

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**High Court Appeal No.265 of 2024**

**Present:**

Yousuf Ali Sayeed &  
Arbab Ali Hakro, JJ

Muhammad Nasser Janjua & others.....Appellants

Versus

Federation of Pakistan & another.....Respondents

Mr. Khalid Javed Khan, Advocate for the Appellants.

Mr. Zia-ul-Haq Makhdoom, Additional Attorney General for Pakistan.

Mr. Altaf Hussain, Advocate for the Respondent No.2.

Date of Hearing : 21.08.2024 and 22.08.2024

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Appellants are admittedly Civil Servants serving with the Federal Board of Revenue (the “**FBR**”) as officers in BPS-20, who had instituted Suit No.[-]1049/2024 [Muhammad Naseer Janjua & others vs. Federation of Pakistan & another] against the present Respondents assailing two Notifications bearing No.1653-IR-I/2024 and No.1654-C-I/2024 both dated 03.07.2024 (the “**Impugned Notifications**”) whereby they were transferred from their posts to Chief (Admin Pool), Federal Board of Revenue (HQ), Islamabad (the “**Admin Pool**”).

2. This Appeal has been preferred against the Order made by a learned Single Judge in the Suit on 08.08.2024, rejecting the Plaint on the touchstone of Article 212 of the Constitution and the law laid down by the Supreme Court of Pakistan in the case reported in 2015 SCMR 456 Ali Azhar Khan Balouch vs. Province of Sindh & others.

3. The operative part of the impugned Order, reflecting the reasons that prevailed of the leaned Single Judge, reads as follows:-

*“Contents of the plaint*

11. There is absolutely no cavil to the fact that the plaintiffs are civil servants. The Impugned Notifications clearly explicate that merely a transfer is contemplated therein, governed *inter alia* per section 10 of the Civil Servants Act 1973. Paragraph 9 of the memorandum of plaint unequivocally expresses that the Impugned Notifications pertain to transfer, however, such transfers may be considered to be akin to being made OSD.

12. At the very onset, it is imperative to record that there is no mention of OSD in the Impugned Notifications and nothing has been articulated before this Court to give the notifications any other meaning than that apparent from the plain verbiage thereof. It may also be a notable mention that the prayer clause is devoid of any constituent seeking a declaration that the impugned transfers be declared as being equivalent to having been rendered as OSD.

*Service Tribunals Act 1974*

13. Section 4 of the Services Tribunals Act 1974 mandates that any civil servant aggrieved by an order made by a departmental authority in respect of any of the terms and conditions of his service, may appeal to the tribunal. Mr. Malik Altaf Hussain has categorically stated that the Impugned Notifications fall squarely within the remit thereof.

14. The proviso contained in section 4(1)(b) *prima facie* pertains to decisions of a departmental authority determining fitness of a person to be appointed to or hold a particular post or to be promoted to a higher grade. Respectfully, no such determination is discernible from the Impugned Notifications, hence, reliance upon the proviso by the plaintiffs appears to be misconceived.

*Conclusion*

15. In view of the foregoing, it is the deliberated view of this Court that the present grievance of the plaintiffs could not be adjudicated in a civil suit; in view of the bar contained in Article 212 of the Constitution, as interpreted by the Supreme Court from time to time; including in *Ali Azhar Baloch*. It may suffice to conclude the requirements to be borne in mind for rejection of a plaint have been satisfied. Therefore, the plaint is hereby rejected per Order VII rule 11(d) CPC.”

4. Proceeding with his submissions, learned counsel for the Appellants conceded that the Appellants were Civil Servants and the matter of their transfer and posting was one that fell within the domain of the Federal Service Tribunal (the "**Tribunal**"). However, he argued that the impugned Notifications could not simply be categorised as those dealing with transfers and postings, but instead amounted to a subjective order/decision by the FBR relating to the fitness of the Appellants to hold certain posts within the contemplation of the proviso to Section 4(1)(b) of the Service Tribunals Act, 1973 (the "**Act**"), which ousts the jurisdiction of the Tribunal to entertain an appeal against an order or decision of the departmental authority determining the fitness/non fitness of a civil servant to hold a particular post.
5. It was contended that though the subject of the impugned Notifications was captioned/titled as being that of transfer/posting, in actuality, by placing the Appellants in the Admin Pool, the departmental authority had determined that they were no longer fit to hold the particular posts which they were holding, and were not fit to be appointed to any other regular post, hence the jurisdiction of the Tribunal was ousted and the Suit was competent before this Court on the Original Side. In an endeavour to bolster that argument, a comparison was drawn between Impugned Notifications and certain other Notifications acknowledged by the Appellants as genuinely relating to the subject of transfer/positing, with the distinction between them being that the officer named was being transferred from one specific post to another rather than being placed in the Admin Pool. Reliance was placed on the judgments of the Supreme Court in the cases reported as Miss Zubaida Khatoon vs. Mrs. Tehmina Sajid Sheikh & others 2011 SCMR 265, Bashir Ahmed Badini & others vs. Hon'ble Chairman and

Member of Administration Committee and Promotion Committee of Hon'ble High Court of Balouchistan & others 2022 SCMR 448, and Abdul Sattar Jatoy vs. Chief Minister Sindh through Principal Secretary, Chief Minister Secretariat & others 2022 SCMR 550, as well as a judgment of a learned Division Bench this Court in the case Dr. Moula Bux & others vs. Government of Sindh & others 2000 PLC (C.S) 905, and that of the Lahore High Court in the matter of Syed Ajmal Hussain Bokhari vs. Commissioner, Rawalpindi 1997 PLC (C.S) 754.

6. Conversely, the learned Additional Attorney General and learned counsel appearing on behalf of the FBR refuted the contention that the Impugned Notifications related to anything but the transfer/posting of the Appellants, and argued that their placement for the time being in the Admin Pool did not place any clog on the salary and other emoluments to which they were entitled as an incidence of their service and also did not preclude their specifically being assigned another post in due course.
7. Having considered the matter, we subscribe to the view taken the learned Single Judge that the Impugned Notifications simply relate to the transfer of the Appellants from their respective posts to the Admin Pool and are unpersuaded by the argument raised on behalf of the Appellants that they are tantamount to a subjective assessment of fitness, hence to fall within the contemplation of the proviso to Section 4(1)(b) of the Act. The judgments cited on behalf of the Appellants are distinguishable as they relate to promotion processes undertaken by Departmental Promotion Committees where a subjective assessment was made regarding the fitness of persons under consideration for promotion as part of that process, which is not the case in the matter at hand.

8. As such, in our opinion the learned Single Judge rightly determined that the Suit was barred under Article 212 of the Constitution with reference to the judgment of the Supreme Court in the case reported as Ali Azhar Khan Baloch v. Province of Sindh and others 2015 SCMR 456, where it was observed that under the Constitution of 1973, the jurisdiction of a High Court and of civil courts has been restricted in respect of the matters of Civil Servants relating to their terms and conditions of service.
9. In view of the foregoing, the Appeal is found to be devoid of force and stands dismissed accordingly.

JUDGE

JUDGE

MUBASHIR