

# In the supreme court of pakistan

( Original Jurisdiction )

## BENCH

Mr. Justice Amir Hani Muslim

Mr. Justice Mushir Alam

Mr. Justice Mazhar Alam Khan Miankhel

## CRL.O.Ps. NO.47, 48 & 50 OF 2016 IN C.R.P.193 OF 2013 & Crl.M.A.No.1822 of 2016.

Fida Hussain Shah (in Crl.O.P.47/2016)  
Ghulam Haider Jamali (in Crl.O.P.48/2016)  
Faisal Bashir, PSP (in Crl.O.P.50/2016)  
Syed Fida Hussain Shah (in Crl.M.A.No.1822/2016)

... ... Petitioners

## **Versus**

Govt. of Sindh & others ... ... Respondents

For Petitioners

(Crl.O.47/16) : Kh. Haris Ahmed, Sr. ASC

(Crl.O.48/16) : Mr. Ali Zafar, ASC

(Crl.O.50/16) : Ms. Asma Jehangir, ASC

On Court Call : Mr. Zameer Hussain Ghumro, AG Sindh  
Mr. Sarwar Khan, Addl. AG Sindh

Date of hearing : 16-02-2017

## JUDGMENT

**AMIR HANI MUSLIM, J.-** Through these three Criminal

Original Petitions the Petitioners seek implementation of the judgments of this Court reported as **Contempt Proceedings against Chief Secretary, Sindh** (2013 SCMR 1752) and **Ali Azhar Khan Baloch vs. Province of Sindh** (2015 SCMR 456). The Petitioners in these three contempt Petitions have *inter alia* challenged the re-allocation/change of Occupational Groups of the Respondents Allah Dino Khawaja and Sanaullah Abbasi from Foreign Service and Income Tax Group, respectively, to the Police Service of Pakistan (PSP).

**CRL. O. P. NO.47/2016**

2. Khawaja Haris Ahmed, learned Sr. ASC appeared in Crl.O.P 48/2016, on behalf of the Petitioner and contended that this Court in the judgments reported as **Contempt Proceedings against Chief Secretary, Sindh** (2013 SCMR 1752) and **Ali Azhar Khan Baloch vs. Province of Sindh** (2015 SCMR 456), has laid down the foundations of a merit based Civil Service in Pakistan. He contended that this Court in the aforesaid judgments has held that no Civil Servant after his appointment to an occupational group, could be re-allocated to any other group. He further contended that directions were issued by this Court to all the Provincial Governments through their Chief Secretaries as well as to the Federal Government to streamline the service structure of civil servants in terms of the principles enunciated in the aforesaid judgments.

3. He next contended that the Respondent A. D. Khawaja, was recommended by the Federal Public Service Commission (FPSC) for appointment to the post of Section Officer in the Foreign Service of Pakistan (FSP) way back in 1986. However, three years thereafter, his group/cadre was changed from FSP to PSP in pursuance of the orders of the then Prime Minister. Similarly, the Respondent Sanauallah Abbasi was appointed in the Income Tax Group as ITO, and was re-allocated the PSP Group in total disregard of law, rules and merit. According to the learned Counsel, the re-allocation of the Occupational Group of the Respondents after their initial appointment was without lawful authority. He, in support of his contention, has relied upon the case of **Liaquat Ali Memon Vs. Federation of Pakistan** (PLD 1994 SC 556).

4. He next contended that the re-allocation of Occupational Group amounted to a transfer which was declared *ultra vires* by this Court in the aforesaid judgments. He finally submitted that contempt proceedings should be initiated for avoiding to implement the aforesaid judgments of this Court against the officers responsible in this regard.

**Crl.O.P.48/2016**

5. Syed Ali Zafar, learned ASC appeared in Crl.O.P 48/2016, on behalf of the Petitioner had contended that there are only three modes of appointment i.e. initial appointment, appointment by promotion and or appointment by transfer. He further contended that the appointment by way of change of Cadre or Occupational Group was not provided under the law and this Court in its judgment reported as **Contempt Proceedings against Chief Secretary, Sindh** (2013 SCMR 1752), had issued directives to streamline the service structure of Civil Servants in line with the principles laid down in the aforesaid judgment.

6. He contended that appointment by transfer was a consequence of the initial appointment and a person could not be allowed to travel horizontally out side his cadre to penetrate into a different cadre, service or post through an appointment by transfer. In this regard he referred to the case of **Ali Azhar Khan Baloch vs. Province of Sindh** (2015 SCMR 456). He next contended that the Prime Minister could not exercise his powers whimsically to change the occupational groups of civil servants and at least the same parameters which were applied to an appointment through transfer should be made applicable to such like cases and if it is a fresh or initial appointment then the criteria of fresh appointment should be followed.

**Crl.O.P.50/2016**

7. Ms. Asma Jehangir, learned ASC appearing on behalf of the Petitioner in Crl.O.P 50/2016, has adopted the arguments advanced by the learned Counsel Khawaja Haris Ahmed and in addition has contended that if the issue involved in the present matter was not covered in the afore-referred judgments, then this Court under Article 184(3) of the Constitution should examine the matter by resorting to its Suo Moto jurisdiction.

8. Mr. Zameer Hussain Ghumro, AG Sindh and Mr. Sarwar Khan, Addl. AG Sindh appeared on behalf of the Government of Sindh and stated that the issue of allocation or re-allocation of Occupational Groups was not covered by the aforesaid judgments, therefore, these Petitions merit dismissal.

9. We have heard the learned Counsels for the Petitioners as well as the learned Advocate General and Additional Advocate General, Sindh. The Learned Counsel for the Petitioners have failed to pin point any portions of the aforesaid judgments which deal with the issue of allocation and re-allocation of Occupational Groups. The aforesaid judgments deal with the issue of deputation, absorption, up-gradation, out of turn promotion, re-employment, appointment by transfer and ante-dated seniority of Civil Servants and Government Servants. The issue in regard to the change in Occupational Group was neither raised during hearing of the said proceedings nor were any findings recorded by this Court therein. We, therefore, are of the considered view that no case of contempt has been made out and these Petitions merit dismissal on that score alone.

10. Khawaja Haris Ahmed, learned Sr. ASC has attempted to argue that the term 'transfer' used in the Civil Servants (Appointment,

Promotion and Transfer) Rules, 1973, is synonymous to the term ‘re-allocation to a service or group’. He has submitted that if a Civil Servant is allocated a particular Occupational Group and subsequent thereto the Competent Authority on his representation changes the allocation, it would deem to be a transfer from one cadre to another, which this Court in the aforesaid judgments has declared to be without lawful authority. In the first place, the term ‘allocation of a group’ is distinct than the term ‘Cadre’ used in Civil Service Laws. The term ‘Cadre’ is defined in FR 9 (4) “Cadre means the strength of a service or a particular service sanctioned as a separate unit”. The term ‘Service’ and ‘Occupational Group’ is synonymous and has been defined for the first time in Occupation Groups and Services (Probation, Training and Seniority) Rules, 1990 as under : -

*“viii. “Occupational Group or Service” means any groups or service recruitment to which is made through the competitive examination conducted by the Commission from time to time against BPS-17 posts under the Federal Government or any occupational group or service transfer to which is made from the Armed Forces by induction and includes the following:*

- (a) Accounts Group*
- (b) Commerce and Trade Group.*
- (c) Customs and Excise Group*
- (d) District Management Group*
- (e) Foreign Service of Pakistan*
- (f) Income Tax Group*
- (g) Information Group*
- (h) Military Lands and Cantonments Group*
- (i) Office Management Group*
- (j) Police Service of Pakistan*
- (k) Postal Group*
- (l) Railways (Commercial & Transportation) Group;*  
*and*
- (m) any other service or group which may be notified by the Government as such.”*

11. However, the term ‘Service’ was defined in Civil Service of Pakistan (Composition and Cadre) Rules, 1954, as “Service’ means the Civil Service of Pakistan”.

12 We may observe here that transfer from one service or occupational group is dealt with under Section 7(b)(ii) of the Federal Public Service Commission Ordinance, 1977, which reads as under:

(b) *to advise the President*

(i) .....

(ii) *on the principles to be followed in making initial appointments to the services and posts referred to in clause (a) and in making appointments by promotion to posts in BS-18 and above and transfer from one service or occupational group to another; and”*

13. From perusal of the above provision, it is abundantly clear that the allocation and re-allocation is the sole domain of the Government and is being made under the provisions of the Ordinance of 1977 and not under the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, which have been interpreted in the judgments of Contempt Proceedings against Chief Secretary Sindh (*ibid*) and Ali Azhar Khan Baloch (*ibid*). The transfer of a civil servant from one occupational group to another, by no stretch of imagination, could be termed as a horizontal movement from one service or occupational group to another. This Court in the case of Syed Maroof Gilani vs Prime Minister of Pakistan (1996 SCMR 1353), while dealing with the issue of the nature has held as under:-

*“It may be mentioned that paragraph 14 of the prospectus for the examination clearly stated that the Government had the right to allocate a candidate against any Group/Service irrespective of his or her preference, in public interest, and that no appeal against the decision of the Government in this regard was entertainable. As already indicated, the Federal Public Service Commission found the appellant unsuitable for appointment to the ‘Custom and Excise Group. The decision of the Government not to appoint him to the said group was based upon the advice*

*tendered to it by the Commission which had examined him both orally and through a written test. In the circumstances, it cannot be said that the Government's decision was arbitrary or whimsical. The appellant has not been able to show that the Federal Public Service Commission was motivated by an ulterior consideration when it declared him unsuitable for the service of his first choice. We, therefore, do not think that this is a fit case for interference by this Court. The appeal is dismissed."*

14. The learned counsel Khawaja Haris has equated the term 'transfer' as used in the Civil Servants Act with the term 're-allocation' to a service or group. We respectfully differ with this contention, which in more or less the similar terms have also been argued by the learned counsel, Syed Ali Zafar.

15. We believe that the term 'transfer' has been used with posting in section 10 of the Civil Servants Act, 1973, which is reproduced as under:

*"10. Posting and transfer:- Every civil servant shall be liable to serve any where within or outside Pakistan, in any [equivalent or higher] post under the Federal Government, or any Provincial Government or local authority or a corporation or body set up or established by any such Government;*

*Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;*

*Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favorable than those to which he would have been entitled if he had not been required to serve."*

16. From the above, the following inference can be drawn:

- i. It is within the competence of the authorities to transfer a civil servant from one place or post to another to meet the exigencies of service or administration; provided his terms and conditions of service are not adversely affected;*
- ii. A civil servant has no vested rights to claim posting or transfer to any particular place of his choice, nor has he any right to continue to hold a particular post at a particular place;*
- iii. His transfer and posting is limited to the given tenure, or at the pleasure of the competent authorities;*

- iv. *Normally, he is not required to acquire any specialized skill or professional training in order to serve at the new post or place;*
- v. *His seniority and progression of career in terms of promotion and other benefits of the service are not affected by the transfer and he remains pegged to his batch or group to which he was initially appointed after completing the required common and specialized trainings and after passing the required departmental examinations conducted by the FPSC;*
- vi. *He is posted and transferred routinely in the same grade or scale that he possesses in his service or group; unless the rule requires so or allows so.*

17. As far as the ‘reallocation to service or group’ is concerned, we believe that though the term ‘reallocation’ has not been defined in the statute but its plane meaning is to “allocate again or in a different way” (Oxford Dictionary). Here the situation is somewhat as under:

- i. *A civil servant is appointed in a new service or group by competent authority, and he loses his ties with his pervious group or service, though his previous service may be counted, if the rules permit;*
- ii. *After joining the new service or group he undergoes afresh the required departmental/specialized training, followed by the Final Passing Out Examination (FPOE) conducted by the FPSC;*
- iii. *His inter se seniority is re-fixed with the new group or service he joins, normally on the basis of his merit and results obtained in the FPOE;*
- iv. *His appointment, unlike a ‘transfer’, is thus irreversible, unless the rules allow him to retain a lien so that he may revert back to his previous service or group within the lien time;*
- v. *Normally ‘reallocation’ happens when a civil servant reappears in the CSS examination and his higher merit allows him to opt for a different occupational group form the one he belongs to;*
- vi. *There are also instances of ‘reallocation’ of civil servants from one to another group, which have been made under the existing rules by the competent authorities; but they are fundamentally different from the ‘appointment by transfer’ as the latter involves absorption of civil servant in a new department as a result of abolition of his earlier department or post or for meeting any other exigency, subject to the given rules;*
- vii. *Moreover, the nature and consequences, if not the form, of the re-allocation to another service or group are the same:*
  - a. *a civil servant is reappointed to the new group or service;*



- b. his seniority is fixed with the new batch in accordance with his overall merit;*
- c. he loses his ties with his earlier occupational except that he may claim benefits of the time of service;*
- d. he undergoes and qualify the required specialized trainings and examinations, including the FPOE;*
- e. he may be discharged from the service if he fails to successfully completes his probation/trainings and examination.*

18. Hence, the reallocation to another occupational group is more akin to the ‘initial appointment’, as provided in Part-III of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, rather than an ‘appointment by transfer’ as contended at the bar. The appointment by transfer is an incidence *a posteriori* to initial appointment, that is, a civil servant is transferred to another place or post after he has been appointed on regular basis, or when he has been promoted and transferred to a post or group (e.g. from the Provincial Service to APUG in BS-19), or rarely when an occupational group is abolished and he is absorbed into a new group or to meet the exigencies of administration.

19. We may also like to add here that allocation and re-allocation of occupational group is a process, which is completed before appointing a person to a particular service or group. In other words, a person becomes a civil servant after his allocation to a particular service or group. For the aforesaid reasons, the change of group or re-allocation could not be considered at par with transfer or horizontal movement made under the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973.

20. It is also not out of context to mention here that the re-allocation of the Respondents was never challenged by any of the candidates of their batch, on the ground of being arbitrary or whimsical, for

more than 26 years till the filing of these proceedings. The Petitioners have failed to demonstrate their *locus standi* to challenge the re-allocation of the Respondents after more than 26 years. No material has been placed before us to establish that the re-allocation of group to the Respondents was made in an arbitrary manner.

21. These are the reasons for the short order of even date, which reads as under:

*“For reasons to be recorded later, these Petitions are dismissed alongwith Crl.M.A No.1822 of 2016.”*

Judge

Judge

Judge

Islamabad, the  
16<sup>th</sup> February 2017.  
Approved for reporting.