

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

*Mr. Justice Aqeel Ahmed Abbasi, CJ*  
*Mr. Justice Abdul Mobeen Lakho, J*

**C.P.No.D-6212 of 2023**

*Ali Hyder & another.....v.....Province of Sindh & others*

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Date	Order with Signature of Judge
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**Fresh Case**

1. For orders on Misc.No.29055/2023
2. For orders on office objection.
3. For orders on Misc. No.29056/2023
4. For orders on Misc.No.29057/2023
5. For hearing of main case.

**22.12.2023:**

Mr. Muhammad Khan Lakho, Advocate for the Petitioners.  
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1. Urgency granted.

2 to 5. Through instant Constitution Petition, the petitioners have impugned Notification No.SO(SP)AS&PD/2001/2023/212 dated 15.12.2023 issued by the Secretary to Government of Sindh, Agriculture Supply & Prices Department, whereby, according to learned counsel for the petitioners, the petitioners, who are presently posted as Assistant Director (Establishment) and Assistant Director (Legal), Directorate General Bureau of Supply & Prices, Karachi have been transferred and directed to report in the office of Secretary, Agriculture Supply & Prices Department, Karachi with immediate effect and till further orders. Per learned counsel for the petitioners, the impugned Notification has been issued in violation of Notifications dated 15.08.2023 and dated 15.12.2023, issued by the Election Commission of Pakistan, whereby, there is a complete ban on any kind of transfer/posting without prior approval of Election Commission of Pakistan.

2. From perusal of the Notifications issued by the Election Commission of Pakistan as well as provision of Section 5 read with

Section 230 of the Election Act, 2017, it appears that transfer/posting cannot be made without prior approval of the Election Commission of Pakistan, however, once the election schedule is announced. It further provides that in case of any transfer or posting prior approval from the Election Commission of Pakistan is required. However, the impugned Notification does not refer to any approval or reference to Election Commission may be for the reasons that petitioners appear to have been transferred/posted by the competent authority in the normal course as a matter of routine, which does not require any approval or reasons for such transfer. It further appears that such transfer/posting of the officers, who are relatable to the process of elections i.e. officers of District Administration or Police, requires approval/prior permission by the Election Commission of Pakistan to ensure transparency in the elections process, whereas, in the case of posting/transfer of petitioners, who are civil servants / officers in Bureau of Supply & Prices (BPS-17), there seems no ban or requirement of seeking any prior approval/permission from Election Commission of Pakistan under the aforesaid law. We are of the view that transfer of the petitioners do not fall in such category, nor covered by the Notifications of Election Commission, as referred to hereinabove. As regard to the contention of the learned counsel for the petitioner that transfer/posting of the petitioners on different cadre post(s), otherwise is illegal, we are not inclined to examine this aspect of the matter for the reasons that the petitioners being civil servants can avail the remedy provided under the law before the departmental forum in accordance with law as prima facie, transfer/posting relates to terms and conditions of service, whereas, the same cannot otherwise be challenged, except in exceptional cases. We are, therefore, not inclined to entertain instant petition, as it does not disclose any malafide or the exceptional circumstances, moreover, it will open a flood gate in all the cases of transfer/posting of civil servants, whereas, it is well settled that a civil servant cannot claim posting or transfer to particular post or place as

matter of right in view of Section 7 of Sindh Civil Servants Act, 1973 as well as in Subsection (4) of Section 5 of the Elections Act, 2017, which reads as follows: -

*“(4) After the Election Programme has been issued and till the publication of the names of the returned candidates in the official Gazette, any Government or authority shall not post or transfer any official appointed or deputed in connection with an election without prior approval in writing of the Commission, including posting or transfer the decision in respect whereof has not been implemented, and the Commission may itself issue necessary directions to any such Government or authority for the posting or transfer of any official.”*

3. While confronted with hereinabove position, learned counsel for the petitioners could not submit any response, and does not press instant petition, however, submits that petitioners will seek remedy the while approaching the relevant forum available in accordance with law. It has however, been prayed that respondents may be directed to consider the request of the petitioners in accordance with law. Order accordingly.

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

**CHIEF JUSTICE**

**JUDGE**

Farhan/PS  
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