal factum that there is a bar of jurisdiction of Article 212(2) of the Constitution in the cases of transfer and

posting of Civil Servants. It is now established that any lis relating to terms and conditions of service is within the domain of administrative courts and tribunals established under Article 212 and even if the element of malafides, ultra vires, or Coram non-judice is pressed into, the same can be entertained and decided by the said courts in its jurisdiction. Hence, in all eventualities, any petition relating to terms and conditions of service is to be dealt with by administrative Courts and Tribunals specifically established for its adjudication in pursuance of Article 212 of the Constitution.

6. The question arises as to whether the transfer of the Petitioner is effected in the public interest or not, which is normally not examined as this would essentially require factual adjudication and invariably depends upon the peculiar facts and circumstances of each case. No government servant or employee has any legal right to be posted at one particular place or to a place of his choice. An order of transfer is not the only condition of service but it is up to the authority to decide who should be transferred and where. This Court is not an appellate/proper forum to decide the fate of the transfer of a government employee on administrative grounds. Wheels of administration should be allowed to run smoothly and courts are not supposed to interdict the working of the administrative system by transferring officers to place it considering properly. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated either by malice or by extraneous reasons. No malice is pointed out. Order of transfer of a government servant should not be interfered with lightly by the Court of law in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Learned counsel for the Petitioner has failed to show any malice on the part of the respondents/department in respect of the transfer of the Petitioner.

7. Under the service jurisprudence, the service matters are essentially between the employer and the employee and it would be for the competent authority to decide as per the Service Rules and there is no question of any public interest involved in such matters as portrayed by the petitioners. We may hold that Section 10 of the Sindh Civil Servants Act 1973, provides transfer and posting of civil servants to different locations across the Province and the competent authority can withdraw any such officer or order his transfer posting before the expiry of their tenure limitation, on administrative grounds/ valid reasons. However, that is subject to one exception of wedlock policy

which is a policy decision and that aspect of the case needs to be looked into by the competent authority within a reasonable time its enforcement is the duty of the policymakers and at this juncture, this court will not intervene until and unless it is shown that the respondents have acted with malice as in the present case the petitioner has been posted at his home town to serve the people of Jacobabad and that is general transfer and posting order not the particular petitioner. On the aforesaid proposition, we are guided by the decision of the Honorable Supreme Court in the case of Muhammad Sajjad v. Federation of Pakistan and others **2021 SCMR 1064**

8. In view of what has been discussed above instant petition being devoid of merits is hereby dismissed along with the listed application(s). However, the Petitioner would be at liberty to make proper representation before the concerned department/forum about his transfer and posting because of Wedlock Policy, if he so desires, under the law and on filing such representation, the appropriate authority may consider and decide the same having regard to exigency administration.

JUDGE

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