

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: I.C.A. No. 48 of 2013

Farooq Ahmad Awan

Versus

Barrister Sardar Mohammad Ali
& 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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19.02.2013 Kh. Haris Ahmad, Advocate for the appellant.
Mr. Nasim Ahmad Kashmiri, Deputy Attorney General for Pakistan.
Syed Raza Ali, Advocate for respondent No.1 along with respondent
No.1.
Mr. Babar Sattar, Advocate, for respondent No.1 in I.C.A.
No.49/2013.

MAIN APPEAL

C.M.No.1/2013

We were in the process of hearing preliminary arguments on an application filed by the appellant for suspension of the impugned order dated 15.01.2013 passed by the learned Single Judge in Chambers of this Court when we were informed that the Federal Government had issued a notification dated 29.01.2013 transferring the appellant with the direction to report to the Establishment Division with effect from the date that he relinquished the charge of the post of Chairman, Pakistan Telecommunication Authority (PTA) i.e. 15.01.2013.

2. It was pointed out by the learned counsels for the respondents that the Federal Government had accepted and implemented the order of the learned Single Judge in so far as it had not filed an appeal against the order and had also implemented the same. It was further submitted that in any event, the appellant who is a civil servant had been transferred and posted as Member, PTA under Section 10 of the Civil Servants Act, 1973. The transfer notification clearly indicated that he had been transferred in his own pay and scale until further

orders. Therefore, there was no bar on the powers of the Government to transfer him to some other position in exercise of the same powers under Section 10 of the Civil Servants Act, 1973. They maintained that the appellant had no vested right to insist on being retained either as a Member PTA or as Chairman PTA which appointment was made vide order dated 28.07.2012 and notified on 31.07.2012.

3. It was also submitted that through the impugned short order, the appointment made by the Federal Government was declared to be without lawful authority. The Federal Government having accepted the said declaration, which is evident from the fact that no appeal was filed, the appellant has no real cause of action left and the Intra Court Appeal is liable to be dismissed on account of the latest development i.e. issuance of notification dated 29.01.2013 whereby the appellant has been transferred and directed to report to the Establishment Division. In view of the fact that the principal learned counsel for the appellant was not present, on the joint request of the learned counsels for the parties the matter was adjourned for today.

4. In the meantime, one of the Members of the Bench which conducted hearings till 07.02.2013 (the last date of hearing) became unavailable on account of holding Court at the Rawalpindi Bench. Therefore, this Bench was reconstituted. The learned counsel for the appellant, therefore, agreed to address arguments only on the limited question of maintainability of the present appeals in view of the notification dated 29.01.2013 mentioned above.

5. The learned counsel for the appellant submits that by virtue of the transfer order the appellant has not lost his status as a civil servant. Therefore, he can still challenge the order through which his appointment as Chairman PTA was set aside. He further argues that the notification dated 24.01.2013 has been issued in compliance with the order passed by the learned Single Bench of this Court as the Federal Government had no other option but to comply with the same.

However, this does not mean that the appeal has abated or that the appellant no longer has a cause of action. He further submits that the appellant had relinquished the charge in compliance with the order of the learned Single Judge, he had been disassociated from the post of Chairman/Member, PTA and had to be placed somewhere by the Federal Government. Therefore, transfer to the Establishment Division is meant to meet that necessity and cannot be interpreted to mean that he has been posted out in the regular course of events in terms of Section 10 of the Civil Servants Act.

6. On the question whether the transfer notification has been issued pursuant to the order passed by the learned Single Judge or independent thereof the learned Deputy Attorney General has stated that the notification has been issued in compliance with the impugned order. We, however, notice that the notification in question does not make any mention of the order passed by the learned Single Judge.

7. We have considered the submissions made by the learned counsel for both sides and have gone through the notifications in question.

8. The answer to the question whether or not these appeals have become infructuous on account of issuance of the transfer notification dated 29.01.2013 may have a direct bearing on the alleged rights of the appellant that he claims, by virtue of his appointment as a Member/Chairman PTA. Therefore, we consider it appropriate and in the interest of justice not to record any findings on this issue at this stage without examining the detailed reasoning of the learned Single Bench, lest it should prejudice the case of the appellant. The legal consequences of the aforesaid notification and its effect on the maintainability of this appeal will be considered at the time of hearing arguments on the main appeal.

9. We, therefore, direct that the main appeal and miscellaneous applications along with the connected appeal (I.C.A. No.49/2013) be listed for hearing for an early date.

M. R. du

(MAMOON RASHID SHEIKH)
JUDGE

Ijaz ul Ahsan
(IJAZ UL AHSAN)
JUDGE

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Mr. Nasim Ahmad Kashmiri, Deputy Attorney General for Pakistan.
Mr. Babar Sattar, Advocate, for respondent No.1.
Syed Raza Ali, Advocate for respondent No.1 along with respondent
No.1 in I.C.A. No.48/2-013.

MAIN APPEAL
C.M.No.1/2013

Same order as in I.C.A. No. 48/2013.

M. N. Sheikh

(MAMOON RASHID SHEIKH)
JUDGE

Ijaz ul Ahsan
(IJAZ UL AHSAN)
JUDGE