

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon

C.P. No.D- 806 of 2020

Javed Baig.Petitioner

Versus

The Director General Military Lands
and Cantonment Department and others.Respondents.

Mr. Muhammad Arshad S. Pathan, advocate for the Petitioner.

Mr. Humayoon Khan, Deputy Attorney General for Pakistan.

Mr. Ishrat Ali Lohar, Advocate for Respondent No.4.

Date of hearing & order : 20.08.2020

ORDER

ABDUL MAALIK GADDI, J.- Through this constitutional petition, Petitioner Javed Baig has prayed for following relief(s):-

- a) To issue writ declaring that the Petitioner is entitled for the benefit of wedlock policy and directives issued by Establishment Division, Cabinet Secretariat to respondents and is entitled for the posting at the same station / Cantonment Board Hyderabad.
- b) To issue writ declaring that the act of the Respondents towards transfer of the Petitioner from Cantonment Board Hyderabad to Cantonment Board Bahawalpur is in violation of mandatory provisions of Service Rules and is in violation of Wedlock Policy, directives, circulars, notifications issued by Ministry of Defence and respondents as well and the transfer order bearing No.92/206/ADG(Est)/ML&C/ 2018 Government of Pakistan, Ministry of Defence (ML&C) Deptt) Rawalpindi dated 29.07.2020 and subsequent exparte relieving order of petitioner are illegal, unlawful and liable to be set aside.

- c) To restrain the Respondents from taking any coercive action against the Petitioner and from ex parte relieving the petitioner from Hyderabad and further restrain the respondents No.2, 3 & 4 from forcing, compelling the petitioner for relieving and restrain them from placing any restriction to his charge / posting as Assistant Revenue Superintendent in any manner whatsoever and further restrain the Respondents from taking any coercive action against the petitioner.
- d) Any other relief which this Honourable Court deems fit and proper.
- e) Cost of the petition."

2. The case and claim of the Petitioner is that he is permanently resident of Hyderabad and is serving in BPS-14 in Cantonment Board, Hyderabad and it being non-transferable post on one hand and on the other hand under wedlock policy, he is posted at Hyderabad whereas his wife Ms. Uzma being a Government servant in BPS-9 in Education Department, Sindh is also posted at Hyderabad; despite this, Respondent No.3 without assigning any valid reason and in violation of existing rules and regulations transferred the Petitioner from Cantonment Board Hyderabad to Cantonment Board Bahawalpur.

3. During the course of arguments, learned counsel for Petitioner also emphasized on the point that Petitioner's post is non-transferable and he cannot be transferred beyond the respective region of his appointment, hence the impugned transfer order is illegal and unsustainable. In order to substantiate his contention he referred to Rule 5 of Rules 1954 Annexure-I and Annexure-II thereto and relied upon the cases of **Mrs. Zeenat Ahmed V Federation of Pakistan through Secretary Defence and 2 others** (2014 PLC (C.S.) 1032), **Khawaja Ahmad Hassaan V Government of Punjab and others** (PLD 2004 Supreme Court 694), **Muhammad Zia-Ul-Haq V Secretary to Government of the Punjab, Livestock and Dairy Development Department, Lahore and 4 others** (2003 PLC (C.S.) 1322) and **Purdil Shah V The Director-General, Military Lands and Cantonments, Rawalpindi and 3 others** (2004 PLC (C.S.) 1598). He has also brought on record a statement stating therein that some of the employees holding same cadre and post in Cantonment Board Hyderabad are posted there for the last considerable period but they

have not been transferred and only the Petitioner has been transferred thus discrimination has been committed with the Petitioner.

4. On the other hand, learned Deputy Attorney General for Pakistan and learned counsel for Respondent No.4 have argued the case mainly on one and same line. They have disputed the claim of the Petitioner and contended that Director General, Military Lands & Cantonments Department in terms of powers conferred upon him under Rule 5(1) of Rules 1954 has all powers to transfer the Petitioner from one to another Cantonment Board. During the course of arguments, learned counsel for Respondents also relied upon the comments already submitted by them in this case and have further contended that the Petitioner on his transfer from Cantonment Board Hyderabad has already been relieved from his duty on 29.07.2020 to join his new assignment at Cantonment Board Bahawalpur. In support of their contention, they have placed on record copy of relieving order of the Petitioner duly signed by Record Keeper, Cantonment Board, Hyderabad. They further submit that the wife of the Petitioner though serving and posted at Hyderabad, however, the Petitioner is not only alone transferred from Hyderabad Cantt: but six other employees have also been transferred. Moreover, the Petitioner has not moved any application for involving any Wedlock Policy and in order to avoid to join his new assignment the Petitioner is showing lame excuses so that his case may come under Wedlock Policy. In support of their contentions, learned counsel for the Respondents relied upon an unreported judgment of this Court passed in C.P. No.D-5661/2014 alongwith other petitions dated 01.06.2017 in respect of almost same facts and circumstances which have been noted in this case, the Honourable Supreme Court of Pakistan in case of **Tariq Iqbal and others V DG Military Land and Cantonments Department Ministry of Defence and others** (2018 SCMR 335), dismissed the Petitions filed by the Petitioners of that case bearing Civil Petitions Nos.382-K to 385-K of 2017 and maintained the aforementioned judgment passed by this Court as well as its review was also dismissed in C.R.P Nos.1-K of 2018 and others vide order dated 07.06.2018.

5. We have heard the learned counsel parties' counsel at a considerable length and perused the entire record with their able assistance.

6. After hearing the learned parties' counsel question arises as to whether the transfer of the Petitioner is effected in public interest or not, 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 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 transfer of a government employee on administrative ground. Wheels of administration should be allowed to run smoothly and courts are not supposed to interdict the working of the administrative system by transferring officer to place it considering proper. It is for the administration to take appropriate decision and such decision 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 Court of law in exercise of its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Learned counsel for the Petitioner has failed to show any malice on the part of respondents / department in respect of transfer of the Petitioner. Besides, this Court in C.P. No.D-5661/2014 and others almost on identical facts and circumstances involved in this case has held that the appointing authority of one Cantonment Board can transfer any of its employee from one Cantonment Board to another and that judgment has also been maintained by the Honourable Supreme Court of Pakistan in case of **Tariq Iqbal** reported in 2018 SCMR 335. During the course of arguments, when this position was confronted to learned counsel for the Petitioner for reply he has no satisfactory answer with him. It has also been brought on record by learned counsel for the Respondents that Petitioner has already been relieved from his duties on 29.07.2020 for joining his new assignment though this aspect of the case has been disputed by learned counsel for the Petitioner but he has again no satisfactory reply with him.

7. In view of what has been discussed above as well as the law cited by learned counsel for the Respondents instant petition being devoid of merits is hereby dismissed alongwith listed application(s). However, the Petitioner

would be at liberty to make proper representation before the concerned department / forum with regard to his transfer and posting in view of Wedlock Policy, if he so desires, in accordance with law and on filing such representation, the appropriate authority may consider and decide the same having regard to exigency administration. It is also divulgence from the record that in past Petitioner has been continuously transferred from one Cantonment Board to another and he joined his new assignments as per those transfer orders without any objection but now he is raising objection on flimsy grounds.

8. The case law cited by learned counsel for the Petitioner has been perused and considered by us but did not find applicable to the facts and circumstances of present case; therefore, same is not helpful for Petitioner.

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