

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.27705/2023

Ashfaq Ahmad Vs. Govt. of Punjab etc.

JUDGMENT

Date of hearing	17-05-2023
Petitioners by	Mr. Naveed Ahmad Khawaja, Advocate. Ms. Nelufar Khan, Advocate. Ch. Anwar Ali Sangha and Miss Sdaqet Nazir Tarar, Advocates.
Respondents by	Ch. Imran Raza Chadhar, Advocate. Malik Asadullah Wagera, Advocate. Mr. Omer Farooq Khan, Assistant Advocate-General, Punjab alongwith Ijaz Ahmad Shakir, Advocate/Legal Advisor and Rizwan Nazir, Secretary Punjab Local Government Board.

ABID AZIZ SHEIKH, J. This judgment will also decide the connected Writ Petition Nos.27703, 27704, 28878 and 29444 of 2023 as common questions of law and facts are raised therein. In these Petitions, the petitioners have challenged two transfer orders of even date i.e. 11.03.2023 (**impugned transfer orders**) to their extent, passed by the Secretary, Local Government & Community Development Department (**LG&CDD**), Government of Punjab/Chairman Punjab Local Government Board, (**respondent No.2**). The petitioners have also challenged three separate impugned orders dated 20.04.2023, 26.04.2023 & 03.05.2023

(**impugned orders**) passed by the Chief Secretary, Civil Secretariat, Lahore (**respondent No.1**), whereby their respective representations were declined.

2. The relevant facts, which are more or less identical in all these Writ Petitions, are that the petitioners are employees of the LG&CDD, Punjab and posted as Chief Officers & District Officers at Municipal Corporation and District Councils. Through both the impugned transfer orders total 193 employees/officers of the local government, including the petitioners, have been transferred. In the earlier round of litigation, some of these matters were referred to respondent No.1, however, the representations of those petitioners have been declined through the impugned orders, hence, these Constitutional Petitions.

3. The learned counsel for the petitioners submit that under Section 186 of the Punjab Local Government Act (XXXIII), 2022 (hereinafter will be referred to as **Act XXXIII of 2022**), the minimum tenure of two years has been provided, and therefore the impugned transfer orders could not be passed before expiry of two years' prescribed tenure. He submits that similar tenure was prescribed under the previous laws, including the Punjab Local Government Board Transfer Policy dated 26th May, 1998 (**Transfer**

Policy), which prescribed tenure of three years. Submits that in the impugned orders passed by respondent No.1, it is stated that as elections could not take place under the Act XXXIII of 2022, therefore, the provisions of the Punjab Local Government Act, 2013 (**Act of 2013**) will apply, wherein no tenure has been prescribed. Contends that this reasoning is fallacious because various instructions issued by respondent-department (in letters appended with CM No.3/2023) show that the directions were issued under the Act XXXIII of 2022 and not under the Act of 2013. He finally submits that the Punjab Local Government Service (Appointment & Conditions of Service) Rules, 2018 (**Rules**) are subservient to the provisions of the Act XXXIII of 2022, and in case of any inconsistency Section 186 of the Act XXXIII of 2022 will prevail. He placed reliance on “Syed Mahmood Akhtar Naqvi and others Vs. Federation of Pakistan and others” (**PLD 2013 Supreme Court 195**) and “Province of Punjab through Conservator of Forest, Faisalabad and others Vs. Javed Iqbal” (**2021 SCMR 328**). Learned counsel for the petitioner in connected matter beside pleading hardship reiterated the above submissions.

4. Learned Law Officer, on the other hand, submits that in most of these cases, the petitioners remained at the same

place of posting for more than two years but under different nomenclatures due to de-limitations or demarcations of the area under different local government laws, remained in force from time to time. To illustrate he submits that the petitioner in this petition (*Ashfaq Ahmad*) remained in District *Gujrat* from 10.11.2018 till 02.06.2022 for more than three and half year, but thereafter was transferred to District *Chakwal* on 03.06.2022 and to District *Mandi Bahaudin* on 27.06.2022 but just within a period of one month he was transferred back to *Gujrat* on 28.07.2022. He submits that the said petitioner never challenged his two previous transfer orders but only challenged the impugned transfer order by abusing the provision for protection of tenure. He further submits that under Rule 11 of the Rules and Section 187(3) of the Act XXXIII of 2022, the employees of the local government shall be liable to serve anywhere within the province, therefore, the impugned transfer orders are lawfully passed under the aforesaid laws. Further submits that under Sections 204 & 205 of the Act XXXIII of 2022, the offices, agencies and authorities of the defunct local government, established under the Act of 2013, alongwith the officers will continue to discharge their respective duties, therefore, the provisions of the Act XXXIII of 2022, including Section

186, shall not apply unless local governments are established under the Act XXXIII of 2022. Concludes that under Section 186 of the Act XXXIII of 2022, the security of tenure is available to Chief Officers or such other officers of the local government, as may be specified by the Secretary, LG&CDD, Punjab (**Secretary**) from time to time, but no such officers are separately specified by the Secretary under Section 186 of the Act *ibid*, therefore, tenure protection under the said Section is not applicable to the employees of local government other than the Chief Officers.

5. Learned counsel for the private-respondents in Writ Petition Nos.27704 & 29444 of 2023 supported the above arguments of learned Law Officer and further submits that the petitioners remained at the same place of posting from time to time under various nomenclatures for much more than two years.

6. I have heard the learned counsel for the parties and perused the record with their able assistance. Because of the commonality of facts and questions of law in all these petitions, it is not necessary to narrate or advert to the facts in each case separately. However, the moot question require determination in all of these cases, is that whether the petitioners who are admittedly employees of the LG&CDD,

Government of Punjab, could be transferred before expiry of their ordinary tenure of two years', prescribed under Section 186 of the Act XXXIII of 2022. In order to better appreciate this baseline question, it is expedient to examine the various provisions remained in field relating to the security of tenure of the officers of local government from time to time. In this context, Article 140A (1) of the Constitution of the Islamic Republic of Pakistan, 1973 (**Constitution**) pertains to local governments and envisages that each province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments. In pursuance to the aforesaid mandate of the Constitution, the Punjab Local Government Ordinance, 1979 (**Ordinance of 1979**) was promulgated. Though the Ordinance of 1979 did not provide any security of tenure to the officers of local government, however, Transfer Policy prescribed tenure of three years. Subsequently, the Punjab Local Government Ordinance, 2001 (**Ordinance of 2001**) was introduced (which repealed the Ordinance of 1979) and under Section 30 of the Ordinance of 2001, tenure of posting of officer or official of the government to district government was prescribed as three years. Afterwards, the Act of 2013

repealed the Ordinance of 2001 but no specific provision was prescribed in the Act of 2013 for security of tenure of the officers of local government. Later on, the Punjab Local Government Act, 2019 (**Act of 2019**) was passed, which repealed the Act of 2013. Under Section 295 of the Act of 2019, the ordinary tenure of two years' was provided for the Chief Officers and other officers of the local government that may be specified by the Government from time to time. Thereafter, the Punjab Local Government Ordinance, 2021 (**Ordinance of 2021**) was introduced, which repealed the Act of 2013 & the Act of 2019, however, the tenure of two years' was retained under Section 186 of the Ordinance *ibid*. On repeal of the Ordinance of 2021, the Punjab Local Government Act (XIII), 2022 (**Act XIII of 2022**) was promulgated and under Section 185 thereof, the tenure of two years was prescribed. The Act *ibid* was replaced by the Act XXXIII of 2022 and under Section 186 thereof, the security of tenure of two years has been prescribed, which provision is currently in field.

7. Cursory glance of above mentioned local government laws manifests that though the security of tenure for the employees/officers of local government was not specifically available under the Ordinance of 1979 and the Act of 2013,

however, the Transfer Policy was in field and subsequently the Act of 2019, the Ordinance of 2021, the Act XIII of 2022 and the Act XXXIII of 2022 provided statutory security of ordinary tenure of two years to the officers of the local government. However, the claim of the respondents is that Section 186 of the Act XXXIII of 2022 is only applicable to Chief Officers as no other officers are specified by the Secretary. It is also argued that as elections did not take place and new local governments are not established under the Act XXXIII of 2022, therefore, under Sections 204 & 205 of the said Act, the provision of the Act of 2013 will remain in field and Section 186 of the Act XXXIII of 2022 will not apply.

8. In order to address above legal issues, it is necessary to reproduce the Sections 185, 186, 204 & 205 of the Act XXXIII of 2022 hereunder:-

“185. Chief Officer, other officers and servants of local governments.—(1) Every local government shall have such number of Chief Officers from amongst the officers of prescribed service and such number and description of other officers and servants as the Secretary may from time to time determine.
(2) All officers of a local government shall be appointed by the Secretary in the prescribed manner.
(3) All servants of a local government shall be appointed by that local government in the prescribed manner and subject to such general directions and conditions as the

Secretary may, from time to time, consider appropriate.

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.*

204. Repeal and Savings.— *(1) The Punjab Local Government Act, 2022 (XIII of 2022), is hereby repealed.*

(2) Save as otherwise provided, the repeal of laws under sub-section (1) shall not affect:

(a) the previous operation of the laws repealed under subsection (1), or any other previously repealed local government law, or anything duly done or made thereunder;

(b) the local areas of the local governments demarcated and notified under the Punjab Local Government Act, 2019 (XIII of 2019), shall remain intact for the purpose of this Act unless altered or reviewed;

(c) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed local government law(s);

(d) any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed local government law(s); and

(e) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation,

liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture and punishment may be imposed as if any other previously repealed local government law has not been repealed.

(3) Notwithstanding its repeal, anything done or any action taken under any other previously repealed local government law, including:

(a) every proceeding, appointment, notification, notice, license, rule, regulation, bye-law, resolution or direction issued, made or saved;

(b) every tax, rent, fee, rate, toll or other charge or sums of money assessed, imposed, collected or due to a local government;

(c) every scheme drawn up, contracted or executed; and

(d) every instrument or contract executed,

which so far as is in force at the commencement of this Act and not inconsistent with the provisions of this Act, shall be deemed to have been done or taken under this Act unless previously altered, modified, cancelled, suspended, surrendered, withdrawn or superseded, as the case may be, under this Act.

205. Interim authorities and continuation of public services.— *(1) All offices, agencies and authorities of the defunct local*

governments established under the Punjab Local Government Act, 2013 (XVIII of 2013) shall continue providing public services in their respective local areas without any interruption till such time new local governments are established under this Act.

(2) Subject to any other relevant law, 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, till such time they are assigned or transferred to any other local government.

(3) Nothing in this section shall preclude the Government from appropriately re-organizing the defunct local governments or for that matter reorganizing or reassigning any other office or authority established under the Punjab Local Government Act 2013 (XVIII of 2013)."

9. Plain reading of Section 186 of the Act XXXIII of 2022 shows that all Chief Officers and such other officers of the local government that may be specified by the Secretary from time to time, shall ordinarily hold office for a period of not less than two years. This Court is not impressed with the argument of the respondents that said provision is only applicable to the Chief Officers as other officers have not been specified by the Secretary under Section 186 of the Act XXXIII of 2022. The aforesaid Section 186 must be read in conjunction with Section 185 of the Act *ibid*, which provides that every local government shall have such number of Chief

Officer from prescribed service and such number and description of other officers and servants as the Secretary may from time to time determine. Sub-section (2) of Section 185 of the Act XXXIII of 2022 further provides that all officers of a local government shall be appointed by the Secretary in the prescribed manner. The words “such other officers of the local government that may be specified by the Secretary”, mentioned in Section 186 of the Act *ibid*, are actually referring to those other officers who are to be “determined” and “appointed” by the Secretary under Section 185 of the Act XXXIII of 2022, and there is no requirement under Section 186 *ibid* for specifying other officers for security of tenure to said officers. It is neither the case of the respondents that any such separate list of other officers has ever been specified by the Secretary under any of the laws, referred above, for security of tenure nor any rules or parameters have been framed for the Secretary to specify the other officers, only to whom the security of tenure shall be available under Section 186 of the Act XXXIII of 2022. If the above argument of the respondents is accepted then the discretion of the Secretary under Section 186 of the Act XXXIII of 2022 will not only be arbitrary being without any

parameters but same will also be discriminatory and violative of the Article 25 of the Constitution.

10. Merely because the word “specified” used in Section 186 and the words “determined” and “appointed” used in Section 185 of the Act XXXIII of 2022, do not mean that the other officers determined and appointed by the Secretary under Section 185 *ibid* will be different from “other officers” specified by the Secretary under Section 186 of the Act *ibid*. The word “specified”, as defined in Black’s Law Dictionary, means to mention specifically; to state in full and explicit terms; to point out; to tell or state precisely or in detail. The word “appoint” mean to designate, ordain, prescribe, nominate, whereas the word “determine” means to bring to conclusion, to decide, to settle. When the number and description of the other officers is “determined” by the Secretary under Section 185(1) of the Act XXXIII of 2022 and the officers of local government are appointed by him under Section 185(2) *ibid*, this means that the officers have been specified for the purpose of Section 186 of the Act *ibid*. The terms “determined” and “appointed” require application of mind to determine and appoint officers, whereas the word “specified”, is only a ministerial job to mention or specify

those officers determined and appointed, hence, these terms are to be read holistically and not in isolation.

11. The next argument of the respondents is that under Sections 204 & 205 *supra*, till such time the new local governments are established under the Act XXXIII of 2022 the provisions including Section 186 of the Act *ibid* will not apply and the Act of 2013 will remain in field. The above ground is also recorded in the impugned orders passed by respondent No.1. I am afraid that this Court is not in agreement with the above reasoning. Plain reading of repeal and savings clause (under Section 204) and interim authorities and continuation of public service (under Section 205) of the Act XXXIII of 2022, shows that the Act XIII of 2022 was repealed, however, the repeal shall not affect previous operation of the laws, demarcated and notified areas, rights of privileges, penalties, investigations or anything done or action taken under the repealed local government laws. Section 205 of the Act XXXIII of 2022 also provides that all offices, agencies and authorities, established under the Act XIII of 2022, shall continue providing public services and all officers and servants of the defunct local government shall continue to discharge their respective duties till they are assigned or transferred to any

other local government. However, nowhere in Sections 204 & 205 of the Act XXXIII of 2022, it is provided that till such time the new local governments are established, the provisions of the Act XXXIII of 2022, including Section 186, shall not apply for the security of tenure to the officers of local government. The above legal position is also supported by the fact that various instructions/orders (appended with CM No.1 of 2023) were issued under the Act XXXIII of 2022 and not under the Act of 2013. I have also found force in the argument of the petitioners that notwithstanding the fact that no security of tenure was provided under the Act of 2013, however, the Transfer Policy remained in field under which the security of tenure has been provided. It is not shown that the Transfer Policy has been repealed or canceled rather according to respondents' arguments, the same is protected under various saving clauses of the local government laws, repealed from time to time. Therefore, it cannot be said that the Act XXXIII of 2022 shall remain in abeyance till holding of the local government elections under the Act *ibid*.

12. The next argument of the respondents that under Section 187(2) of the Act XXXIII of 2022 and Rule 11 of the Rules, the employees of local government shall be liable to

serve anywhere in the province, and therefore the impugned transfer orders are justified, is misconceived. No doubt, under Section 187(3) of the Act XXXIII of 2022 and Rule 11 of the Rules, a member of the local government is liable to serve anywhere in the province, however, it does not mean that security of tenure of two years, provided under Section 186 of the Act XXXIII of 2022, shall not be available to the officers of the local government.

13. The Hon'ble Supreme Court in the case of "Syed Mahmood Akhtar Naqvi" *supra* held that when the ordinary tenure for posting and transfer has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied except for compelling reasons, which should be recorded in writing and are judicially reviewable. The Apex Court in "Syed Liaqat Shah Vs. Vice-Chancellor, University of Engineering and Technology, Peshawar and others" (2019 PLC (C.S.) 74) held that where tenure of service of an employee is protected under a law, it cannot be curtailed without first initiating and completing disciplinary proceedings against him. The same view was also expressed by this Court in "Dr. AFTAB AHMAD MALIK Vs. UNIVERSITY OF ENGINEERING AND TECHNOLOGY and others" (2005 PLC (C.S.) 80), by the learned Islamabad

High Court in “VADIYYA S. KHALIL and others Vs. FEDERATION OF PAKISTAN through Secretary, Cabinet Division and others” (2020 PLC (C.S.) 460), “HOMEOPATHIC DR. JAMIL AKHTAR GHOURI Vs. FEDERATION OF PAKISTAN and others” (2017 CLC 575), by the learned Sindh High Court in “ASIF ALI MEMON Vs. THE PROVINCE OF SINDH through Chief Secretary and others” (2019 PLC (C.S.) 492), by the hon’ble Supreme Court AJK in “MISBAH MUSHTAQ Vs. D.P.I. COLLEGES, AZAD JAMMU AND KASHMIR, MUZAFFARABAD and 2 others” (2012 PLC (C.S.) 1446) and by the learned High Court AJK in “Mrs. JAMSHED NAQVI Vs. AZAD JAMMU AND KASHMIR GOVERNMENT through Chief Secretary and 5 others” (2013 PLC (C.S.) 1037).

14. In all afore-noted judgments, the law settled by the august Supreme Court of Pakistan as well as by various High Courts is that postings and transfers exclusively fall under the domain of competent authority and in the exigencies of service, transfer and posting can be made but such discretion must not be exercised in arbitrary or fanciful manner rather same should be exercised judiciously, with equity and fair play. Therefore, when ordinary tenure for posting has been specified in law then such tenure cannot be varied except for

compelling reasons, which should be recorded in writing and must be justiciable. Ordinary tenure of two years for employees of local government in above mentioned laws apparently is in line with Article 140A of the Constitution, which envisages establishment of local government system to promote good governance, effective delivery of services through institutionalized participation of the people at low level through local governments and its employees.

15. In the present case, perusal of the impugned transfer orders shows that total 193 local government employees, including the petitioners, have been transferred with one stroke of pen without adhering to the security of tenure, prescribed under Section 186 of the Act XXXIII of 2022, or giving any compelling reasons in writing for such transfers before expiry of two years' ordinary tenure. The argument of learned Law Officer as well as learned counsel for private-respondents that some of the officials are stationed at one place for many years and only got transfer out of district for a few days by backdoor influence and again got their transfer back to same district and now abusing the protection of tenure provided under Section 186 of the Act XXXIII of 2022, may have substance but none of these grounds or reasons has been recorded in their impugned transfer orders

rather on face of it no judicious mind was applied at all before passing of the impugned transfer orders, whereby 193 local government officers have been transferred without any determination that how many employees have completed their tenure of two years or what are the compelling reasons to transfer those employees, who have not yet completed their tenure prescribed under the law.

16. In view of above discussion, all these Constitutional Petitions are **allowed** and the impugned transfer orders to the extent of the petitioners as well as the impugned orders are set-aside being without lawful authority and of no legal effect. However, this judgment will not preclude the respondents to proceed in the matter afresh in terms of the guidelines prescribed by the august Supreme Court of Pakistan and also discussed in this judgment.

(ABID AZIZ SHEIKH)
JUDGE

Approved For Reporting

JUDGE

Arsalan