

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Writ Petition No. 4470/2019.

Abdul Hameed Gilal

Versus

The Federation of Pakistan through Secretary M/o Energy (Power Division) Pak Secretariat, Islamabad, etc.

Petitioner by: Mr. Ishtiaq Ahmad Cheema, Advocate.

Respondents by: Barrister Muhammad Mumtaz Ali, AAG.
Mr. Muhammad Asif Khan, Advocate.

Date of Decision: 10.01.2020.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has assailed the office order dated 10.12.2019, issued by respondents/IESCO, whereby petitioner Abdul Hameed Gilal, SDO IESCO Sub Division Choa Saidan Shah has been posted as SDO IESCO Sub Division Dharyala Jalip.

2. Learned Counsel for the petitioner contends that respondent No.1/Government of Pakistan, Ministry of Energy has imposed ban on postings/transfers in DISCOs vide order dated 29.08.2019, therefore, posting order of the petitioner is contrary to the order passed by Government of Pakistan, hence, the same is not sustainable in the eyes of law; that posting/transfer of petitioner could only be made subject to other legal requirements settled in Anita Turab case **PLD 2013 SC 195 (Syed Mahmood Akhtar Naqvi Vs. Federation of Pakistan, etc.)** and even successive transfer order and its cancellation was highly depreciated by the Apex Court in case reported as **1995 SCMR 1844 (Niaz Parveen Vs. Rukhsana Shaheen)**.

3. Conversely, learned counsel for respondents No.2 & 3 raised objection qua the maintainability of instant writ petition mainly on the ground that respondent company IESCO is registered under Companies Ordinance, 1984 and governed

by its Board of Directors; that service rules of IESCO employees are non-statutory and as such writ petition is not competent; that posting order of the petitioner was not restricted due to disciplinary grounds and poor performance; that it is prerogative of IESCO authority to transfer the employees anywhere in Pakistan which is referred in the appointment letter of petitioner in clause 10.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner is mainly aggrieved with posting/transfer order dated 10.12.2019, whereby petitioner was transferred from SDO IESCO Sub Division Choa Saidan Shah to SDO IESCO Sub Division Dharyala Jalip. The petitioner has mainly relied upon order issued by Government of Pakistan, Ministry of Energy (Power Division) dated 29.10.2019, which is as under:-

Subject: BAN ON POSTINGS/TRANSFERS IN DISCOs

Please refer to the subject mentioned above. It is stated that during the ongoing monsoon season, DISCOs have their staff at high alert due to frequent tripping/ faults arising due to changing weather conditions. The DISCOs are required to have stable and reliable distribution system of electricity during the months of Muharram and for constraint free next summers, besides each of the DISCO is required to improve their operations/management for reduction in circular debt.

2. *Keeping in view the above, the Competent Authority in this Division has been pleased to impose a complete ban on postings/transfers in all DISCOs with immediate effect and till 31-12-2019, except for disciplinary cases. The CEOs of the respective Distribution Companies are hereby directed to comply/adhere to these instructions without fail.*

6. I have gone through the employment contract of the petitioner which carries clause 10 wherein it was settled that any employee of the company can be posted anywhere within the company and as such no one is allowed to raise objection to that extent, however, while considering the ban imposed by the Federal Government there are certain exceptions which are referred in the same order "except for disciplinary cases". However, wisdom behind the imposition

of ban by the Government of Pakistan is based upon "changing weather conditions". However, it is trite law that employer is the best judge to place service of the petitioner anywhere within the jurisdiction of the company. There is no denial to the proposition that IESCO service rules are non-statutory and this question has already been dealt by this Court in reported case 2018 PLC (C.S.) 1224 (Manzoor Ahmed Vs. Federation of Pakistan through Secretary, M/o Water and Power, Government of Pakistan and 4 others), wherein it was held that writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is not maintainable where no service rules applicable to the employees have been violated. Even otherwise, in this case petitioner is seeking protection of the order issued by Federal Government qua the imposition of ban and as such it is not disputed that the order dated 29.08.2019 imposing ban on postings/transfers is not based upon any statutory rules rather it is an administrative order, whereby no malafide has been attributed to the employer, nor any such event has been quoted, therefore, keeping in view the above mandate, instant writ petition is misconceived and the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid