

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3600 of 2020
Amjad Latif and others
Versus
Federal Board of Revenue

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	01.12.2020	M/s Umar Saeed Khan and Sidra Hussain, Advocates for the petitioners.

Through the instant writ petition, the petitioners, who are admittedly civil servants, impugn the office order dated 20.11.2020 issued by the Federal Board of Revenue (“F.B.R.”), whereby eight officials, including the petitioners, were transferred to different stations.

2. Learned counsel for the petitioners drew the attention of the Court to the advertisements annexed to the petition and submitted that the petitioners were appointed on the basis that they resided at the place where they were supposed to work; that the petitioners were performing clerical duties and were not serving in the field; that there were no pending inquiries against the petitioners; that the petitioners had also been awarded appreciation certificates by the F.B.R.; that the petitioners were not given any notice as to their transfer but gained knowledge of the same from the F.B.R.’s website on 23.11.2020; that the petitioners are over fifty years of age and are suffering from different illness; that since the petitioners have school-going children, their transfer to far-flung areas would cause them great inconvenience; that the F.B.R. should not have transferred the petitioners during the second wave of the COVID-19 pandemic; that the Esta Code requires three months’ notice to be given to

government servants who have been transferred from one station to another to plan their affairs; that the petitioners have been transferred for *malafide* reasons as they are the members of the Regional Cabinet of the Federal Revenue Alliance Employees Union; and that the impugned transfer order violates the petitioners' fundamental rights. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

3. I have heard the contentions of the learned counsel for the petitioners and have perused the record with his able assistance.

4. In the cases of Aamir Khurshid Mirza Vs. The State (2006 CLD 568) and Shabbir Jan Sarhandi Vs. Province of Sindh through Chief Secretary and three others (2006 PLC (C.S) 955), it has been *inter alia* held that it was the duty of the Court to first decide the question pertaining to its own jurisdiction and then consider the merits of the case. I propose, therefore, to first decide whether the instant petition is maintainable on account of the bar contained in Article 212 of the Constitution.

5. Article 212(1)(a) of the Constitution empowers the legislature to make a law providing for establishment of Tribunals to exercise exclusive jurisdiction in respect of matters relating to terms and conditions of persons who are or have been in the service of Pakistan including disciplinary matters. Under Article 212(2) of the Constitution, the jurisdiction of this Court is barred in respect of any matter to which the jurisdiction of such a Tribunal extends. Section 4 of the Federal Service Tribunal Act, 1973 provides for appeals to the Service Tribunal by a civil servant aggrieved of any order regarding the terms and conditions of his

service. Section 4(1)(b) of the Federal Service Tribunal Act, 1973, only bars the Service Tribunal from entertaining appeals against the decisions of departmental authorities determining the fitness or otherwise of a person to be appointed or to hold a particular post or to be promoted to a higher grade. In the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456), it was held as follows:-

“149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals.”

6. Furthermore, it was held that the exercise of jurisdiction by way of suit and Constitution petition filed by a civil servant with regard to his terms and conditions of service is violative of Articles 175, 212 and 240 of the Constitution and the law. The Hon'ble Supreme Court also observed that the admission of such suits and petitions by the learned Judges concerned *“obviously confront and defy Article 189, if not attract the provisions of Article 209 of the Constitution.”*

7. The petitioners are admittedly civil servants and have challenged their transfer order. A writ petition cannot be filed by a civil servant against transfer orders. The consistent view of the Superior Courts has been that a petition under Article 199 of the Constitution cannot be filed by a civil servant with respect to a matter connected with the terms and conditions of the service. The jurisdiction of the High Court in such matters is

barred in view of the provisions contained in Article 212 of the Constitution. It is well settled that transfers and postings relate to the terms and conditions of service, and lie within the domain of the competent authority. Reference in this regard may be made to the following case law:-

- (i) In the case of Mazar Hussain Bukhari Vs. Secretary, Government of Punjab (1998 SCMR 1948), it was held that even if the transfer orders from one place of posting to another were challenged on the ground of *malafide*, the same were to be challenged before the Service Tribunal, and Article 212 of the Constitution was a bar against the filing of a Constitutional petition before the High Court under Article 199 of the Constitution.
- (ii) In the case of Ayyaz Anjum Vs. Government of Punjab, Housing and Physical Planning Department through Secretary and others (1997 SCMR 169), it has been held as follows:-

“Clearly, the matters relating to the posting and transfer of a civil servant relate to the terms and conditions of his service. Disputes about these matters fall within the exclusive jurisdiction of the appropriate Service Tribunal. The jurisdiction of High Court is barred in these matters by the express provisions of Article 212(2) of the Constitution.”

- (iii) In the case of Rai Ahmad Ali Vs. Province of Punjab and others (1999 SCMR 1832), it was held as follows:-

“Article 212 of the Constitution is a bar against filing of a Constitutional petition in relation to the terms and conditions of civil servants. It has been repeatedly held by this Court that a Constitutional petition under Article 199 of the Constitution is not maintainable in relation to any matter

connected with the terms and conditions of service in respect whereof the appropriate Service Tribunal is possessed of the requisite jurisdiction, in view of the provisions contained in Article 212 of the Constitution. This Court has also held that even in cases where the order is alleged to be mala fide, the bar of Article 212 is attracted.”

- (iv) In the case of Peer Muhammad Vs. Government of Balochistan through Chief Secretary and others (2007 SCMR 54), it has been held as follows:-

“It is well-settled by now that the question of posting of a Government servant squarely falls within the jurisdictional domain of the Competent Authority subject to law and rules made thereunder. 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. The plea of mala fide does not confer upon High Court jurisdiction to act in the matter in view of the Constitutional ouster as contained in Article 212 of the Constitution of Islamic Republic of Pakistan and learned Service Tribunal has full jurisdiction to interfere in such-like matters.”

8. Since the impugned transfer order has already been issued, there is nothing preventing the petitioners from invoking the jurisdiction of the Service Tribunal. Even otherwise, a transfer made

in the exigency of service cannot be interfered with in the Constitutional jurisdiction of this Court.

9. In view of the above, this petition is dismissed as not maintainable. I refrain from touching the merits of the case, lest it may prejudice to the either party's case before the competent forum. There is a catena of case law in support of the view that where a Court holds a petition not to be maintainable, it ought not to delve into or give findings or even observations on the merits of the case. Reference in this regard may be made to the judgments in the cases of S.M. Waseem Ashraf Vs. Federation of Pakistan through Secretary, Ministry of Housing & Works and others (2013 SCMR 338), Messrs Voyage de Air, General Sales Agent, Shaheen Air International Vs. Shaheen Air International Pvt. Ltd. (2006 CLC 173) and Yousuf A. Haroon Vs. Custodian of the Karachi Hotel Project (2004 CLC 1967). There shall be no order as to costs. The petitioners are at liberty to agitate their grievance before the competent forum.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Sultan*