

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 5042 of 2021 : Muhammad Ali Panhwar vs. Controller
General of Accounts & Another

For the Petitioner : Mr. Malik Naeem Iqbal, Advocate
Mr. Muhammad Saleem Khaskheli, Advocate

For the Respondents : Mr. Syed Yasir Ahmed Shah
Assistant Attorney General

Mr. Ali Safdar Depar
Assistant Advocate General

Mr. Shahid Hussain, Accounts Officer

Date/s of hearing : 20.09.2022

Date of announcement : 20.09.2022

ORDER

Agha Faisal, J. Briefly stated, the petitioner was employed by the Controller of General Accounts (“CGA”) in October 2008 and upon his request, in March 2009, transferred to office of the Accountant General Sindh (“AG Sindh”). Vide order dated 07.03.2017 (“AG Order”), the services of all transferred officers, including the petitioner, with AG Sindh were relieved and repatriated to their parent departments. The petitioner has never expressed any grievance with regard to the AG Order, however, has filed the present petition assailing letters of the CGA dated 11.08.2021, issued to AG Sindh in response to some earlier correspondence, wherein *inter alia* the repatriation of the petitioner has been recognized, and letter of the AG Sindh to the petitioner dated 12.08.2021, pursuant to the letter referred to supra, wherein the petitioner was asked to report to the parent department (“Impugned Letters”).

2. At the very onset the petitioner’s counsel was confronted with regards to maintainability; *inter alia*, as to how could letters referring to the repatriation be made the cause of action when the AG Order was neither assailed in the past nor even in this petition. It was also queried as to how a civil servant could maintain this petition, pertaining directly to the terms and conditions of his service, in view of Article 212 of the Constitution.

3. Per petitioner's counsel, the AG Order could not be assailed on the premise that the petitioner was incarcerated in connection with NAB offence/s at the time when the instrument was issued. In response to the second query, it was submitted that the case of the petitioner is of allocation / re-allocation, hence, amenable to writ jurisdiction per 2017 SCMR 798.

4. The learned law officers submitted that the grievance of the petitioner, if any, was *prima facie* barred by *laches*. It was argued that the repatriation was mandatory per judgment of the august Supreme Court reported as 2013 SCMR 1752, notwithstanding any measure of tenure. It was further submitted that there was no reference to allocation / re-allocation of service in the facts and law under scrutiny and that such recourse has merely been feigned to deflect the bar contained in Article 212 of the Constitution.

5. Heard and perused.

6. Admittedly, the services of the petitioner were engaged, post a competitive process, for the CGA¹. In response to a private request dated 19.02.2009², the services of the petitioner were *permanently transferred / absorbed* to the AG Sindh. Petitioner's counsel was queried as to how a recently employed person could avail such a benefit and his reliance was on section 6 of the Controller General of Accounts (Appointment, Functions and Powers) Ordinance 2001 ("Ordinance"). The cited law provisions for transfer and posting of officers within the organization, however, the learned counsel was unable to demonstrate as to whether the said section / permitted irrevocable *permanent transfer / absorption*. However, since the ambit hereof has been kept circumscribed to maintainability, therefore, any observation / finding on merits is eschewed presently.

7. It is patent that the repatriation of the petitioner was undertaken vide the AG Order. The said instrument has never been assailed by the petitioner at any time in the past or even now. The plea of incarceration in NAB offence/s, when the instrument was issued, does not merit any favor to the petitioner as it did not bar the petitioner from assailing the AG Order during incarceration or even thereafter. A perusal of the prayer clause demonstrates that no challenge has been made by the petitioner to the AG Order even in this petition. While omitting a challenge to the AG Order altogether, no case appears to be made out to challenge the repatriation, undertaken vide the AG Order, by assailing mere

¹ As denoted vide the Note dated 18.10.2008, available at page 25.

² Available at page 37.

post facto correspondence. In such regard it is observed that that the petition appears to be *prima facie* hit by *laches*.

8. There is the issue of Article 212 that also must be considered. It is apparent that the verbiage employed in all the instruments / documents placed before us refer to the transfer / absorption of the petitioner. The law relied upon, i.e. section 6 of the Ordinance, also refers to transfers and posting. Suffice to observe that there is no reference to allocation / re-allocation of the petitioner in the entire law / record placed in our surveillance. In view hereof, it is observed that no case for displacement of the Constitutional bar could be set forth before us in order to merit indulgence in writ jurisdiction.

9. Therefore, we are constrained to observe that this petition is misconceived, hence, was dismissed, along with pending application/s, vide our short order announced in open Court earlier today. These are the reasons for the short order.

JUDGE

JUDGE