

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH MULTAN.
JUDICIAL DEPARTMENT

W.P. No.14268/2024.

Malik Imtiaz Ahmad.

Versus

Government of Punjab through
Secretary Irrigation Department
Punjab, Lahore & others.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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29.10.2024.

M/s Syed Ameer Mehdi and Syed Qunber Naqvi,
Advocates for petitioner.

Haji Muhammad Tariq Aziz Khokhar, Advocate
for petitioner in W.P. No.13876/2024.

Malik Masroor Haider Usman, Assistant A.G.
along Hafiz Abdul Rehman, SE Irrigation.

Mirza Hasnain Abbas, Inspector.

This and connected constitutional petition bearing W.P No.13876/2024 manifest grievance arisen out of transfer orders of the petitioners, former petition relates to order of cancellation of transfer and latter is directed against the transfer effected. Transfer orders, being part of terms and conditions of service, are not interfered under constitutional jurisdiction, unless some element of apparent *mala fide*, vindictiveness or nefariousness is manifested. These cases are different, where the orders subject matter commonly traced their source in the Notification No.PS/SCM/CMO/24/OT47/ dated 01.03.2024 (the 'Notification'), through which

Chief Minister Punjab had imposed complete ban on all kinds of transfers / postings with immediate effect. Office of the Advocate General Punjab was put on notice to explain that under what authority of law blanket ban was imposed on transfers / postings of civil servants. This petition will only decide the question that whether exercise of authority by the Chief Minister, through issuance of Notification, is justiciable under and endorsed by any applicable law?

2. Learned Law Officer submits that in terms of the constitutional mandate the executive authority of the province vests in the Chief Minister, who is otherwise empowered to extend approval to appointments, postings, promotions and transfers in terms of Rule 23 of the Punjab Government Rules of Business, 2011. Further law officer sought protection of section 9 of the Civil Servants Act, 1974.

3. Heard. Rule 23 of Punjab Government Rules of Business, 2011 is not attracted, which relates to the appointments, postings, promotions and transfers to the posts in fourth schedule, thereof. Rule 23, *ibid*, speaks of approval and does not

authorize the Chief Minister to place complete ban on postings / transfers. Reference to section 9 of the Civil Servants Act, 1974 is misplaced, which does not permit issuance of such Notification, placing ban comprehensively. It appears that Notification further creates an exception and permit transfers / postings, subject to circumstances stated therein existing, and approval of the Chief Minister. Notably subject posts are not covered under the fourth schedule of Punjab Government Rules of Business, 2011.

It is appropriate to examine text of the Notification for clarity, which is reproduced hereunder,

**“SUBJECT: BAN ON POSTINGS/
TRANSFERS.”**

Chief Minister Punjab is pleased to impose complete ban on all kinds of transfers/postings with immediate effect, till further orders.

2. In case of any posting / transfer, which is required to be made on extreme hardship / compassionate or administrative grounds, prior approval will be sought from the Chief Minister through summary containing details of tenure of the officer and vacancy position, etc.”

4. Executive authority so vested in the Government or Chief Minister is circumscribed by the law, to the extent legislated by the legislature. Chief Minister can exercise powers and perform functions within the limitations

defined and contours prescribed through legislative *fiat*. There is no cavil that Postings and transfers are governed and regulated in terms of section 9 of the Civil Servants Act 1974 and rules framed thereunder, and according to the policy of the Government, unless aligned with the permissible limits, prescribed by law. Executive, by no stretch of imagination, could assume the role of the legislature(s), and proceed to legislate in garb of exercise of executive authority. If the legislature intends to extend powers to the Chief Minister to centralize and regulate postings and transfers of civil servants operating in the province, same may legislate and make requisite amends in relevant laws. No law / judicial precedent is cited that supports or endorses action of imposition of complete ban on all kinds of transfers / postings, which act of arbitrarily encompassing all power unto the Chief Minister is nothing but sheer abuse of executive authority. Text of the Notification manifest centralization of powers / control and aggrandizement of authority, at the expense of subduing, effectively controlling and conspicuously undermining the independence and working of the civil servants / bureaucracy,

including Police department – in connected constitutional petition Sub-Inspector was transferred while acting under the effect of Notification. Such an overreach by the executive authority tantamount to an obvious encroachment and otherwise disturbs administrative equilibrium of checks and balances. Notification, appears to be a remnant of colonial legacy. Nothing is placed on record to demonstrate that legal opinion was solicited from the principal law officer of the province, before introducing the Notification of 01.03.2024. Notification without the support of law has no authority or legal effect. Reliance is placed on the ratio settled in the case of “Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A and others Vs. Federation of Pakistan through Secretary Ministry of Interior and others” (PLD 2007 Supreme Court 642), relevant portion reads as,

26. It may not out of place to mention here that “There is no inherent power in the executive, except what has been vested in it by law, and that the law is the source of power and duty. The structure of the machinery of government, and the regulation of the powers and duties which belong to the different parts of this structure are defined by the law, which also prescribes, to some extent the mode in which these powers are to be exercised or those duties performed. From the all pervading presence of law, as the sole source of governmental powers and duties, there follows the consequence that the existence or nonexistence of a power or duty is, a

matter of law and not of fact, and so must be determined by reference to same enactment or reported case. Consequently there are no powers or duties inseparably annexed to the executive Government. It cannot be argued that a vague, indefinite and Writ Petition No. 15453/2024 Writ Petition No. 29024/2024. Writ Petition No. 34713/2024. 9 wide power has been vested in the executive to invade upon the proprietary rights of citizens and that such invasion cannot be subjected to judicial scrutiny if it is claimed that it is a mere executive order. This is not the position in law. Any invasion upon the rights of citizens by anybody no matter whether by a private individual or by a public official or body, must be justified with reference to some law of the country. Therefore, executive action would necessarily have to be such that it could not possibly violate a Fundamental Right. The only power of the executive to take action would have to be derived from law and the law itself would not be able to confer upon the executive any power to deal with a citizen or other persons in Pakistan in contravention of a Fundamental Right. Functionaries of State, are to function strictly within the sphere allotted to them and in accordance with law. No Court or Authority is entitled to exercise power not vested in it and all citizens have an inalienable right to be treated in accordance with law. Therefore, an action of an Authority admitted to be derogatory to law and Constitution, is liable to be struck down.”

Reference is made to the decision in the case of “Province of Punjab through its Home Secretary, and 3 others Vs. Gulzar Hassan, Advocate and 8 others” (PLD 1978 Lahore 1298)

“59. In view of the above observations of the Supreme Court, it is absolutely clear that no executive authority can take any executive action without the support of a valid law and any action taken in violation of the above rule can be struck down by the High Court under Article 199 of the Constitution as being without lawful authority.”

5. Objection raised that jurisdiction to decide instant matter vests with the Constitutional

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Benches under Article 202A of 26th Constitutional Amendment Act 2024, appears to be misplaced and otherwise misconceived, when examined in the context of clause 7 of Article 202A of the Constitution of Islamic Republic of Pakistan 1973 ('Constitution of Pakistan 1973'), which provides mechanism for triggering of Article 202A of the Constitution of Pakistan, 1973 – Resolution passed by majority of the total membership of respective Provincial Assembly to give effect to the provision of Article 202A.

Even otherwise instant petition is entertained and decided in exercise of powers under sub-clause (ii) of clause (a) of Article 199 of Constitution of Pakistan 1973, to declare an act, undertaken without the authority of law.

6. In view of the above, these constitutional petitions are allowed only to the extent of holding / declaring the Notification dated 01.03.2024 without lawful authority and of no legal effect. To avoid administrative disruption or disorder, any and all transfer orders made or cancelled, purportedly under the dictates of the Notification shall continue to hold field, unless affirmed, endorsed or cancelled by the authorities

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competent to make transfer / postings. And petitioners are at liberty to raise individual grievances with the authorities competent to consider grievances relating to transfer/postings.

(ASIM HAFEEZ)
JUDGE

Imtiaz Nasir

Approved for reporting

JUDGE.