

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Writ Petition No.1253 of 2021**

Sajid Ullah and another

**Versus**

Federation of Pakistan through Secretary, Ministry of Communication,  
Islamabad and 02 others

Petitioners By : Mr. Raheel Azam Khan Niazi,  
Advocate for the Petitioners.

Respondents By : Mr. Saqlain Haider Awan, learned  
Assistant Attorney General.

Date of hearing : 20.05.2021.

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**TARIQ MEHMOOD JAHANGIRI, J.** The petitioners have challenged the order dated 24.03.2021, whereby they were transferred from N-5 (North) Zone, i.e Peshawar to Lahore to M-5 Zone, i.e Multan to Sukkur with immediate effect on rotation basis for a period of one year.

2. Succinctly stated the facts of the matter are that the petitioners were appointed as Patrol Officers in (BS-14) in National Highways and Motorways Police. Since then they are serving to the entire satisfaction of their superior authority. Presently, both the petitioners are posted at N-5 (North) Zone, i.e Peshawar to Lahore including the area of Islamabad. The petitioners' wives are also serving in the same department in the same

grade and cadre at the same station under the wedlock policy.

3. That on 24.03.2021, the petitioners were transferred from N-5 (North) Zone to M-5 Zone, i.e Multan to Sukkur. Their wives have not been transferred and are still posted in N-5 (North) Zone; they have been transferred for more than three times in the last three years and have not been allowed to complete normal tenure of service of three years at one station; they made representations before the respondents No. 2 & 3 to withdraw the impugned order dated 24.03.2021, to the extent of the petitioners with a request that they may be allowed to serve in N-5 (North) Zone where they and their wives are already serving, in the light of wedlock policy. The representations have not been responded yet and the respondents are forcing them to relieve their present posting and to join at their new place of posting.

4. That the petitioners have challenged their posting on the ground that posting order is against the Rule 20-A of the Appointment, Promotion and Transfer Rules, 1973 read with Wedlock Policy dated 13.05.1998 issued by the Government of Pakistan and have prayed to set aside the impugned order dated 24.03.2021.

5. The respondents have filed comments, wherein, preliminary objection regarding maintainability of the present petition has been agitated on the ground that the petitioners being civil servants are bound under Section 10 of Civil Servants Act, 1973, as well as the terms and conditions of their service, to serve anywhere in Pakistan. It is mentioned in their appointment letters that they will be liable to serve anywhere in Pakistan; they are serving in the same zone i.e N-5 (North) Zone since last more than 10 years and have now been transferred on rotation basis for exigencies of service and variety of experience of policing. The petitioners along with 107 officers have been transferred from these zones for posting to M-5 Zone on rotation basis for a period of one (01) year. However, the officers more than fifty five (55) years of age and female officers were exempted from transfer to other zones on rotation basis. As National Highways and Motorways Police is facing acute shortage of officers for deployment on newly constructed highways and motorways, therefore, the exigencies of service require posting of officers at these roads.

6. Learned counsel for the petitioners, inter alia, contends that the impugned order dated 24.03.2021 is against the law especially is

against the Wedlock Policy dated 13.05.1998 issued by the Government of Pakistan; the impugned order is also against the Articles 4, 5, 25, 27, 34, 35, 37 & 38 of the Constitution of Islamic Republic of Pakistan, 1973. He has further contended that the guidelines issued under the wedlock policy clearly indicate that spouses already posted at one station may normally not be disturbed without compelling reasons of public interest even the employees who are serving on deputation basis under the said policy, their serving period beyond the permissible limit may be condoned on compassionate grounds and the impugned order is in violation of Rule 20-A of APT Rules, 1973 which provides that:

*“Posting of serving husband and wife at the same station, unmarried female government servants at the place of residence of their parents/family and that of married female government servants at the place of residence/posting of their husbands who are not in government employment shall be exempted from the said rule.”*

The impugned order is the worst example of bad administration and is against the promotion of good governance by the state functionaries, which would ultimately cause to social murder of the petitioners and their families; their children are also living and getting education in different schools, their

annual examination will be held in near future and for their wives it would become difficult to live alone at the present station in case of transfers of their husbands on different stations which would ultimately cause hardships for them and their families. Learned Counsel has relied upon the following case laws:

- i. **PLD 2011 SC 963** (*Corruption in Hajj Arrangements*)
- ii. ***Mrs. Zeenat Ahmed Vs. Federation of Pakistan through Secretary Defence and 2 other***  
**(2014 PLC (C.S) 1032)**
- iii. ***Mumtaz Ahmad Khan Vs. Secretary to Government of the Punjab, Local Government and Community Development Department, Lahore and 2 others***  
**(2016 PLC (C.S) 526)**

7. Learned Assistant Attorney General, inter-alia, contends that instant petition is not maintainable as it is barred by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. The appointments of civil servants and the terms and conditions of their service are regulated by Civil Servants Act, 1973 and any grievance arising in respect thereof is to be dealt with by the Service Tribunal, as the Tribunal is the sole Adjudicator of all disputes relating to terms and conditions of service of civil servants and only power of judicial review

lies with the High Courts. He has further contended that a party has no discretion to ignore the provisions of the Constitution to select a forum of his/her own choice and the Supreme Court has disapproved such tendency in number of cases, therefore, the present petition merits no consideration and is liable to be dismissed. Learned AAG has relied upon order dated 06.02.2017 of the Hon'ble Supreme Court of Pakistan in C.P Nos. 3311 to 3313 of 2016 and order dated 28.01.2014 passed by this Court in Writ Petition No. 3725 of 2013.

8. I have considered the arguments advanced by learned counsel of the parties and have perused the record.

9. First of all I will take up the question of maintainability of this petition regarding which specific objection has been raised by the respondents by making reference of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, which provides establishment of Administrative Courts and Tribunals to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of persons in service of Pakistan. For ready reference, same is reproduced as under:

***"212. Administrative Courts and Tribunals.- (1) Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act [provide for the establishment of] one or more Administrative Courts or Tribunals to***

*exercise exclusive jurisdiction in respect of-*

*(a) matters relating to the terms and conditions of persons [who are or have been] in the service of Pakistan, including disciplinary matters;*

*(b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or*

*(c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.*

*(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends [and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal [other than an appeal pending before Supreme Court,] shall abate on such establishment]:*

*Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, [Majlis-e-Shoora (Parliament)] by law extends the provisions to such a Court or Tribunal.*

*(3) An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal.”*

The perusal of above referred Article clearly reveals that the objection to the maintainability of this petition in view of bar contained in Article 212 of the Constitution, 1973 is fully attracted in the instant case.

10. It has been held by the Hon’ble Supreme Court of Pakistan in a case titled

***“Peer Muhammad Vs. Government of Balochistan through Chief Secretary and others” (2007 SCMR 54)*** that *“the question of posting/transfer relates to terms and conditions of a Government servant and Service Tribunal would have exclusive jurisdiction to dilate upon and decide such matters and Constitutional jurisdiction cannot be invoked to get such controversies resolved. We have also adverted to the question of mala fides which according to the learned Advocate Supreme Court could have been dilated upon in Constitutional jurisdiction which is not correct because the provisions as contained in Article 212 of the Constitution of Islamic Republic of Pakistan ousts jurisdiction of all other Courts and orders of the departmental authority even though without jurisdiction or mala fide can be challenged only before the Service Tribunal and jurisdiction of Civil Court including High Court is specifically ousted.”*

11. It has further been held by Hon’ble Supreme Court of Pakistan in a case titled as ***“Miss Rukhsana Ijaz Vs. Secretary, Education, Punjab and others” (1997 SCMR 167)*** that

*“Dispute relates to their transfer/posting which is a matter relatable to the terms and conditions of their service. Disputes about these matters fall within the exclusive jurisdiction of the Service Tribunal and the jurisdiction of the High Court is excluded in such matters by virtue of the express provisions of Article 212(2) of the Constitution. It appears that the learned Judge in the High Court has not duly attended to this aspect of the matter before issuing the stay order. In the circumstances, we convert this petition into an appeal and allow it.”*

12. The Hon’ble Supreme Court of Pakistan in the case reported as ***Ali Azhar Khan Baloch v. Province of Sindh*** (2015 SCMR 456) has been pleased to deal with the issue of maintainability



of a Constitutional Petition of a Civil Servant before High Court and at Para-150 such findings have been recorded, which read as under:-

*“150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitution petitions filed by the Civil Servants, which are explicitly barred by Article 212. The expression 'Terms and Conditions' includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973. Surprisingly, it has been ignored that it is, by now, a settled principle of law that the civil and writ jurisdictions would not lie in respect of the suits or petitions filed with regard to the terms and conditions of Civil Servants, and yet some of the learned Judges of High Court of Sindh have erroneously exercised both civil and writ jurisdictions with regard to the terms and conditions of Civil Servants.”*

The Honourable Supreme Court in the aforesaid judgment has clearly and specifically held that terms and conditions includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person to be appointed to or holding a particular post or to be promoted to a higher post or grade. The Honourable Supreme Court in the aforesaid judgment has taken

strong exception to the entertaining of petitions and civil suits by High Court of Sindh in such matters and clear directions have been issued in this regard.” (*Emphasis added*)

13. Reliance is also placed on the following cases:

i. 1998 SCMR 2129 (Asadullah Rashid v. Haji Muhammad Muneer and others). *Constitutional petition under Article 199 of the Constitution is not maintainable by a civil servant in relation to any matter connected with the terms and conditions of service in respect whereof the Service Tribunal has jurisdiction.*

ii. 2012 PLC (C.S.) 665 (Mrs. Abida Jabeen v. Secretary Education (Schools) Government of Punjab). *It was held that the appellant had no vested right to be posted against a particular place. Transfer policy was just a guideline which had no binding force. Competent Authority, was to see the feasibility that husband and wife could be posted at one station or not Impugned order passed by Single Judge of High Court, which was in accordance with law, was maintained.*

14. I have gone through the above cited three reported judgments relied upon by the learned counsel for the petitioners but all of them are distinguishable and clearly not applicable to the facts and circumstances of the present case. In PLD 2011 SC 963 which is famous case of “*Corruption in Hajj Arrangements*”, the powers of the high courts have been adjudicated.

15. In **2016 PLC (C.S) 526**, it was the case of an employee of DG Khan Development Authority who was not a government servant rather was an employee of Local Government Board Lahore which was an autonomous body and services were being governed by Punjab Local Government, District Service (TMA Cadre) Rules, 2005 and relief of reinstatement was granted.

16. In case titled as **2014 PLC (C.S) 1032**, relief on the basis of wedlock policy was granted. It is categorically mentioned in the judgment that the Federal Service Tribunal was not functioning hence the petitioner could not approach to the Federal Service Tribunal for seeking appropriate relief. Hence, she approached the High Court under the writ jurisdiction.

17. In view of above, order dated 24.03.2021 cannot be set aside as prayed by the learned counsel for the petitioners. As per the record, the petitioners have already approached the respondents through representations, this Court is confident that the same will, of course, be decided on merits and it would then be open for the Petitioners to approach the relevant forums including the appellate authority, as well as, the learned Federal Service Tribunal having

exclusive jurisdiction, as far as terms and conditions of their service are involved.

18. For the above reasons, instant writ petition is dismissed being not maintainable.

(TARIQ MEHMOOD JAHANGIRI)  
JUDGE

Announced in Open Court on this 26<sup>th</sup> day of May, 2021.

JUDGE

Ahmed Sheikh

Approved for Reporting