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ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Const. Petition No.D-6181 of 2023

<i>Date</i>	<i>Order with signature of Judge</i>
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Fresh Case

1. For orders on Misc. No.28885/2023 (U/A)
2. For orders on office objection No.04.
3. For orders on Misc. No.28886/2023 (Exemp. App.)
4. For hearing of main case.

21.12.2023:

Mr. Inayat Ali Mirza, advocate for the petitioner.

1. Granted.
2. Granted subject to all just exceptions.
- 2-4. Through instant petition, the petitioner has impugned Notification No.SO(G)/CTA&AD/1-79/2020 dated 14.12.2023 issued by the Secretary to Govt. of Sindh, Culture, Tourism Antiquities & Archives Department, whereby, according to learned counsel for the petitioner, the petitioner, who is presently posted as Assistant Director Planning (BPS-17), Directorate General (Antiquities & Archeology) Sindh, Culture, Tourism, Antiquities & Archives Department, Govt. of Sindh, Karachi, has been transferred and posted as Incharge, Miskeen Jahan Khan Khoso Museum at Nagarparker, on detailment basis, with immediate effect, until further orders, which according to learned counsel for the petitioner, has been issued in violation of law and in retaliation as petitioner has filed Constitutional Petition No.D-5833/2023 against official respondents, which has otherwise been dismissed. Per learned counsel, the impugned Notification, otherwise is illegal as the same has been issued in violation of Notification dated 15.12.2023 issued by the Election Commission of Pakistan, whereby, there is ban on any kind of transfer/posting without prior approval of Election Commission of Pakistan.

From perusal of the Notification issued by the Election Commission of Pakistan, as well as in view of the provision of Section 5 read with Section 230 of the Election Act, 2017, it appears that

transfer/posting without prior approval of the Election Commission of Pakistan has been restricted, however, once the election schedule is announced. It further appears that such transfer/posting of the officers, who are relatable to the process of elections or election duties requires approval/prior permission by the Election Commission of Pakistan, whereas, in case of routine posting/transfer by the Competent Authority, there seems no ban in the aforesaid law or the Notification as referred to hereinabove. We are of the opinion that transfer of the petitioner does not fall in such category, which may require prior approval/permission by the Election Commission of Pakistan or may have any effect of Notification. It further appears that the petitioner being a civil servant cannot object to transfer/posting unless the same is contrary to law, whereas, in case of any grievance, can avail the remedy before the departmental forum as may be available in accordance with law. In view of hereinabove facts and circumstance, we are not inclined to entertain instant petition, as it will open a flood gate in the cases of transfer/posting of civil servants.

While confronted with hereinabove position, learned counsel for the petitioner does not press instant petition, however, submits that petitioner will seek the remedy as may be available in accordance with law, however, requests that respondents may be directed to consider the request of the petitioner in accordance with law.

Petition stands disposed of in the above terms along with listed application.

CHIEF JUSTICE

JUDGE