

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar

Mrs. Justice Ayesha A. Malik

CPLA NO.4701 OF 2024

(Against judgment dated 21.09.2023 passed by the Federal Service Tribunal, Islamabad in Appeal No.307(R)CS of 2021)

Mubashir Iqbal Zafar

...Petitioner

VERSUS

Ministry of Defence through its Secretary, Pak
Secretariat-II Saddar, Rawalpindi and others

...Respondents

Petitioner : In person

For the Respondents : Mr. Shafqat Abbasi,
Deputy Attorney General for Pakistan.

Date of Hearing : 04.12.2025

JUDGMENT

AYESHA A. MALIK, J.- This Civil Petition is directed against judgment dated 21.09.2023 passed by the Federal Service Tribunal, Islamabad (**Tribunal**) whereby the appeal filed by the Petitioner was dismissed.

2. The Petitioner is an Assistant Health Inspector (AHI) (BPS-5) who was transferred to Dera Nawab Sahib, District Bahawalpur on 08.02.2021 from Abdul Hakim, District Khanewal. He intimated to the competent authority his difficulty in accepting the transfer order dated 08.02.2021 on the ground that his wife is a government school teacher (BPS-14) working at GGES Jinnah Colony, Abdul Hakim, District Khanewal and that she is a heart patient who requires continued medical treatment. Furthermore, that he has two minor children who require supervision and he himself is diabetic, therefore, requires due care and attention as well. Accordingly, he requested that he be allowed to retain his posting at Abdul Hakim, District Khanewal or in the alternate be transferred to some nearby station making it possible for him to attend to his domestic matters. This request was turned down on 30.03.2021 after which the Petitioner filed an appeal before the

Tribunal which was also dismissed on 21.09.2023. The impugned judgment dismissed the case of the Petitioner on the ground that a civil servant has no vested right to claim posting and transfer to any particular place of choice nor can he continue to hold a particular post at a particular place; that transfer and posting is at the pleasure of the authority, in the public interest and does not qualify for interference. Thereafter, the Petitioner filed the instant CPLA. In the meantime, he requested the competent authority to allow him to continue to work at Abdul Hakim on compassionate grounds essentially being the need to be with his wife and family, which request was also rejected. The Petitioner relied upon medical certificates to confirm the fact of his own ailment and his wife's ailment as well as his repeated requests that he and his wife be allowed to serve at the same place as prescribed under the Wedlock Policy (**Policy**).

3. The Petitioner who appears in person states that there is a Policy in existence since 1998 which allows a husband and wife, who are in government service, to be facilitated with respect to transfer and posting so as to avoid hardship. He states that in terms of this Policy medical problems are a valid condition for due consideration by the competent authority, which must be given priority, which in his case was not considered. He relied upon medical certificates as well as the transfer order of his wife dated 20.06.2023 allowing her to continue working at GGES Jinnah Colony, Abdul Hakim, District Khanewal on medical grounds.¹ On the other hand, the Deputy Attorney General for Pakistan (**DAG**) does not dispute the factum of the Policy, however, he states that the Petitioner is bound to obey the transfer order dated 08.02.2021; that he does not have any right to choose his place of transfer and that his transfer and posting was done in a routine manner as per the Policy. The DAG particularly emphasized on the fact that the Petitioner has repeatedly sought the benefit of the Policy and has been in Abdul Hakim for a considerable period of time. Therefore, he states that there is no merit in the fact that the Petitioner has been treated arbitrarily or has been discriminated against. In this context,

¹ Reliance was placed on the report of a Medical Board dated 08.06.2023, by the Office of the Medical Superintendent, DHQ Hospital Khanewal, which confirms his wife's ailment and treatment requirement, recommending therein that she be transferred near her home town.

he states that it is the discretion of the competent authority to issue transfer orders based on need and necessity and in doing so determine whether a husband and wife can be posted at one station if it fulfills the administrative requirements. He states that the Petitioner has served at Abdul Hakim, District Khanewal for seven years and therefore has to be transferred out of District Khanewal and further that the Policy are just guidelines which cannot be indefinitely relied upon. Therefore, in view of the arguments made the specific question before us is whether the Petitioner is entitled to continue his service at Abdul Hakim, District Khanewal where his wife is currently posted. The more general and important question is the scope and enforcement of the Policy.

4. The Policy issued by the Establishment Division comprises of a series of office memorandums, which prescribe guidelines and standard operating procedures when dealing with transfer or deputation of married government employees or unmarried female government employees. Its objective as stated, is to reduce the socio-economic hardship faced by married government employees in matters of transfer and posting. Office Memorandum dated 13.05.1998² was issued to deal with the hardships faced by husbands and wives in government service posted at different stations of duty. The Office Memorandum prescribes that a request made by a spouse should be considered subject to availability of a post in the same BPS. It also requires that temporary deputation, transfer or absorption in another department or agency be considered subject to availability of post. Medical problems as per the Office Memorandum is to be given the highest priority and more importantly, it requires that spouses posted at one station including those on deputation beyond the prescribed maximum period should not be disturbed without compelling reasons of public interest. Therefore, as per the Office Memorandum dated 13.05.1998 extensions may be considered with compassion in cases involving married civil servants. In continuation of the aforesaid Office Memorandum, another Office Memorandum dated 17.12.1999³ was

² Office Memorandum No.10/30/97-R.II. Islamabad, the 13th May, 1998 issued by the Government of Pakistan Cabinet Secretariate Establishment Division (**Office Memorandum dated 13.05.1998**) with respect to posting of serving husband and wife at the same station.

³ Office Memorandum No.10/30/97-R-2. Islamabad, the 17th December, 1999 issued by the Government of Pakistan Cabinet Secretariate Establishment Division (**Office Memorandum dated 17.12.1999**) regarding posting of unmarried female government servants at the place of residence of parents/family.

issued with respect to the transfer of unmarried female government employees at the place of the residence of the parents or family. This Office Memorandum was issued on account of the difficulties that unmarried female government employees were facing with respect to transfer and deputation. The directive contained therein was similar to that of Office Memorandum dated 13.05.1998. Thereafter, Office Memorandum dated 21.04.2006⁴ was issued wherein the previous Office Memorandums of 1998 and 1999 were extended to facilitate married female government employees to be able to serve at the place of residence of their spouse irrespective of whether such spouse was employed with the government, the private sector or even unemployed. The underlying objective being to facilitate the transfer of the wife at the place of her husband, even if the husband was not in government employment. This Office Memorandum, in particular, was notified on 16.04.2012⁵ as an amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 (**Rules**) by adding a *proviso* to sub-rule (3) of Rule 20-A stating specifically that the posting of serving husband and wife and unmarried female government employees shall be exempt from Rule 20-A of the Rules, meaning thereby that the appointment on deputation for a period altogether of five years should not become a cause to dislocate spouses working at the same station or unmarried female government employees already working at the place of residence of their family. In 2020, another Office Memorandum was issued setting out the Standard Operating Procedure (SOPs) for decisions in cases of deputation under the Policy.⁶ This Office Memorandum also provided for the manner in which government employees on deputation could seek deputation, rotation or absorption on the basis of the Policy.

5. The Policy provides an administrative framework intended to alleviate the hardship faced by married government employees. The Policy serves as the guiding methodology provided

⁴ Office Memorandum No.10/30/97-R-2. Islamabad, the 21st April, 2006 issued by the Government of Pakistan Cabinet Secretariate Establishment Division (**Office Memorandum dated 21.04.2006**) with respect to posting of married female government servants at the place of residence/posting of their husbands who are not in government employment.

⁵ S.R.O. No.375(I)/2012. Islamabad, the 16th April, 2012 (Notification of 2012) whereby proviso to Rule 20-A after sub-rule (3) was inserted "*Provided 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*".

⁶ Office Memorandum No.10/30/97-R-II. Islamabad, the 28th January, 2020, issued by the Government of Pakistan Cabinet Secretariate, Establishment Division (**Office Memorandum dated 28.01.2020**).

to government departments while deciding on issues of transfer and posting to keep in mind cases where a husband and wife are both government employees, such that they be located at the same station for duty. The Policy does not create an absolute right, but establishes a legitimate expectation that married government employees can be posted to the same location thereby preserving the family and the institution of marriage. The Policy, in essence, requires that *spouses posted at one station should not be disturbed without compelling reason of public interest and further that a request for extension beyond permissible limits may be considered with compassion, in the public interest*. This encapsulates the objective of the State to promote family sensitive transfer practices which are designed to address the hardship faced by married government employees and unmarried female government employees. As a policy directive of the State, the State must follow it given that this Policy was designed to specifically tackle the difficulties faced by married government employees and unmarried female government employees. In such circumstances, the government cannot pick and choose as and when the Policy can be followed but must ensure that it is followed in letter and spirit to remove not only hardship but also to discourage the continued practice of issuing transfer orders without thought or sensitivity to the requirements of government employees who are married. Hence, as a matter of propriety, effort should be made to follow the Policy to avoid psychological, economical and social strains on families.

6. The State is duly bound to perform its functions in accordance with the directives set out in the Constitution.⁷ Chapter 2 of the Constitution delineates the Principles of Policy mandating that every organ and authority of the State as well as persons performing functions on behalf of the State, must adhere to these principles. While Chapter 2 does not mandate that the Principles of Policy be followed as a matter of course, it is a constant reminder to guide the State's decision making process. It places a responsibility on the State to act in consonance with the directives of the Principles of Policy⁸ and to prioritize the welfare of the people. It sets out the

⁷ The Constitution of the Islamic Republic of Pakistan, 1973 (**Constitution**).

⁸ Asad Ali Khan v. Province of Punjab (PLD 2021 SC 770)

priorities of the State so that it can align its decisions and actions with the Principles of Policy ensuring that the overall working of the State protects and promotes the lives and well-being of its citizens. Accordingly, Article 35 of the Constitution requires the State to protect the marriage, the family, the mother and the child and Article 34 of the Constitution requires the State to take necessary steps to ensure the full participation of women in all spheres of national life. These Articles collectively place a burden on the State to ensure that it promotes the full participation of women in public service and also requires the State to protect the institution of marriage and the family for the benefit of men and women alike. Accordingly, the State is constitutionally mandated to frame policies which take into account marriage, family and the participation of women in public service which in this case translates into the Wedlock Policy. Such measures help to reduce hardships for women, promote family stability and foster greater participation of women in public service. Therefore, given that the State has issued a Policy to promote and protect the institution of marriage and family life, it is essential that the State, in line with its Policy, move away from creating structural and institutional barriers which keeps spouses apart for long periods, for no justifiable reason. Therefore, objections premised on convenience, tradition or rigid administrative practices cannot displace the constitutional obligation to facilitate marriage and family life and to bring about the full and equal participation of women in public service.

7. The government's common response to the Policy is the fact that a civil servant does not have an absolute right to be transferred to any specific location and that civil servants agree at the time when they are appointed that they can be transferred to any place at any time during their service and that transfer orders are issued at the discretion of the competent authority. This in our opinion is a one-dimensional approach to the question at hand. While we recognize the fact that a civil servant does not have a vested right to demand transfer to any specific location, the Policy requires that the genuine hardship faced by spouses, be considered at the time of transfer and that unless absolutely necessary, in the public interest, married couples should be given the benefit of being able

to work at the same place. Similarly, a benefit has been given to unmarried female government employees that they be able to work at a station where their family resides. The Policy by design is made to remove the hardship of separation due to transfer and posting in a marriage or within a family and places a heavy burden on the State to work in a way that facilitates government employees, their marriage and family life. This means that the State must make an earnest effort to abide by its own Policy and maintain its objective. Instead, we find that the intent is the exact opposite of what the Policy sets out. Government employees who are married are expected to live apart for the duration of their service, because transfer is an incident of service, a routine and expected aspect of civil service and civil servants are expected to adjust to these requirements. They are reminded of their duty and obligation to abide by transfer orders which does not as of policy factor in the marriage or family life of the civil servant.

8. In this case, we asked the DAG repeatedly as to the reason why the Petitioner cannot continue his service at Abdul Hakim, District Khanewal given the medical issues both he and his wife face and in pursuance of the Policy. Unfortunately, there was no justifiable reason forthcoming as the transfer order was made in a routine manner with no specific or special reason assigned to transfer the Petitioner, particularly after he filed his representation seeking the benefit of the Policy on medical grounds. We are informed by the DAG that the Petitioner has been given the benefit of the Policy in 2012 where the transfer and posting of his wife *vis-a-vis* his own posting was considered and that he cannot continuously serve at one place. This appears to be the only reason prevailing with the government which we find is not justified given that there is no specific or special reason, in the public interest, to transfer the Petitioner. Furthermore, this request was also made by his wife who was subjected to a medical examination by a medical board which recommended that she be posted near her home town. The DAG does not deny this fact and clarified that Abdul Hakim, District Khanewal is the home town of the wife, where both she and the Petitioner have been working since 2012. In this context, we note from the arguments made by the DAG that there is no impediment

with respect to the enforcement of the Policy other than the opinion of the government that the Petitioner has been given the benefit of this Policy for some time. We are of the opinion that there is no reason for the government to ignore the Policy which facilitates the very issue raised by the Petitioner. Given that the Policy has been issued by the government and has existed since 1998 for this very purpose, it is their responsibility to implement the Policy and its implementation cannot be left at the whims and mercy of the competent authority. While transfer and posting is the discretion of the competent authority it is to be made in the public interest for the benefit of all based on fairness and a lawful administrative process which reflects not only the administrative requirements of the State but also balances the needs and requirements of government employees. The Policy is designed to guide the transfer and posting of married government employees and is grounded in public interest serving as an impartial administrative measure, that is fair, reasonable and consistent with the rights and legitimate expectation of the employees. The Policy was designed with the intent to protect the institution of marriage and the family based on the hardships faced by spouses and unmarried female employees when transferred to different places. There is nothing in the Policy that places a limitation on the timeframe within which a transfer can be maintained, rather it promotes welfare and family life as the underlying consideration while issuing transfer orders. Its implementation ensures that the State is able to function effectively and at the same time ensures that all government employees can work with dignity within the ambit of their family and marriage. As such, we find absolutely no basis in ignoring the Policy and proceeding to transfer the Petitioner in a routine manner. The transfer order dated 08.02.2021 is, therefore, against the Wedlock Policy which, being a Policy of the State, must be complied with.

9. It goes without saying that the foundation of governance lies in the unwavering commitment to preserve and protect the welfare of the people. Every policy and administrative action must be rooted in the best interest of the public, ensuring that governance remains people centric. This is the core purpose of the State. Law and policies designed for the betterment of the people should be

adhered to and not ignored on account of reasons which negate the objective of the law or policy itself.

10. Under the circumstances, this Civil Petition is converted into an appeal and is allowed. The impugned judgment is set aside and the impugned transfer order dated 08.02.2021 to the extent of the Petitioner is also set aside.

JUDGE

Islamabad
04.12.2025
Azmat/*
'Approved for Reporting'

JUDGE