

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Umar Ata Bandial, HCJ

Mrs. Justice Ayesha A. Malik

Mr. Justice Athar Minallah

**CIVIL PETITION NO.1532 OF 2022**

*(Against the judgment dated 27.04.2022 of the Baluchistan Service Tribunal, Quetta passed in Service Appeal No.62 of 2022)*

Dr. Muhammad Saleem

... Petitioner

***Versus***

Government of Baluchistan, and others ... Respondent(s)

For the petitioner: Mr. Kamran Murtaza, Sr.ASC

For respondent No.1: Mr.M.Ayaz Swati, Addl.AG Baluchistan.

For Respondent No.3: Ms. Gulzar Butt, ASC

Date of hearing: 20.01.2023

**ORDER**

**Athar Minallah, J.-** Dr. Muhammad Saleem

(**'petitioner'**) has sought leave against judgment, dated 27.4.2022, of the Baluchistan Service Tribunal (**'Tribunal'**).

2. The controversy stems from the transfer order of Dr. Shamsullah Bazai (**'respondent'**) from the post of Principal, Loralai Medical College (**'College'**). The respondent was posted as Principal of the College vide notification, dated 04.12.2020. The competent authority, vide notification dated 17.10.2021, directed the respondent to report to the Specialized Healthcare and Medical Education Department, but the notification was later withdrawn vide notification, dated 26.10.2021. He was transferred from the post of the Principal of the College and to the post of Professor (B-20) and Head of Ophthalmology Department, Bolan Medical College, vide notification dated 11.02.2022, while the petitioner replaced him as

Principal of the College. The respondent filed a departmental appeal and it was rejected by the competent authority vide order dated 17.2.2022. He then preferred an appeal before the Tribunal which was allowed vide the impugned judgment dated 27.4.2022.

3. We have heard the learned counsels for the parties and the Additional Advocate General of Baluchistan.

4. The respondent had challenged his posting/transfer orders. He had taken the stance in his departmental representation that allowing him to continue to hold the post of the Principal of the College was in the public interest. Likewise, the Tribunal had concluded that the transfer of the respondent from the latter post was not in the public interest. The Tribunal had raised concerns regarding the status of governance, besides placing reliance on the judgments of this Court, so as to justify interference with the executive functions in connection with posting/transfer of employees. The judgments relied upon were distinguishable, while the principles enunciated in the context of the executive domain with respect to transfer and postings of employees/civil servants appears to have been excluded from consideration.

5. This Court has already highlighted the scope of interference with the executive function of postings and transfers of government officials.<sup>1</sup> It has been held that the transfer of a government official from one place or post to another to meet the exigencies of service was within the exclusive domain and competence of the competent authorities of the executive organ of the State and, ordinarily, it is not amenable to interference except in extraordinary circumstances. This principle is subject to the

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<sup>1</sup> *Fida Husain Shah and others v. Government of Sindh and others* (2017 SCMR 798)

condition that the terms and conditions of service are not adversely affected. Moreover, an official has no vested right to claim to be posted/transferred to any particular place of his choice, nor is there a vested right to continue to hold a particular post at a particular place. The transfer and posting of a government servant is limited to the given tenure, if any, or at the pleasure of the competent authority. The question of whether the posting and transfer made by the competent authority was in the public interest is not open to judicial review by a tribunal or court and utmost caution and restraint ought to be exercised in interfering with or encroaching upon the exclusive domain of the executive authorities. The decisions in connection with posting and transfer of government servants must not be subjected to judicial scrutiny unless a law has been clearly violated or mala fide and malice is established without the need for making an inquiry. The interference of the Tribunal or courts in matters relating to postings and transfers is, therefore, an encroachment upon the executive domain and in breach of the seminal principle of separation of powers embedded in the Constitution. The Tribunal was not justified in interfering with the posting/transfer orders of the respondent nor was it in consonance with the settled principles relating thereto. The impugned judgment is, therefore, set-aside and with leave of this Court the petition is converted into an appeal and allowed.

Chief Justice

Judge

Judge

**Islamabad the,**  
20<sup>th</sup> January, 2023  
**APPROVED FOR REPORTING.**  
(Aamir Sh.)