

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(APPELLATE JURISDICTION)

PRESENT:

Raja Saeed Akram Khan, C.J.

Civil P.L.A No.35 of 2021

Civil Misc. No.46 of 2021

(Filed on 26.02.2021)

Raja Mumtaz Ahmad, Assistant Private
Secretary, Inland Revenue Department, Mirpur.

....PETITIONER

VERSUS

1. The Government of Azad Jammu and Kashmir through Secretary Inland Revenue, having his office at New Secretariat, Muzaffarabad.
2. The Commissioner Inland Revenue (Direct Taxes), having his office at Mirpur.
3. The Deputy Commissioner Inland Revenue, Circle 11 (Business), Mirpur.
4. The Deputy Commissioner Inland Revenue, Circle 15, Neelum.
5. Talat Mehmood Mirza Staff Officer to

Commissioner Inland Revenue (Direct Taxes), Mirpur.

....RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 07.01.2021 in service appeal No.399 of 2020)

APPLICATION FOR INTERIM RELIEF

FOR THE PETITIONER: Qazi Adnan Qayyum,
Advocate.

FOR THE RESPONDENTS: Mrs. Nabeela Ayub,
Advocate and Raja
Waseem Younis, AAG.

Date of hearing: 23.06.2021

ORDER:

Raja Saeed Akram Khan, CJ.— Through the titled petition for leave to appeal the petitioner has challenged the validity and correctness of the judgment of the Service Tribunal dated 17.01.2021. The petitioner was performing the duties as Assistant Private Secretary at Inland Revenue Circle-11, Mirpur. The Commissioner Inland Revenue transferred the petitioner vide notification dated

16.07.2020, to Inland Revenue Circle-15, Neelum. The petitioner challenged the said notification by filing appeal before the Service Tribunal which has been dismissed through the impugned judgment.

2. Qazi Adnan Qayyum, Advocate, the learned counsel for the petitioner argued that the impugned judgment is against law and the facts of the case. He submitted that the main point involved in the matter is that the Commissioner Inland Revenue was not competent to issue the notification for transfer of the petitioner. The transfer notification has been issued without lawful authority, but the learned Service Tribunal failed to attend and resolve this point in a legal manner. He submitted that the transfer notification is patently illegal which in view of the dictum laid down by the superior Court is liable to be set

aside. He referred to and relied upon the case law reported as 2014 SCR 878.

3. On the other hand, Miss Nabeela Ayub, Advocate and Raja Waseem Younis, AAG, strongly controverted the arguments advanced by the learned counsel for the petitioner. They submitted that the impugned judgment is perfectly legal which is not open for interference by this Court. The Commissioner Inland Revenue was fully competent in view of notification dated 02.08.2005, to transfer the petitioner. After the 13th amendment new rules have not been framed as yet and the notification (supra) is holding the field, therefore, the argument of the learned counsel for the petitioner that the transfer notification has been issued without lawful authority has no substance. They also submitted that the petitioner has been transfer after long stay period of 19 years, at one station and in

compliance of the transfer notification he has submitted the joining report. No question of law of public importance is involved in the matter, hence, leave cannot be granted in routine.

5. I have heard the arguments and gone through the record made available along with the impugned judgment. It is an admitted position that the petitioner has been transferred after a long stay period at one station and he has submitted the joining report, meaning thereby the transfer notification has been complied with. The sole point raised by the learned counsel for the petitioner in support of this petition is that the Commissioner Inland Revenue was not competent to issue the transfer notification. In view of the notification dated 02.08.2005, brought on record by the petitioner, the powers of appointing authority had been delegated to the Commissioner and being appointing authority he was competent to

transfer the petitioner. After 13th amendment as admittedly, the departmental rules have not been promulgated as yet and still the notification dated 02.08.2005, is holding the field, therefore, the argument of the learned counsel for the petitioner that the transfer notification has been issued without lawful authority has no substance. In the instant matter, the transfer notification has been issued in the interest of administration and Government work on the requisition made by the Deputy Commissioner Inland Revenue Neelum and under the provisions of section 9 of the Azad Jammu and Kashmir Civil Servants Act, 1976, a civil servant can be posted anywhere in exigency of service. The findings recorded by the learned Service Tribunal in this regard are comprehensive, I fully endorse the same. No question of law of public importance

is involved in the case, therefore, leave cannot be granted.

In view of the above this petition being devoid of any force is hereby dismissed. No order as costs.

Mirpur,
23.06.2021

CHIEF JUSTICE

