

Judgment Sheet
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

W.P. No.19036 of 2023

Badar Majeed Choudhary

Versus

Government of the Punjab, etc.

J U D G M E N T

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| Date of Hearing | 17.05.2024 |
| For the petitioner | Rana Asif Saeed, Mehr Irshad Ahmad Arain, Syed Khawar Shahzad and Ghulam Mustafa, Advocates |
| For the Province of Punjab | Mr. Arshad Pervaiz Qureshi, Assistant Advocate General with Riaz Ahmad, Senior Law Officer on behalf of Secretary Local Government & Community Development Department |

Raheel Kamran J:- Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (‘the Constitution’), the petitioner has impugned the notifications dated 06.12.2023 issued by the Secretary Local Government & Community Development Department, South Punjab whereby he has been transferred from the post of Municipal Officer (Infrastructure), Municipal Committee, Vehari and directed to report to LG&CD Department (South Punjab) and respondent No.7 namely Nazar Hussain Sub-Engineer has been assigned additional charge of the said post.

2. Learned counsel for the petitioner contends that the impugned transfer notification has been issued in disregard of

security of tenure provided in section 186 of the Punjab Local Government Act, 2022 ('the Act'). According to him, the petitioner who was posted as Municipal Officer (Infrastructure), Municipal Committee, Vehari vide notification dated 16.09.2022 has been transferred and directed to report to Local Government and Community Development Department, Punjab vide impugned notification dated 06.12.2023 without completion of two years period. He further contends that the impugned notification was passed during subsistence of ban imposed by the Election Commission of Pakistan through notification dated 15.08.2023.

3. Learned Law Officer contends that the notification dated 15.08.2023 issued by the Election Commission of Pakistan imposes restriction only upon posting and transfer of public official under the Federal and Provincial Governments and not the Local Governments, which difference is evident from clauses (c) and (d) of the notification, as the former does not mention the Local Governments whereas the latter does so. He further contends that although the Act has been notified on 16.11.2022 yet the local governments under the Act are to be constituted after conduct of general elections. He adds that under section 205(1) of the Act all offices of the defunct local governments constituted under the repealed Punjab Local Government Act, 2013 are presently providing public services without any interruption till new local governments are constituted under the Act. He further adds that a public servant has no fundamental right with regard to posting, transfer and promotion.

4. Arguments heard. Record perused.

5. Although a government servant has no vested right to remain posted at a place of his choice and he cannot insist that he must be transferred at any particular place yet if the transfer order is made in violation of any statutory provision, the Court can interfere with it. Admittedly, the petitioner was transferred at the present place of posting vide notification dated 16.09.2022 and he has been further

transferred from the said place vide impugned notification after about one year and two months. However, section 186 of the Act provides security of tenure to the Chief Officers and such other Officers of the local governments. The same is reproduced hereunder: -

“186. Security of tenure for the Chief Officer and other officers.- All Chief Officers and such other officers of the local governments that may be specified by the Secretary from time to time, shall ordinarily hold office for a period of not less than two years.”

After perusing the above provision of law, this Court has no hesitation in holding that ordinarily when a certain period of tenure has been provided to the officers by the legislature, it is the responsibility of the competent authority to abide by the same so that the benefit may be given to all such persons who are covered under the said law. Its execution cannot be left at the whims and wishes of the competent authority to grant this benefit or advantage on pick and choose basis. However, use of the word “ordinarily” in section 186 ibid saves power of the competent authority to deprive an incumbent of his security of tenure from holding office in extraordinary circumstances, for which purpose the order passed by the competent authority should manifest valid reasons. I have also gone through the impugned notification of transfer wherein no reason including any exigency or public interest is mentioned.

6. Although clause (c) of notification dated 15.08.2023 issued by the Election Commission of Pakistan only mentions the Federal and Provincial Governments and not the Local Government yet the impugned transfer notification has been issued by the Secretary Local Government & Community Development Department, Government of the Punjab (South Punjab), therefore, contention of the petitioner’s counsel that restriction imposed upon posting and transfer is not applicable to the officer of Local Governments, is misconceived.

7. Insofar as provision of section 205(1) of the Act declaring that all offices, agencies and authorities of the defunct local governments shall continue providing public services without any interruption till such time new local governments are established, referred by the learned Law Officer is concerned, sub-section (2) thereof provides that all officers and servants of the defunct local governments shall continue to discharge their respective duties and exercise their powers with the successor local governments under this Act, therefore, contention of the learned Law Officer is misconceived.

8. Since the petitioner is not claiming any vested right against any particular post but only wants implementation of security of tenure provided under section 186 of the Act and there is also a ban imposed by the Election Commission of Pakistan vide notification dated 15.08.2023, the impugned notification for transfer of the petitioner calls for interference by this Court. Accordingly, this petition is allowed and impugned notification for transfer of the petitioner dated 06.12.2023 and the subsequent notification dated 06.12.2023 are set aside. However, nothing in this order shall be taken to restrict or prevent the competent authority to transfer the petitioner after expiry of the requisite tenure or where extraordinary circumstances so warranted, in accordance with law.

(RAHEEL KAMRAN)
JUDGE