

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, C.J.

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO. 283-K OF 2020

(On appeal against the judgment dated 11.03.2020 passed by the High Court of Sindh, Karachi in Constitutional Petition Nos. D-5659 & D-3597 of 2018)

Muhammad Sajjad

...Petitioner(s)

VERSUS

Federation of Pakistan and others

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Akbar Awan, ASC
(through video link from Karachi)

For the Respondent(s): Not represented

Date of Hearing: 08.03.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the judgment dated 11.03.2020 passed by the High Court of Sindh, Karachi, whereby the Constitutional Petition filed by him, challenging the vires of Rule 5(1) of the Cantonment Servants Rules, 1954, under which the competent authority had transferred him, was dismissed.

2. Briefly stated the facts of the matter are that the petitioner was appointed as Sanitary Inspector (BPS-10) in the Cantonment Board, Pannu Aqil vide order dated 23.01.2010 and purportedly he was transferred to Karachi subsequently. His services were transferred from Cantonment Board Korangi Creek, Karachi, to Cantonment Board D.I. Khan vide order dated 07.11.2013. Being aggrieved by the transfer order, the petitioner along with other similarly placed employees challenged the transfer order by filing Constitutional Petitions No. D-4790/2013 etc titled as "Muhammad Sajjad Vs. Federation of Pakistan" before the High Court of Sindh, Karachi, on the ground that their posts are non-

transferable pursuant to Service Policy framed under Rule 5(1) of the Pakistan Cantonment Servants Rules, 1954. The said Constitutional Petitions were dismissed vide consolidated judgment dated 01.06.2017. The petitioner and others assailed the said judgment before this Court through Civil Petitions No. 384-K of 2017 etc but it also met the same fate vide judgment dated 23.11.2017. He then filed Civil Review Petition No. 23-K of 2018 which also stood dismissed vide order dated 07.06.2018. In the second round of litigation, the petitioner along with another challenged the vires of Rule 5(1) of the Pakistan Cantonment Servants Rules, 1954 before the High Court of Sindh, by filing Constitutional Petition No. D-5659 of 2018 with a prayer that the said Rule may be declared ultra vires of the law. However, the petition was also dismissed by the High Court on the ground that the said question has already been decided by this Court while dismissing Civil Petition Nos. 384-K of 2017 etc i.e. in the case reported as Tariq Iqbal Vs. D.G. Military Lands and Cantonments Department (2018 SCMR 335). Hence, this petition seeking leave to appeal.

3. The crux of the arguments advanced by the learned counsel for the petitioner is that Rule 5(1) of the Pakistan Cantonment Servants Rules, 1954, is contrary to sub-Section 2(c) of Section 280(c) of the Cantonments Act, 1924. He contended that the petitioner being a low paid employee, his transfer to a far flung area would certainly cause him financial constraints.

4. We have heard learned counsel for the petitioner at some length and have perused the record.

5. Primarily the question which is raised before us is whether the Rule 5(1) of the Pakistan Cantonment Servants Rules, 1954, is ultra vires of the law, the post held by the petitioner is transferable or not and whether the competent authority has misused the authority under the said Rule 5(1). We have noted that in the appointment letter dated 23.01.2010, which is available at page 36 of the paper book, it is clearly mentioned that the service of the petitioner is transferable. It would be advantageous to reproduce the relevant paragraphs of the appointment letter, which read as under:-

"8. His service is transferable at any other station throughout Pakistan.

9. If already, in service, he should produce paper admission/relieving order from his employer.

10. No TA/DA will be admissible to him for joining this appointment.

11. Should Mr. Muhammad Sajjad S/o Muhammad Zaman accept the above mentioned appointment, he should report for the duty in the office of Cantonment Board Pano Aqil by 6th February, 2010."

6. Perusal of the aforesaid clauses clearly reflects that it was made clear to the petitioner that only if he accepts the aforesaid clauses, he should report for duty. Joining of duty by the petitioner means that he had accepted clause 8 of the appointment letter, which says that his service is transferable at any other station throughout Pakistan. In this view of the matter when the petitioner had accepted the conditions mentioned in the appointment letter, he was estopped to challenge the transfer order before the High Court. Even otherwise, in the earlier round of litigation, this matter has already been agitated and decided by this Court in the Tariq Iqbal supra case in the following terms:-

"12. However, the important thing which needs to be noted is that both Annexure-I and III were issued by the Director General Military Lands in exercise of power conferred under Rule 5(1) of the Rules of 1954 and in the same pattern Director General Military Lands on 03.11.1999 under exercise of the power conferred under the same Rules directed that all employees of Cantonment Boards in BS-5 and above who were in Non-Transferable categories were placed in Transferable Categories and therefore could be transferred anywhere throughout Pakistan. It is important to note that neither Annexure-I nor Annexure-III were notified in official gazette nor under Rule 5 of Rules of 1954, there appears to be any requirement to notify and publish in the official gazette any consequent change, made by the Director, Military Land and Cantonments. Additionally, petitioners could not be allowed, to back their case on the basis of Annexure-I and III issued by the Director, Military Land and Cantonments while exercising power under Rule 5(1) of the Rules 1954 and dispute the change in posting and transfer brought by the same Director, Military Land and Cantonments in the same manner vide his letter dated 03.11.1999 declaring all employees of the Cantonment Boards in BS-5 and above to transferable categories. It is also important to note that the Petitioners have never challenged the vires of Rule 5 of the Rules of 1954 and for the first time before this Court have simply contended that since clause (c) of subsection (2) of section 280 requires that the rules for the purposes of appointment, control, supervision, condition of service, transfer, suspension, removal, dismissal and punishment of servants of Boards need to be published and, therefore, any change brought therein needs to be published. Suffice is to observe that Pakistan Cantonments Servants Rules, 1954 were duly

published in accordance with requirement of subsection (1) of section 280 and no change in the said rule has been questioned nor it has been brought to our notice. It is only the exercise of power by the Director now Director General ML&C under Rule 5 of the Rules, 1954 and the question as to whether the powers so conferred on the Director, Military Land and Cantonments inter alia, to issue service policy, provide cadres declare posts as transferable or not are intra vires of clause (3) of subsection (2) of section 280 or not, nor the provisions of Rule 5(1) which confer such powers on the Director, Military Land and Cantonments were ever questioned. On the contrary the entire case of the petitioners is based on Annexure I and III issued by the Director General ML&C in pursuance of Rule 5(1) of Rules of 1954. The contention thus fails."

7. *As all the issues raised by the petitioner have already been resolved by this Court in the judgment referred above, therefore, again challenging the transfer order on one pretext or the other is hit by the principle of 'res judicata' and the same is not sustainable in the eyes of law. Transfer of an employee/public servant falls within the ambit of "terms and conditions" of service, which includes transfer and posting. The petitioner neither agitated any element of mala fide on the part of the department nor any of his right has been infringed. 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.*

8. *For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
8th of March, 2021
Not Approved For Reporting
Khurram