

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**(JUDICIAL DEPARTMENT)**

**Writ Petition No. 3020 of 2021**

Asima Sarwat and another

Versus

Pakistan Atomic Energy Commission (PAEC), through its Chairman,  
Headquarters, Islamabad and others.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(01)	27.08.2021	Mr. Muhammad Shoaib Shaheen, Advocate for the petitioners.

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed order dated 13.08.2021, whereby they (both husband and wife) have been transferred from Education Centre Nilore, Islamabad to Education Centre Jauharabad.

02. Succinctly, stated the facts mentioned in the writ petition are that petitioner No. 1 is serving as Associate Professor SPS-10 and petitioner No. 2 is serving as Assistant Professor SPS-9 in the respondent's organization i.e.

Pakistan Atomic Energy Commission. From day one of initial appointment, the petitioners have been performing their duties with full devotion, dedication and up to the entire satisfaction of their superiors. During their entire service career, there has been no complaint of any kind whatsoever. Hence, the petitioners maintain unblemished service record and enjoy very good reputation amongst their colleagues.

03. That after rendering 18 years of service, they were transferred to Education Centre Nilore, Islamabad against vacant posts in the '**public interest**' vide office order dated 10.07.2020. The petitioner No. 1 while performing her duties received a letter dated 09.02.2021 issued by the Head of Education Centre Nilore, Islamabad (on the direction of Dr. Iftikhar Ahmed, Director Education i.e. Respondent No. 3), containing allegations that she visited PAEC HQ many times and met the

different worthy members without prior permission from higher authorities and also has not followed the proper channel. Furthermore, three days' time period was given to reply the said allegations till 12.02.2021.

04. In order to submit reply of letter dated 09.02.2021, petitioner No.1 sought provision of necessary documents from the respondents department which include clear testimonial reflecting petitioner's visit along with date, time and names of different worthy members to whom she met and also copy of the SOPs regarding meeting with high-ups framed by the PAEC / NCA, vide application dated 12.02.2021, followed by reminders dated 12.03.2021 and 29.03.2021, which have not been responded till to date. Instead of providing the necessary documents which were sought by the petitioner No. 1 and waiting reply till 12.02.2021 (last date given by the Head of Education Centre, Nilore), the respondents with

malafide intention and ulterior motives issued a letter dated 11.02.2021, whereby she was transferred from Girls Campus, PAEC Education Centre Nilore, Islamabad to Boys Campus, PAEC Education Centre Nilore, Islamabad, where the petitioner No. 2 i.e. husband of petitioner No. 1 already teaching the same subject i.e. Pakistan Studies to boys classes.

05. That despite the facts that the petitioner No. 1 was initially appointed at Girls Campus and there is also non availability of female lecturer / Assistant / Associate Professor of concerned subject i.e. Pakistan Studies in Girls Campus at Education Centre Nilore, the respondents malafidely transferred services of the petitioner No. 1 from Girls Campus to Boys Campus neither in the exigency of service nor in the public interest. However, afterwards the petitioner No. 1 being an obedient officer, joined the

duties at Boys Campus, PAEC Education Centre Nilore, Islamabad.

06. That subsequently, Dr. Iftikhar Ahmed, Director Education i.e. respondent No. 3 issued an office memorandum dated 12.02.2021, whereby he directed to petitioner No. 1 to attend the meeting with him on 15.02.2021 at 10:00 Hrs sharp. In compliance with the above office memorandum, the petitioner No. 1 went to the office of respondent No. 3 on 15.02.2021, in order to attend the meeting, wherein respondent No. 3 instead of inquiring into the matter, started harassing her at one pretext or the other in order to accept the illegal means, which were not acceptable to the petitioner No. 1 and therefore she left his office.

07. That it is worthwhile to mention here that previously Dr. Iftikhar Ahmed, Director Education i.e. respondent No. 3 also harassed the petitioner No. 1, when her services were attached on 24.07.2017

by the respondents at Pakistan Institute of Engineering and applied Sciences (PIEAS), Islamabad and afterwards due to harassment, she submitted an application before the respondents for cancellation of her service at PIEAS. Now, once again respondent No. 3 started harassing the petitioner No. 1 which is illegal, unlawful and liable for exemplary punishment.

08. Being aggrieved, the petitioner No. 1 lodged a complaint dated 06.04.2021, before the respondent No. 2 i.e. Member (Admin) against the harassment of respondent No. 3, whereupon respondent No. 2 instead of inquiring into the matter and taking strict action against the respondent No. 3, forced the petitioner No. 1 to withdraw the said complaint, which is illegal, unlawful and against the principle of natural justice, subsequently, respondent No. 3 vide office memorandum dated 09.04.2021 also warned the petitioner No. 1 to mend her

conduct and keep working at a place, wherever asked, otherwise, her services will be posted back to PAEC Education Centre, D.G. Khan. That feeling aggrieved, the petitioner once again lodged a complaint on 22.06.2021 before the respondent No. 1, which is still pending. Instead of redressing her grievance, the respondents issued an impugned office order dated 13.08.2021, whereby services of both the petitioners have once again been transferred to hard working area neither in the exigency of service nor in the public interest except as a punishment, which is illegal, unlawful and against the dictum laid down by the Hon'ble Superior Courts and has prayed for setting aside of order dated 13.08.2020 issued by respondent's organization.

09. Learned counsel for the petitioners *inter alia* contends that the impugned office order dated 13.08.2021 is void ab initio, illegal, unlawful, arbitrary, having

no legal effects on the rights of the petitioners and is also against the dictum laid down by the Hon'ble Superior Courts; the impugned office order is neither in public interest nor in the exigency of service, but the same has been issued on extraneous considerations and in order to teach them a lesson, hence the same is liable to be set aside; no compelling circumstances have been mentioned in the impugned office order as required under the law laid down by the August Supreme Court of Pakistan in a case titled as "**Syed Mahmood Naqvi and others Vs. Federation of Pakistan and others (PLD 2013 SC 195)**" (the case of Miss Anita Turab) (**PLD 2013 SC 195**); it is established principle that the discretion must be exercised fairly, justly and to advance the cause of justice and has prayed for setting aside the impugned office order dated 13.08.2021. Learned counsel has relied upon the cases reported as **1995 SCMR 650**,



**2010 SCMR 1301, 1998 T.D. (Service) 253, 1997 T.D. (Service) 56 and PLD 1995 SC 530.**

10. Arguments advanced by learned counsel for the petitioners have been heard and the documents, placed on record have been examined with his able assistance.

11. Learned counsel for the petitioners has mainly relied upon a case titled as **"Syed Mahmood Naqvi and others Vs. Federation of Pakistan and others (PLD 2013 SC 195)"** (the case of Miss Anita Turab), it is mentioned by the Hon'ble Supreme Court of Pakistan in the judgment that:

***"When the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable."***

12. In the instant case learned counsel for the petitioner has neither mentioned in the writ petition nor produced any law

or rule during the course of arguments which specifies the tenure of posting of the petitioners.

13. It is admitted that the petitioners are the employees of Pakistan Atomic Energy Commission which is the strategic organization governed under the National Command Authority Act, 2010. Vide National Command Authority (Amendment Ordinance 2016), following new proviso has been added in section 15 of the Act V of 2010:-

**“Provided that notwithstanding anything contained in any judgment, decree, order, direction or declaration of any Court or in this Act or in any other law for the time being in force, the rules, instruction or orders already made, or which may be made, in respect of the employees and strategic organization of the Authority shall be non-statutory unless approved by the Federal Government and published in the Official Gazette of Pakistan”.**

14. Learned counsel for the petitioner has also admitted during the course of arguments that the rules of respondents

organization are non-statutory, in the recent judgment passed by a larger Bench of this Court in **Writ Petition No. 1502/2019 titled as "Waqas Rafi Awan Vs. National Engineering & Scientific Commission (NESCOM), Islamabad through its Chairman, Islamabad and 02 others"** while dismissing about 108 petitions of the employees of strategic organization it is held that:

***"We, therefore, declare that the effect of the insertion of the proviso in section 15 of the Act of 2010 is to acknowledge the intent of the Majlis-e-Shoora (Parliament) regarding the relationship of the Authority with its employees. The relationship will be governed by the principle of 'master and servant' and the rules regulating the employees and their terms of service will continue to enjoy the status of being non statutory".*** It has further been held that:

***"We, therefore, declare that the petitioners are regulated and governed under non statutory rules and thus not amenable to***

***the jurisdiction of this Court under Article 199 Constitution. The constitutional petitions are consequently not maintainable and accordingly dismissed."***

15. It is well settled that a writ petition is maintainable where the respondent authority violated any provision of law or statutory rules. Employees who are governed by statutory rules can avail the remedy of filing a writ petition before the High Court. It is also well settled that the principle of 'master and servant' was applicable to the employees whose services were not governed by any statutory rules. Employee of a company / organization, owned by the government, in the absence of violation of law or any statutory rule, could not press into service Constitutional jurisdiction of the High Court in order to seek relief with respect to his employment. References in this regard may be made to the laws laid down in the cases titled as **"Samiullah Narago Vs. Federation of Pakistan" (2012 PLC (C.S.) 1205), "Pakistan**

**Telecommunication Company Limited Vs. Iqbal Nasir” (PLD 2013 SC 132), and “Pakistan International Airline Corporation Vs. Tanveer-ur-Rehman and others” (PLD 2010 SC 676).** In the latter case, it has been held

as follows:-

***“However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees***

***have to seek remedy permissible before the Court of competent jurisdiction"*** Reliance is also placed on the cases titled as "**Miss Naureen Naz Butt Vs. Pakistan International Airlines through Chairman, PIA and others"** (2020 SCMR 1625), "**Pakistan Airline Pilots Association and others Vs. Pakistan International Airline and another"** (2019 SCMR 278), "**Pakistan Defence Officers Housing Authority Vs. Mrs. Itrat Sajjad Khan and others"** (2017 SCMR 2010) and "**Abdul Wahab and others Vs. HBL and others"** (2013 SCMR 1383).

16. Even otherwise an employee neither has vested right to remain posted at a place of his own choice nor can he / she insist that he / she must be posted at one place or other. He / she is liable to be transferred in the administered exigencies from one place to another. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in absence of any specific

indication to the contrary. No Department can function if an employee insists that he / she should be posted at the place of his / her own choice and desire. In the matters relating to the posting and transfer of an employee, the apex Court has held that transfer and posting at a particular place is not a vested right of an employee rather the Competent Authority is the best judge of necessary features of service. It is the sole prerogative of the employer to transfer any employee and the Courts usually refrain from interfering in postings and transfers particularly where there is no element of mala fide. Reliance is placed on the cases titled as

**"Peer Muhammad Vs. Government of Balochistan through Chief Secretary and others" (2007 SCMR 54),**  
**"Muhammad Naveed Vs. Government of Khyber Pakhtunkhwa through Secretary Education, Peshawar and 3 others" (2016 PLC(C.S.) 24) and Fida Hussain Shah**

**and others Vs. Government of Sindh**  
**and others (2017 SCMR 798).**

17. In the recent law laid down by the Hon'ble Supreme Court of Pakistan in a case titled as **"Muhammad Sajjad Vs. Federation of Pakistan and others"** **(2021 SCMR 1064)**, it is held that:

***"Transfer and posting is part of service and it is for the authority to determine where services of any staff member are required. The department has exercised delegated powers while passing the impugned order of transfer and the same could not be termed as without jurisdiction or without lawful authority."***

18. The impugned transfer order has been passed by Pakistan Atomic Energy Commission (PAEC), which is a strategic organization, the petitioners have failed to establish from the record appended with the petition, any element of mala fide on the part of the Respondents / Department while passing the impugned order, rather the petitioner No. 1 was found violating the discipline of a



strategic organization, hence the same cannot be held to be illegal.

19. It is also mentioned in the impugned order dated 13.08.2021 that posting / transfer of following educationists is made along with posts in '**public interest**' as shown against each.

20. In view of above discussion, the instant writ petition is not maintainable, hence the same is **dismissed in limine** being meritless.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

*Approved for reporting.*

Bilal /-