

PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary. 3
	20.12.2022	<p style="text-align: center;"><u>W.P No.1400-M/2022 with Interim Relief</u></p> <p>Present: <u>Mr. Aman Ullah Pirzada, Advocate for Petitioner.</u></p> <p style="text-align: center;">***</p> <p><u>MUHAMMAD NAEEM ANWAR, J.</u>-The petitioner, who is Sub-Divisional Education Officer (SDEO), Male District Dir Lower has been transferred from Tehsil Adenzai, District Dir Lower to Khar Bajaur by respondent No.2 in public interest vide impugned order dated 31.10.2022, which has been challenged by him through instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 on the ground that same is without lawful authority, unjust, unwarranted, illegal, against the law and policy of the Government, as such, it requires reversal.</p> <p>2. Learned counsel for petitioner contended that the petitioner is a civil servant who has assailed the order of respondent No.2 through his departmental appeal before respondent No.1 on 04.11.2022, which has already been dismissed, therefore, he in consonance with law approached to the Tribunal constituted under the Khyber Pakhtunkhwa Civil Services Tribunal Act, 1974 but his appeal was not entertained there being premature and it was returned to him, hence, he having got no other alternate, efficacious and appropriate remedy has filed the instant constitutional petition before this Court.</p>

He added that after return of his appeal once again he approached to the Tribunal with memorandum of appeal and an affidavit to the effect that his departmental appeal has already been decided, as such, the Tribunal could hear the appeal against the impugned order, but to no avail.

3. Arguments heard and record perused.

4. It is an admitted fact that the petitioner is a civil servant and was posted as SDEO (Male) Adenzai District Dir Lower, wherefrom he has been transferred and posted as SDEO (Male), Khar Bajaur through impugned order dated 31.10.2022 by respondent No.2. Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 deals with administrative Courts and Tribunals and its sub-article (a) pertains to the matters relating to the terms and conditions of the persons who are or have been in service of Pakistan including the disciplinary matters, are exclusively to be tried by the Tribunal. Sub-Article 3 of Article 212 *ibid* has categorically provided an appeal to the Hon'ble Supreme Court from the judgment, order, decree or sentence of an Administrative Court or Tribunal. When questioned, learned counsel for the petitioner contended that in the case of "Dilshad Begum Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and 02 others" (2018 PLC CS Note 50), this Court has held that the matter relating to the terms and condition of service though can be looked into keeping in view the facts and circumstances of the case. We have gone through from said judgment and while considering the specific bar in terms of Article 212 *ibid* are of the

view that the order of the Service Tribunal or even that of its worthy Registrar cannot be assailed before this Court. The question of posting of a government servant squarely falls within the jurisdiction/domain of the competent authority. According to Khyber Pakhtunkhwa Civil Servant Act, 1973 every civil servant under the provincial government is liable to serve within the province. It would be relevant to reproduce the Section 10 of the Act, 1973 as under:

"10. Posting and Transfer.

Every civil servant shall be liable to serve anywhere within or outside the province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body setup or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further, that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."

5. More-so, in the matter of posting/transfer of civil servant the Hon'ble Supreme Court of Pakistan has settled the principle in the case of "Syed Muhammad Naqvi and others v. Federation of Pakistan (PLD 2013 SC 195)" and any such matter shall fall within the domain of Tribunal. Under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973 any decision of the Supreme Court to the extent of law is binding on all the High Courts and Subordinate Courts. Similarly, the decision of the Hon'ble Supreme Court of Pakistan is binding on all the government functionaries, whether the

parties or not. Though learned counsel for petitioner contended that the petitioner has filed another appeal after returning of the earlier appeal through an affidavit, but same has neither been annexed with the instant petition nor could be produced before us by him during the course of arguments.

6. It is the domain of the authority or administration to post and transfer any civil servant anywhere during his service and the appointment, posting and transfer of a civil servant relate to the terms and condition of service are purely administrative matters, however, for settlement of those matters a forum has been provided by the law and presently Tribunal is functioning. This Court in the case of *Naheed Jan vs. Additional Chief Secretary, (Fata) Secretariat, Khyber Pakhtunkhwa, Peshawar and 2 others* [2013 PLC(CS) 153]

has held that:

“Since posting and transfer is one of the terms and conditions of civil servant as defined in Chapter-II section 10 of Civil Servants Act, 1973, therefore, this Court lacks the jurisdiction to entertain the writ petition challenging the transfer/posting order.”

7. Furthermore, when this Court has got no jurisdiction regarding the matter relating to the terms and condition of service of a civil servant, cannot direct the Service Tribunal to entertain the appeal of the petitioner and to grant an injunction in terms of status quo against the transfer order. It is the basic principle of law that when the law requires that a particular thing is to be done in a particular manner, it must be done in that manner and not otherwise. Thus, this Court cannot assume the jurisdiction, which has specifically been barred by

the Constitution of Islamic Republic of Pakistan, 1973. In the case of *Faiz Ahmed* (1998 SCMR 436) Hon'ble Supreme Court has observed that the High Court first to determine the jurisdiction and then to pass any order regarding the status-quo. Reliance may be placed on the case of *Khalid Javaid Khalid* (1998 SCMR 2061) wherein it was observed that "the dispute raised by respondent No.1 in the writ petition admittedly related to his transfer/posting which is a matter relating to terms and conditions of the service. Such disputes exclusively fall within the jurisdiction of the Service Tribunal as envisaged by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. A bare reading of the impugned order shows that the learned Judge in Chambers has not considered this aspect of the matter before passing the impugned order".

8. Though learned counsel for petitioner has submitted that till entertainment of his appeal by the Service Tribunal, the operation of impugned order may be suspended but this submission is also misconceived in view of the dicta laid down by the august Supreme Court, as such, we would refrain ourselves to enter into a sphere, in which, this Court has got no jurisdiction. Thus, without discussing the nature of the impugned order as to whether it has been passed in public interest or otherwise, instant petition is hereby dismissed in *limine* being not maintainable, leaving the petitioner at liberty to approach to the appropriate forum, if so desired.

Announced.
20.12.2022.


JUDGE


JUDGE