

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

W.P. No.19728 of 2023

Muhammad Shoaib Iqbal

Versus

Government of the Punjab, etc.

JUDGMENT

Date of Hearing	20.11.2024
For the petitioner	Mr. Zakriya Moon Gill, Advocate
For the Province of Punjab	Mr. Kanwar Sajid Ali, Assistant Advocate General

Raheel Kamran J:- The petitioner has invoked the constitutional jurisdiction of this Court to challenge the notification dated 06.12.2023 issued by the Secretary Local Government & Community Development Department, South Punjab whereby he has been transferred from the post of Sub Engineer, Municipal Committee, Vehari and posted as Sub-Engineer, District Council, Vehari.

2. Learned counsel for the petitioner contends that earlier on the basis of similar grievance a Writ Petition No.19036 of 2023 was filed by another Officer of the Local Government, which was allowed by this Court vide judgment dated 17.05.2024 and notification of his transfer impugned therein was set aside. He further contends that the petitioner's case is also on the same footing, therefore, it may be decided in terms of the aforementioned petition.

3. Learned Law Officer, while opposing this petition, contends that case of the petitioner is on different footing from the aforementioned petition already allowed by this Court, as petitioner in the said petition was Chief Officer whose tenure was secured under section 186 of the Punjab Local Government Act, 2022 ('Act') whereas the petitioner here is Sub-Engineer.

4. Heard. Record perused.

5. In order to have a better understanding, this Court deems it appropriate to reproduce the findings given in the aforementioned W.P.No.19036 of 2023, which are as under:-

"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."

6. The only difference emphasized by the learned Law Officer between this case and the aforementioned petition is that status of the petitioner is not equal to that of the Chief Officer. I am afraid the stance taken by the learned Law Officer is misconceived, as section 186 of the Act, quoted above, refers to all Chief Officers and such other officers of the Local Governments that may be specified by the Secretary from time to time. The petitioner was transferred and posted as Sub-Engineer, District Council, Vehari vide notification dated 06.12.2023 by the Secretary Local Government and Community Development Department, therefore, petitioner falls within the category of '*such other officers*' specified by the Secretary.

7. The documents annexed with this petition reflect that since 05.10.2022, within a span of fourteen months, the petitioner has been

transferred five times and transfer through the impugned notification has been made just after four months, which is against the ordinary tenure provided in section 186 of the Act.

8. The normal period of posting at a station provided by the law is to be followed in ordinary circumstances unless for reasons of exigencies of service¹. The transfers of civil servants should only be considered on the basis of convenience to the general public, betterment of the institution or in the interest of public good but unfortunately, this is being used for extraneous considerations. At times the officials are frequently transferred on the whims and caprices of politicians and others on the consideration of vested interests. However, they should ordinarily be allowed to hold the office as per their tenure provided in the law/policy to encourage operational freedom within the confines of rules and laws as the same would effectively deter outside influences from using transfers as a threatening weapon and will promote professionalism, efficiency and good governance. When the ordinary tenure for a posting is specified in the law or rules made thereunder, such tenure must be respected and should not be varied, except for compelling reasons, which should be recorded in writing². However, on the touchstone of the above principles, the competent authority can transfer an officer on administrative grounds but if the same is tainted with *mala fide* or any external influence or any other arbitrary reason or a reason contrary to the settled principles of transfer/posting, the same is *void ab initio*. Needless to observe that the right of an employee/officer against displacement or transfer is accepted only when the same is passed on extraneous consideration and it cannot be claimed as a matter of right.

9. For what has been discussed above, this petition is *allowed* and impugned notification dated 06.12.2023 for transfer of the

¹ *Muhammad Ilyas Khan v. Senior Member, Board of Revenue, N.W.F.P., Peshawar and others* (**2011 PLC (C.S.) 935**)

² *Syed Mahmood Akhtar Naqvi and others v. Federation of Pakistan and others* (**PLD 2013 SC 195**)

petitioner is *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 warrant, in accordance with law.

(RAHEEL KAMRAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

Saeed Akhtar