

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT.

W.P No. 4523/2018

Tayyab Azam Khan Vs. Human Resource Department through Member
Administration CDA etc.

Petitioner by: Mr. Abdul Haseeb Khan Afridi, Advocate.

Respondents by: Mr. Haseeb Hassan and Qazi Adil Aziz,
Advocates for MCI.

Mr. Muhammad Anwar Dar, Advocate for
CDA.

Mr. Niazullah Khan Niazi, Advocate General,
Islamabad.

Barrister Muhammad Mumtaz Ali, AAG.

Amer Ali Ahmed, Chairman, CDA/Chief
Commissioner, Islamabad.

Sheikh Ansar Aziz, Mayor, MCI.

W.P No. 3008/2019

Naseer Ahmad Vs. Mayor, Metropolitan Corporation, Islamabad etc.

Petitioner by: Mr. Muhammad Saleem Khan, Advocate.

Respondents by: Mr. Haseeb Hassan and Mr. Adil Aziz Qazi,
Advocates for respondents No. 1 & 2.

Ch. Tariq Zaman, Ch., Advocate for
respondents No. 3 to 6.

Mr. Niazullah Khan Niazi, Advocate General,
Islamabad.

Amer Ali Ahmed, Chairman, CDA/Chief
Commissioner, Islamabad.

Barrister Muhammad Mumtaz Ali, AAG.

Sheikh Ansar Aziz, Mayor, MCI.

W.P No. 4257/2019

Dr. Muhammad Bilal Khilji Vs. Federation of Pakistan etc.

Petitioner by: Mr. Kashif Ali Malik, Advocate.

Respondents by: Mr. Naseem Ahmed Shah, Advocate for
respondents No. 2.

Mr. Haseeb Hassan and Mr. Adil Aziz Qazi,
Advocates for respondents No. 3 & 5.

Ms. Misbah Gulnar Sharif, Advocate for
CDA.

Mr. Niazullah Khan Niazi, Advocate General,
Islamabad.

Amer Ali Ahmed, Chairman, CDA/Chief
Commissioner, Islamabad.

Sheikh Ansar Aziz, Mayor, MCI.

Dr. Fakhar-e-Alam, Additional Secretary,
Ministry of Interior.

Barrister Muhammad Mumtaz Ali, AAG.

Raja Muhammad Aftab Ahmed, AAG.

Date of Hearing: 21.02.2020.

MOHSIN AKHTAR KAYANI, J. By way of this common judgment, I intend to decide captioned writ petitions having similar question of law and facts.

2. Through the W.P No.4523/2018, petitioner (Tayyab Azam Khan) has prayed for the following relief:-

"It is most humbly prayed before this Honourable Court that the impugned transfer order dated 17.08.2018 and the impugned relinquishment report dated 08.10.2018 may kindly be set aside being illegal, void abinitio, issued without any lawful authority and contrary to the spirit of law in the best interest of justice.

Further a writ of mandamus may kindly be issued directing the Respondents to withdraw the transfer orders of the petitioner in the light of human resource regulations and policies of the Respondent No.1 in the best interest of justice. Any other relief which this Honourable Court deems fit and necessary shall also be granted to the Petitioner in the best interest of justice."

3. Through the W.P No.3008/2019, petitioner (Naseer Ahmad) has prayed for the following relief:-

"In these circumstances, it is, therefore, most respectfully prayed that a proper writ be issued by accepting the present writ petition specifically directing the respondents No. 1 & 2 to immediately withdrawn/cancel and set aside the impugned office order dated 19.08.2019 without any further delay in the best interest of justice.

It is further prayed that the respondents may also be restrained from taking any adverse action against the petitioner, implementing the impugned office order dated 19.08.2019, shifting, posting or transferring the petitioner anywhere else, stopping the salaries of the petitioner, pressurizing, humiliating, threatening, blackmailing the petitioner or doing any other act, which is prejudicial or

constitute an invasion over the rights of the petitioner in any manner whatsoever.

Any other relief, which this Honourable Court may deem fit and proper, may also be awarded.”

4. Through the W.P No.4257/2019, petitioner (Dr. Muhammad Bilal Khilji) has prayed for the following relief:-

“It is most respectfully prayed that this Honorable Court may be pleased to declare that under the Islamabad Local Government Act, 2015, the Respondent No.3/Mayor, is not vested with any power to order transfers, postings or initiate disciplinary proceedings against the employees, let alone employees transferred from CDA.

Consequently, declare issuance of Municipal Corporation Islamabad, Office order No. MCI-1(1)/HR/2019/716, dated: November 29, 2019, issued by Respondent No.5/Director Admin/HRD, MCI, conveying approval of the Respondent No.3/Mayor, for transfer/posting of officers/officials of environment wing, MCI, as illegal, unauthorized and violative of the governing law and Regulations, and set aside it.

Any other further/additional relief (s) which this Hon’ble may deem fit and proper in the circumstances of the present case”.

5. In all these petitions a common question of transfer and posting of the petitioners made by the respondents Metropolitan Corporation Islamabad has been challenged mainly on the ground that Municipal Corporation Islamabad could not make transfer and posting of the employees as they are the employees of Capital Development Authority and all those employees have been governed under Section 115(3) of Local Government Act, 2015 read with 129 (4)(5) of the Local Government Act, 2015, which has been reproduced for the sake of brevity:-

“115. Local government servants. -(1) Notwithstanding anything contained in any other law, the Government shall, in the prescribed manner, create a service cadre for a local government or a group of local governments.

(2) The Government may prescribe the terms and conditions for recruitment promotion, dismissal, disciplinary, conduct and any other related service matter for the service cadre mentioned in sub-section (1).

(3) A local government other than a Union Council may, in the prescribed manner, absorb an employee, already working in any other municipal body/local government prior to the commencement of this Act, with the consent of the employee against an equivalent pay scale."

6. Perusal of record reveals that the question raised by the petitioners in these entire writ petitions has earlier been adjudicated upon by this Court in **Writ Petition No. 2702/2016 (Ghulam Sarwar Sindhu & others Vs. Federation of Pakistan through Secretary Law & Parliamentary Affairs etc.)** in the following manner:-

"The bare perusal of the above two provisions of law shows that the terms of service of an employee of CDA, who is transferred to a Local Government/MCI are protected viz his salary, emoluments and pension. Under sub Section 5 it is only that the Federal Government guarantees the payment till such time that it deems appropriate. The conjunctive reading of both the provisions makes it clear that in any case the salary, emoluments etc of the transferred employee of CDA are not to be reduced on transfer, however, the Federal Government guarantees this only for a limited time but anybody to which these employees are transferred shall have the benefit of sub section 4 without even the Federal Government guarantee. Even otherwise, section 115(3) of Act of 2015 a Local Government other than Union Council may absorb an employee already working in any other Municipal body/Local Government prior to the commencement of the said with the consent of that employee against an equivalent pay scale, hence, when collectively read section 115(3), section 129(4)(5) indicate that a CDA employee transferred to Municipal Corporation Islamabad shall have the protection that his/her salary emoluments etc shall not be reduced and he shall have the option to be absorbed permanently on the equivalent pay scale, if he accords consent to the same.

In Parawise comments/reply filed by respondent No.2 it has been categorically submitted that the transferred employees shall continue to be Governed by CDA Employees Regulations, 1992 till such time that they are absorbed and Local Government cadre is established under Section 115(3) *ibid*.

In view of above interpretation of law section 129 (4)(5) are not in any way, violative of Articles 4, 9, 10-A and 25 of the Constitution. The referred Sections are also not in conflict with the provisions of CDA, Ordinance 1960 and or Regulations, Rules, Orders framed thereunder.

The petitioners have been afforded ample security of tenure and emoluments and shall not be prejudiced by the transfer in any way. The notifications mentioned hereinabove, have been issued pursuant to ICT Local Government Act, 2015, hence, are also in accordance with the referred Act and do not transgress the mandate provided under the law.

In view of the foregoing reasons, the instant petition is without merit and is accordingly dismissed."

7. In the above referred judgment, the rights of the employees have been protected, however, an additional question has been raised by the petitioner Dr. Muhammad Bilal Khilji in W.P No. 4257/2019, whereby he has challenged the authority of the Local Government Board in terms of Section 98 of the Local Government Act, 2015, whereby the Board is empowered to make appointments, orders, transfers, take disciplinary actions and Metropolitan Corporation, Islamabad has no authority to pass such orders of transfer and postings. This question has been confronted to the Mayor, Islamabad, Chairman, Local Government Commission and Chief Commissioner, who categorically stated that the functions between CDA and MCI have been regulated on the basis of notification dated 06.01.2017, issued by Ministry of Interior, Government of Pakistan in exercise of powers conferred under Section 130 of the Islamabad Capital Territory Local Government Act, 2015, the said notification has been reproduced hereunder:-

Government of Pakistan
Ministry of Interior

Islamabad, the 6th January, 2017

NOTIFICATION.

S.R.O No. (1)/2017:-In exercise of the powers conferred by section 130 of the Islamabad Capital Territory Local Government Act, 2015 (X of 2015), read with section 3 thereof, the officer designated by the Government, Additional Secretary-II, Interior Division, is pleased to divide all rights, assets and liabilities relating to the offices of Metropolitan Corporation Islamabad (MCI), Capital Development Authority (CDA), and Islamabad Capital Territory (ICT), Administration among the departments as specified in the Tables below:-

<u>TABLE A-1</u>
<u>TO BE ADMINISTERED BY MCI</u>
<u>DIRECTORATE OF ADMINISTRATION</u>
1. Directorate of Health Services
2. Directorate of CARES 1122
3. Directorate of Municipal Administration
4. Directorate of Sports and Culture
5. Directorate of Public Relations
6. Directorate of Security.
7. Directorate of Information Technology (IT)
8. Directorate of Coordination
9. CDA Model School
1. Directorate of MQC, CE Lab.
2. Directorate of G & H.
3. Directorate of Bulk Water Management

4. Directorate of Water & Sewerage Development 5. Directorate of M & RM 6. Directorate of Water Supply 7. Directorate of Sewerage Treatment Plant 8. Directorate of MPO 9. Directorate of E&M Maintenance. <u>DIRECTORATE OF ENVIRONMENT</u> 1. Directorate of Environment (East) 2. Directorate of Environment (West) 3. Directorate of Sanitation 4. Directorate of E & DM 5. Directorate of Parks 6. Directorate of Environment Regional.
<u>ESTATE</u> 1. Directorate of Enforcement.
<u>FINANCE</u> 1. Finance-I 2. Finance-II 3. Directorate of Audit 4. Directorate of Accounts 5. Directorate of Revenue 6. Head of Treasury
<u>TABLE A-2</u> <u>SUBJECT TRANSFERRED FROM ICTA TO MCI</u>
1. Local Government and Rural Development Department. a) Local Government Department, ICT. b) Three Rural Development Markaz. c) One Rural Area Coordination Committee 2. Civil Defence Department, ICT, Islamabad. 3. Public Health Department, ICT, Islamabad. 4. Project: "Prevention and Control of Communicable Diseases in ICT, Islamabad.
<u>TABLE-B</u> <u>TO BE ADMINISTERED BY CDA</u> <u>DIRECTORATE OF ADMINISTRATION</u> 1. Directorate of HRD-I 2. Directorate of HRD-II 3. Directorate of Law and Labour Relation 4. CDA Capital Hospital 5. Directorate of Public Relations 6. Directorate of Security 7. Directorate of Information Technology (IT) 8. Directorate of Coordination <u>DIRECTORATE OF engineering</u> 1. Directorate of Maintenance 2. Directorate of E&M Maintenance 3. Directorate of Road (North) 4. Directorate of Road (South) <u>DIRECTORATE OF ENVIRONMENT</u> Directorate of Environment Protection Cell <u>ESTATE</u> Directorate of Enforcement <u>FINANCE</u> 1. Finance-I 2. Finance-II 3. Directorate of Audit 4. Directorate of Accounts 5. Directorate of Revenue 6. Head of Treasury <u>PLANNING & DESIG</u> 1. Directorate of Architecture 2. Directorate of Traffic Engineering & Planning. 3. Directorate of Structure 4. Directorate of R.P(KAC).

8. The Federal Government while exercising the authority under the above referred provision will provide all rights, assets and liabilities to the officers of Metropolitan Corporation, Islamabad, CDA and ICT Administration in the following manner:-

The functions/formations stated in Col.I of para ante of this are hereby transferred to Mayor, Islamabad Metropolitan Corporation with immediate effect alongwith its assets, rights and liabilities in pursuance of Section-130 of the ICT Local Government Act, 2015. All officers/officials or respective directorates shall also stand transferred to the IMC with issuance of this office order.

The functions/formations stated in Col.II of para ante of this order would be transferred to Islamabad Metropolitan Corporation as per provisions of ICT Local Government Act-2015 within three months after carefully working out the details by the committee being constituted for the purpose by the Government, comprising Chief Metropolitan Officer as representatives of Islamabad Metropolitan Corporation and Director General Administration from Capital Development Authority.

The Budget and Finance of the above directorates/formation shall be governed under provisions of section-129 of the ICT Local Government Act, 2015. The IMC has already taken up its budgetary requirements in accordance with the provisions of this Act with the Government and Finance Division through its Administrative Ministry.

The employees transferred to Islamabad Metropolitan Corporation shall continue to draw their pay and allowances from CDA till close of FY-2015-2016 as per provisions of Sections-129 sub-section-4 of the said Act, However, if budgetary allocation would be delayed by the Government to Islamabad Metropolitan Corporation, CDA may continue to pay salaries to the transferred staff for another period of two months on instructions of the Government. Nevertheless, CDA will recoup the expenditure from the IMC through Government, in case that scenario arises.

Till the entire process of transfer of functions/directorates/formation is completed, all heads of directorates shall ensure the service delivery and shall continue to work, as per provision of Section-127 sub-section-1 of the ICT Local Government Act-2015.

This order may be modified from time to time to give effect to legal provisions of Islamabad Metropolitan Corporation, Local Government Act, 2015”.

9. Consequent upon the transfer of CDA employees in MCI, the status of the employees/officers working in the offices of MCI has to be regulated in terms of Section 115(3) read with Section 129(4)(5) of the Act, which has certain prerequisites to be followed, therefore, all the employees working under the transferred department to the MCI are called to be the employees of CDA on attachment basis and their rights of absorption have to be governed under the said procedure in a manner provided under the law.

10. It is made clear that after the transfer of Departments to MCI by the notification of the Federal Government in terms of Section 130 of the Local Government Act, 2015, the authority to deal with the services of employees exclusively falls within the domain of MCI, whereas the MCI has an absolute discretion to exercise its powers for the purposes of transfer and posting of any transferred employee within the directorate and different offices of MCI, and as such, the same could not be called in question on the ground that the employees are CDA employees and they could only be regulated by the CDA.

11. The ground raised by the petitioners/employees is not tenable as the MCI has the jurisdiction to post and transfer the employees as per their requirement within the hierarchy of MCI at anytime and in any place, and as such, they require no prior permission of the CDA in doing so. However, in case if any departmental action is required, the matter should have to be referred to the CDA.

12. It is further clarified that all the employees transferred in MCI are considered to be posted on attachment basis and even the MCI can

transfer back the said employees to CDA, if so required by them on their administrative side.

13. For what has been discussed above, all the writ petitions are hereby **DISMISSED.**

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court 05 March 2020 .

JUDGE

RAMZAN