

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 232/2020

Muhammad Mazhar Ali

V/s.

Federation of Pakistan, etc.

Writ Petition No. 3873/2019

Babar Noman

V/s.

Chief Commissioner ICT, etc.

Petitioners by: Dr. G. M. Ch., Advocate in W.P No.232/2020.
Raja Inam Ameen Minhas and Ch. Waqas
Zamir, Advocates in W.P No.3873/2019.

Respondents by: Mr. M. Atif Khokhar, State Counsel.
Raja Saif ur Rehman, Advocate.
Babar Sahib Din, Director (Admn) ICT.

Date of Decision: 08.09.2020.

MOHSIN AKHTAR KAYANI, J:- Through this common judgment, I intend to decide both the captioned writ petitions as common question of law and facts are involved in both these writ petitions.

2. In W.P No.232/2020 Muhammad Mazhar Ali/petitioner is mainly aggrieved with the office order No.90/2019, dated 12.06.2019, whereby respondent No.4/ Asghar Khan Niazi was given look after charge of the post of Circle Registrar and petitioner was transferred and posted as Deputy Director Fisheries, ICT.

3. In W.P No.3873/2019 Babar Noman/petitioner member of Federal Employees Cooperative Housing Society, Islamabad has assailed the

appointment of respondent No.4/Asghar Khan Niazi as Circle Registrar, Cooperative Societies Department, Islamabad and has also prayed for issuance of direction to the Chief Commissioner ICT for the appointment of any officer from ICT as Circle Registrar subject to fulfillment of criteria of appointment, qualification, experience and training as mentioned in the notified Rules of Cooperative Department for the appointment of Circle Registrar.

4. Learned counsel for the petitioner Muhammad Mazhar Ali contends that petitioner is professional officer in the department of cooperative societies and was promoted as Circle Registrar BPS-18 vide notification dated 27.05.2019 from the post of Assistant Registrar BPS-17, where-after he assumed the charge for the post of Circle Registrar on 11.06.2019 vide notification issued through Ministry of Interior, Government of Pakistan, however, on 12.06.2019 Chief Commissioner Office, ICT has transferred the petitioner and posted him as District Water Management Officer BS-18 with immediate effect and appointed respondent No.4 Executive Engineer BS-18 of LG&RD Department, ICT which is in violation of prescribed qualification for the post of Circle Registrar as respondent No.4 is an Engineer by profession and petitioner has requisite experience of five years in the field of cooperative societies department i.e. its registration and functioning; that post of District Water Management Officer requires the qualification of M.Sc. (Hons) Agriculture/ Agriculture Engineering and five years experience in the field of water management and as such petitioner is not qualified for the said post, therefore, order of posting and transfer is illegal; that in terms of Section 10 of Civil Servants Act, 1973 Federal Government or the competent authority can pass any order of posting and transfer at any other place but there is no concept of posting & transfer on look after basis which is in violation of law, therefore, respondent No.4 be removed from his position of Circle Registrar after setting aside the order dated

12.06.2019, whereby respondent No.4 was appointed on look after charge basis and petitioner be posted as Circle Registrar, Cooperative Societies Department.

5. Learned counsel for the petitioner Babar Noman contends that petitioner being member of Federal Employees Cooperative Housing Society has assailed the appointment of respondent No.4 mainly on the ground that said position of Circle Registrar requires the qualified person for cooperative department having experience in the relevant field as it effects the working of the societies and public at large is suffering at the hands of respondent No.4, therefore, respondents No.1 to 3 be directed to appoint any officer from ICT, who fulfill the criteria of Circle Registrar.

6. Conversely, learned State Counsel appearing on behalf of Chief Commissioner Office, ICT alongwith Director (Admn) ICT contends that both these writ petitions are not competent especially writ petition No.232/2020, because Muhammad Mazhar Ali/petitioner is civil servant who has assailed the transfer, posting order which exclusively falls within the jurisdiction of Federal Services Tribunal and Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 comes into field, whereas this Court has no jurisdiction to entertain these kind of petitions; that Chief Commissioner ICT is the competent authority to transfer and post out any officer as per requirement of the department in the public interest and no one else can judge his decision on other grounds; that petitioner has already served on the said position for last three years and as such he was given promotion on the said position through notification dated 27.05.2019 and subsequently had assumed the charge on 11.06.2019 only for the said date and he has rightly been transferred and posted as District Water Management Officer; that connected writ petition is also not maintainable as relief sought by the petitioner is that only officer having prescribed qualification can be appointed as Circle Registrar, however, ICT

Administration is under process to requisition the services of different officers from the Ministry and same will be settled when those officers would join the department and temporary look after charge of respondent No.4 will ~~cease~~^{cease} on the said date.

7. Learned counsel for respondent No.4 contends that respondent No.4 is on look after charge which is temporary in its nature and it will not create any right for appointment against the said position.

8. It is important to mention here that conduct of Chief Commissioner office, ICT is not in accordance with law who have been given number of opportunities to submit their written comments in these writ petitions but parawise comments have not been filed, therefore, this Court has no option but to call Director Administration ICT vide order dated 21.08.2020, who put appearance alongwith written report which has been placed on record and as such there is no further requirement for submission of written reply in this case.

9. Arguments heard, record perused.

10. Perusal of record reveals that petitioner Muhammad Mazhar Ali in W.P No.232/2020 has assailed the office order dated 12.06.2019, whereby he was transferred and posted as District Water Management Officer BS-18 and respondent No.4 is allowed to look after working of post of Circle Registrar BS-18 with immediate effect. The entire background of the case revolves around two different portions of the impugned order, firstly the posting of petitioner Muhammad Mazhar Ali from his position of Circle Registrar to the post of District Water Management Officer and subsequently Deputy Director Fisheries and secondly petitioner claims the posting as Circle Registrar only being the qualified person.

11. There is no cavil to the proposition that post of Circle Registrar requires specific qualification notified through SRO 828(i)/2017, dated 08.08.2017, issued

by Ministry of Interior, Government of Pakistan in the exercise of powers conferred by Sub-Rule (2) of 3 of Civil Servant (Appointment, Promotion & Transfer) Rules, 1973 and Section 7(i)(b)(i)(ii) of FPSC Ordinance, 1977 which prescribed specific qualification and experience for the said position, the said SRO has not been denied by respondent side rather it has been acknowledged that petitioner was promoted as Circle Registrar vide notification dated 27.05.2019, however, there is no cavil to the proposition that competent authority can transfer and post out any officer under their command from one place to another in the public interest or in the best interest of department as such there is no legal right of any civil servant to agitate the matter in constitutional jurisdiction to claim posting on particular position or can challenge the transfer, even the action is based upon malafide or in violation of any law. Reliance is placed upon 2019 PLC (CS) 488 Peshawar (Abdul Wadood Vs. Additional Chief Secretary FATA and 3 others).

12. However, at this stage, this Court cannot enter into the subject of posting and transfer due to bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, especially when petitioner Muhammad Mazhar Ali has not denied that he has challenged the order through departmental appeal. In this eventuality reliance is placed upon PLD 1997 SC 382 (Ahmad Salman Waris Vs. Nadeem Akhtar), 2015 SCMR 456 (Ali Azhar Khan Baloch and others Vs. Province of Sindh and others).

13. Keeping in view the above mandate of law, petitioner has been confronted regarding maintainability of instant writ petition, whereby he conceded that he is civil servant in terms of Civil Servant Act, 1973, therefore, instant writ petition is not competent. However, question of look after charge has to be considered as interim measure when officer concerned is not available due to any pending departmental proceedings, leave or posting but respondent

department in utter disregard of the concept of temporary posting has stretched his posting for more than two years and four months on look after charge, therefore, the term acting charge basis has been misused by respondent department especially when respondent No.4 lacks the requisite qualification and experience for the post of Circle Registrar, who is an Engineer having been appointed in the department of LG&RD, hence, petition to the extent of issue in hand regarding look after charge basis is maintainable. Reliance is placed upon 2010 PLC (CS) 215 (Fazal Ahmed Samtio Vs. Province of Sindh through Secretary Local Government), 2010 PLC (CS) 731 Sindh (Dr. Jalil Qadir Vs. Province of Sindh through Chief Secretary, Government of Sindh), 2005 PLC (CS) 908 (Mian Zia ud Din Vs. Secretary Local Government), therefore, Director (Admn) ICT in attendance undertakes before this Court that requisition has already been submitted to the concerned Ministry for different officers to be appointed on these positions having prescribed qualification and same will be appointed as and when officers will be posted from Ministry of Interior.

14. In view of above, writ petition No.232/2020 is hereby **dismissed** and writ petition No.3873/2019 is **disposed of** with direction to the Chief Commissioner ICT to appoint suitable officer on regular basis against the post of Circle Registrar, Cooperative Societies, ICT in accordance with law within period of thirty (30) days, where-after respondent No.4 shall cease to be on the position of Circle Registrar, Cooperative Societies, all of his actions after the said date will also be considered as illegal by all means.

(MOHSIN AKHTAR KAKANI)
JUDGE