

**ORDER SHEET  
HIGH COURT OF SINDH, KARACHI**

**C.P. No.D-6382 of 2019**

---

<b>Date</b>	<b>Order with signature of Judge</b>
-------------	--------------------------------------

---

**Present**

**Mr. Justice Muhammad Ali Mazhar.**

**Mr. Justice Agha Faisal.**

Muhammad Jibran Nasir & others.....Petitioners

Versus

Federation of Pakistan & others.....Respondents

For hearing of CMA No.35721/2019.

Date of hearing 24.12.2019.

Mr. Faisal Siddiqui, advocate for the Petitioners.

Mr. Salman Talibuddin, Advocate General Sindh along with  
M/s. Jawad Dero and Ghulam Shabbir Shah, Additional  
Advocate General Sindh.

Mr. Zulfiqar Mahar, AIGP (Legal) along with Mr. Raza Mian  
and Mr. Akbar Ali, DSP (Legal).

-----

**Muhammad Ali Mazhar, J:** Quintessentially, the petitioners have entreated for declaration inter alia that the consultation with the Inspector General of Police under Article 13 of the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019 for posting of Additional Inspector General of Police and Deputy Inspector General of Police is binding on the Government of Sindh. The respondent No.6 (IG) should act in accordance with the Judgment passed in C.P. No.D-7097/2016 and C.P.No.D-131/2017 vis-à-vis the appointments of Additional Inspectors General of Police and Deputy Inspectors General of Police. A request has also been

made for the declaration inter alia that proviso attached to Article 15(1) and (3) of the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019 is unconstitutional and also sought for implementation of some other provisions.

2. Notice on main constitution petition and interlocutory application moved (to restrain in general all transfer posting in police department during pendency of petition) was issued to the respondents. Since vires of some provisions of Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019 are also under challenge therefore a notice was also issued to the Advocate General Sindh under Order 27-A CPC. During pendency second injunction application (CMA No.35721/2019) was also moved to stay transfer notifications of two police officials, therefore separate notice was also issued with ad-interim orders. The learned A.A.G filed the counter affidavit and shown some urgency hence putting aside the main petition awhile, the second injunction application was heard extensively so that its fate may be decided first.

3. The learned counsel for the petitioners argued that Khadim Hussain Rind, DIG was relieved and his services were surrendered to the Federal Government, however after suspension of the impugned Notification by this Court through Order dated 16.12.2019, he resumed his charge whereas Dr. Muhammad Rizwan Ahmed, SP was also relieved from his post and his services were also surrendered to the Federal Government but after suspension of his Notification, he has also assumed his charge.

4. It was further averred that impugned notifications were issued in violation of Articles 13 and 17 of the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019. The entire subject matter is the interpretation of the new Police Act, 2019 in accordance with the judgment reported as

PLD 2018 Sindh 8, especially in relation to matters of appointment and removal of police officers. In the earlier judgment reported as PLD 2018 Sindh 8, numerous notifications related to multiple officers of the Sindh Police were set aside by this Court on the ground of the absence of the consent of the IG, even though, none of those officers were a party to the petition and even then the illegal notification transferring those non-parties were set aside. Reading of Rule 8 (i), Entry 10 of Schedule VI, Sindh Government Rules of Business, 1986, shows that Entry No.10 has nothing to do with the power of the Chief Minister to relieve or surrender Federal Officers but is strictly limited to only three categories: (i) conditions of service, (ii) promotion and (iii) disciplinary action of federal officers. If the interpretation of the Government of Sindh is accepted that relieving of service or surrender of service is not removal or transfer, then the entire powers and autonomy of the IG regarding transfer and posting can be subverted and sabotaged by simply the removal of police officers appointed with consent of the IG by camouflaged such removals as relieving of service or surrender of service. The new Police Act, 2019, guarantees total autonomy of IG in operational, administrative and financial matters and such a meaning of surrender of services as given by the Sindh Government will destroy such autonomy completely. In the earlier Petition reported as PLD 2018 Sindh 8, this Court has also dealt with the surrendering of services to the Federal Government in relation to the removal of the IG. The aforementioned Judgment makes no distinction between surrendering of services and removal/transfer.

5. It was further avowed that two letters dated 02.11.2018 and 26.11.2018 available at page 1235-1237 of the court file relied upon by the Government of Sindh are irrelevant for the reasons that these letters were issued much before the coming into force of the New Police Act, 2019. It was further contended that under Article 17(3) of the New Police Act, 2019, the removal of SP on

the ground of misconduct is the sole power of the IG as compared to the removal of the DIG of a range and SSP of a district under Article 15(3) which requires the consent of the Government of Sindh. It is not denied by the Sindh Government that there was no consent of the IG to remove Mr. Rizwan. There is no provision in law which simply allows the removal of a PSP officer by the Government of Sindh on the request of another province. Even otherwise, no document has been placed to show that the Establishment Division, Federal Government has made any request for repatriation of DIG.

6. The learned Advocate General Sindh argued that so far as the main petition is concerned, he has no objection to the maintainability but according to him application for interim relief seeking suspension of the transfer orders i.e. annexure A and annexure A-1 attached to CMA No.35721/2019 is not maintainable. He further argued that the application is supported by the affidavit of petitioner No.1 who has no right and authority to move such an application. He further argued that Article 13 and 17 of the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019 are only related to interprovincial transfer of PSP. The present case is not related to interprovincial transfer but relates to surrendering the services of DIG and SP to the Establishment Division.

7. He further argued that the issue involved in the second stay application purely relates to terms and conditions of PSP officers, jurisdiction of which, by virtue of the provisions of Article 212 of the Constitution of Pakistan, 1973, vests in the Federal Service Tribunal, therefore, the stay application is liable to be dismissed. The law with respect to practice and procedure of adjudication appears to be settled and it was held in PLD 2003 S.C. 979 that what is not permitted to be done directly cannot be achieved through circumvention of law by indirect means. He further argued

that any decision rendered on the stay application would affect CP No.D-8099/2019 pending in this Court where relief sought is identical to the relief sought in the stay application which was adjourned with the directions to the advocate to assist on the maintainability of the petition as the petitioner is not aggrieved person.

8. It was further averred that that right from the commencement of surrendering proceedings of said PSP officers, the I.G was duly apprised of all the development and every step taken was in the knowledge of I.G. It is inconceivable to allege that surrendering of services were sudden and unplanned or that I.G came to know it through media reports. The power to surrender PSP officers serving in the Province of Sindh, pursuant to Rule 8 read with item 10 of Schedule VI of the Sindh Government Rules of Business, 1986, vests in the Chief Minister of Sindh. The whole proceedings were carried out in accordance with the Sindh Government Rules of Business, 1986. The learned Advocate General Sindh made much emphasis that even under the extended doctrine of locus standi under the public interest litigation, a stranger cannot challenge the validity of Government orders. He further argued that constitutional jurisdiction of this court is required to be exercised carefully to promote public interest and not to entertain speculative or malicious attacks to block or suspend the performance of executive functions by the Government. The petitioners have failed to show that they are litigating in public interest and for public good and for welfare of general public. He further argued that to invoke constitutional jurisdiction of this court, a person is required to first qualify test of being aggrieved person and then to show that his case fell in any of the categories so defined by Article 199 of the Constitution that there was no alternate legal remedy except the petition. The learned Advocate General Sindh referred to case of Balochistan Medical Association vs. Government of Balochistan and others (2017 CLC

1195), Javed Ibrahim Paracha vs. Federation of Pakistan and others (PLD 2004 S.C. 482), Premier Battery Industries Private Limited vs. Karachi Water and Sewerage Board and others (2018 SCMR 365), and Kasani Narayana vs. Government of A.P. and others (AIR 1989 Andhra Pradesh 51).

9. Heard the arguments. The bone of contention is an act of relieving and surrendering the services of DIG and SP to the Establishment Division, Government of Pakistan vide Annexure A and A-1. The petitioners have also attached a letter dated 10.12.2019 which was communicated by the Inspector General of Police, Sindh to the Chief Secretary for raising objections that the services of said officers were surrendered without his consultation. I.G in his letter further stated that DIG was supervising extremely important matters of police establishment including recruitment against vacant positions, promotions in upper subordinate ranks and implementation of career and rotation plans in Sindh Police, whereas, SP, Shikarpur was leading some operation against dacoits. He was also working on some clues related to incident of killings of police officers by notorious dacoits in remote areas. He protested that sudden and unplanned transfers came as a surprise to him through media which will not only affect working of police department but also create an environment of uncertainty amongst police officers. I.G in his letter also reminded the judgment of this court that the Inspector General must have independent control over postings and transfers. He also referred to the provisions of Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019 requiring consultation of I.G in transfer and posting matters of police officers.

10. For the purpose of deciding this interlocutory application, Article 13 and 17 of the Sindh (Repeal of the Police Act, 1861 and

Revival of Police Order, 2002) (Amendment) Act, 2019 are quite relevant which are reproduced as under:-

**13. Posting of Additional Inspectors General of Police or Deputy Inspector General of Police. -** The Government may post such number of Additional Inspectors General of Police and Deputy Inspectors General of Police to assist the, Inspector General of Police and Additional Inspector General of Police, as the case may be, in the efficient performance of duties as it may deem fit, in consultation with the Inspector General of Police or Additional Inspector General of Police, as the case may be.

**17. Posting of Superintendent, Assistant Superintendent, Deputy Superintendent.-** (1) The Inspector General shall post Superintendent of Police and Assistant or Deputy Superintendent of Police.

(2) The term of office of Superintendent of Police and Assistant or Deputy Superintendent of Police shall be as may be prescribed.

(3) Under exceptional circumstances, due to exigency of service or on grounds of misconduct and inefficiency which warrant major penalty under the relevant rules, the Superintendent and Assistant or Deputy Superintendent may be transferred before completion of the term of office.

11. Though Article 15 of the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019 is also related to the posting of Deputy Inspector General of Police and Senior Superintendent of Police however, by means of this petition, a proviso attached to sub-Article(1) and sub-Article(3) are also under challenge. The proviso put together sub-Article(1) set forth that in case the Chief Minister and Inspector General, after a process of meaningful consultation do not reach any consensus, the Inspector General shall propose three names to the Chief Minister who shall approve one of them for posting as Deputy Inspector General of Police of a Range or Senior Superintendent of Police of a District, as the case may be. The next sub-Article(3) which is also under challenge elucidates that under exceptional circumstances, due to exigency of service or on grounds of misconduct and inefficiency which warrant major penalty under the relevant rules, the Deputy Inspector General of Police and Senior Superintendent of Police may be transferred, with the approval of the Government, before completion of the term of office.

12. At the dictates of this order, obviously, we cannot come to a decision of main petition which was not argued but in view of urgency pleaded by the learned AG, both learned counsel elected to argue second injunction application only, therefore, we have to be confined within the prescient and equilibrium of injunction application alone. It is well settled exposition of law that even for deciding the application in the writ jurisdiction, the elementary principle for making out a prima facie case cannot be ignored or ruled out. The Act of 2019 was promulgated to repeal Police Act, 1861 and Revival of Police Order, 2002 with the intellect and prudence that the police has an obligation and duty to function according to the Constitution, law and democratic aspiration of the people; the functioning of police requires it to be professional, service-oriented and accountable to the people so it was found expedient to redefine the police role, its duties and responsibilities and to reconstruct the police service for efficient prevention and detection of crime and maintenance of public order. Under the definition clause of Article 2 (vii-a), the term “ex-officio secretary” has been depicted as under:-

**“(vii-a) “ex-officio Secretary” means Inspector General of Police who shall exercise administrative and financial powers of the Secretary to the Provincial Government with operational, administrative and financial autonomy in matters pertaining to Police subject to the policy, oversight and guidance given by the Chief Minister through the Chief Secretary and the Provincial Home Department.”**

Whereas in clause (xxvi-a), the term “superintendence” has been defined which is reproduced as under:-

**“(xxvi-a) ‘superintendence’ means supervision of Police by the Chief Minister through the Chief Secretary and Home Department while ensuring total autonomy of the Inspector General of Police in operational and financial matters.”**

In unison, Article 9 represents and incarnates that Superintendence of Police shall vest in the Government which shall be exercised as to ensure that police performs its duties efficiently and strictly in accordance with law whereas Article 10 pertains to the administration of police in which police area shall

vest in the Inspector General of Police, Additional Inspector General of Police, Deputy Inspector General of Police and Senior Superintendent of Police as the case may be. According to sub-Article(4), it is the responsibility of the Inspector General of Police to prepare a provincial annual policing plan for review by the Provincial Public Safety and Police Complaints Commission which shall include objectives of policing; financial resources likely to be available during the year; targets; mechanism for achieving these targets and key performance indicators and performance measurement criteria.

13. The learned Advocate General Sindh enthusiastically argued that this is not a case of transfer but surrendering the services to the Establishment Division, Government of Pakistan. He also quoted Rule 8 of the Sindh Government Rules of Business, 1986 amended up to 11.11.2019 which emphasizes and draws attention that the cases enumerated in Schedule-VI shall be submitted for approval of the Chief Minister and at one fell swoop, he also pointed out entry No.10 in the Schedule VI crafted pursuant to Rule 8, the gist or nucleus of this entry exemplifies the instances of matters related to the conditions of service, promotion or disciplinary action against members of Federal Services or holders of appointment normally held by them and before making reference to the Federal Government, this should be shown to the Chief Minister before final orders are issued. In our considered view, this rule has no direct application with regard to the plea of surrendering of service by the Sindh Government of the aforesaid officers to the Establishment Division, Government of Pakistan as these powers are confined vis-à-vis the reference to the Federal Government with the concurrence of Chief Minister for something else and not for surrendering services of PSP officers. On one hand, learned Advocate General argued that there is no need of any consultation with the Inspector General while surrendering the services as this cannot be construed

interprovincial transfer or posting but quite the reverse, he vigorously argued that while deciding to surrender the services, the Inspector General was consulted and taken on board. He further relied on the inquiry report in Crime No. 24/2019 P.S. Sultankot, district Shikarpur that the SP district Shikarpur was involved in registering false cases and inquiry report is revealing the recommendation for initiation of departmental proceedings against SHO P.S. Sultankot for poor and unprofessional handling of situation and registration of defective FIR and SSP was advised to closely monitor such incidents and supervise investigations to prevent such injustice in future.

14. In contrast, the learned counsel for the petitioner had drawn our attention to the letters dated 02.11.2018 and 26.11.2018. The learned counsel argued that "*The Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019*" was notified on 26.06.2019 and both aforesaid letters were written prior to the promulgation of Act when no provision for IG consultation was prevailing but it was incorporated in the 2019 Act. However, the I.G, vide letter dated 29.10.2019 communicated to the Chief Secretary, Sindh that there is already shortage of BS-20 PSP officers in Sindh Police and Khadim Hussain Rind, DIG is working on certain important initiatives and on-going tasks, therefore, his services are required to the Sindh Police and he made a request for cancellation of letter. Again vide letter dated 10.12.2019, I.G. Sindh shown his concern to the Chief Secretary that he came to know the sudden surrender of services of DIG to the Establishment Division through media. The line of argument progressed by the learned Advocate General seems to be mutually destructive that for surrendering the services no consultation is required but in juxtaposition he argued that the services were surrendered with the consultation of I.G. which assertion was denied by I.G in his letter. He further argued that one more C.P. No.D-8099 of 2019 has been filed by some other persons against

the transfer of the same persons and another learned Division Bench of this court raised the question of maintainability that how petitioner is an aggrieved person. To fight back, the learned counsel for the petitioner responded that the present petitioners have nothing to do with the said petition. The petitioners in the course of instant petition have challenged the vires and also sought the effective implementation of 2019 Act and if any other petitioner has challenged the transfer it does not create any impediment or embargo against the present petitioners.

15. The Judgment rendered by the learned Division Bench of this court in the case of ***Karamat Ali vs. Federation of Pakistan (PLD 2018 Sindh 8)*** depicts that the petitions were filed in the public interest and the judgment is deciphering straightforward articulations that High Court has plenary powers to positively enforce fundamental rights. The proper policing and an efficient and effective police force have a connection with many and perhaps most fundamental rights. The fundamental rights are best enjoyed in an environment where the rule of law is respected and properly enforced and the rule of law is in essential part dependent on the law and order situation which in turn depends on effective policing. The most basic of fundamental rights that of life and liberty enshrined in Article 9 is dependent on proper and effective policing for its proper enjoyment. It is, therefore, clear that in appropriate circumstances it may be necessary to make orders and give directions in respect of policing and the police force in terms of Article 199, and in particular under clause (1)(c) to ensure the proper enforcement of fundamental rights. The police force must have autonomy of command and independence of operation. The court further held that autonomy and independence will bring stability and balance to the organizational structure of the police force by curbing and reducing and ideally eliminating the farcical frequency of turnover, transfers and postings that now plague the system. The police hierarchy, acting

through the Inspector General, must have control over its own affairs especially insofar as postings and transfers are concerned. The judgment of this court was challenged by the Government of Sindh in the Supreme Court and vide Judgment dated 22.03.2018 Civil Appeals No.148 to 150 of 2018 were dismissed. The relevant portion of the Judgment is reproduced as under:-

**“9. On the foregoing analysis, we affirm the impugned judgment by the leaned High Court in particular with reference to the autonomy of command and independence of operation of the Police Force governed by the Police Act, 1861. We also uphold a tenure to be attached to PSP senior cadre posts in the Province of Sindh, of which the IGP is a principal officer. Transfers and postings on all senior cadre posts shall be made by order of the IGP pursuant to transparent rules framed under Article 12 of the Police Act, 1861 framed in consultation with the Provincial Government. It is also declared that “Police” is concurrently subject to the legislative and executive competence of the Federation and the Provinces in the relation to the matters covered by Article 142(b) and Article 240 of the Constitution. For securing integrity, competence, diligence in and accountability for Police performance, the Federation may consider framing a law setting out uniform criteria of appointment on senior cadre posts, their independence of operation, security of tenure, performance assessment and accountability for incompetence, negligence or dishonesty. Meanwhile, it is necessary that the Federal Government and Provincial Government to collaborate in the matter of appointments, transfers of police personnel on senior cadre posts and in any event with respect to crime prevention, detection and investigation as well as prosecution and punishment of criminal offenders in the Province.”**

16. In our good judgment, if the niceties and nitty-gritties of Article 13 & 17 of the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019 are merely considered or meant for interprovincial transfers or postings alone and precondition of consultation with I.G. is narrowed down or deemed to be confined in this limited sense then the independence and autonomy of the I.G. office cannot be maintained which would also in negation and renunciation of the judgment passed by this court supra which was affirmed by the apex court in particular with reference to the autonomy of command and independence of operation of the police force governed and also upheld the tenure attached to PSP senior cadre posts in the Province of Sindh of which the IGP is a principal officer. It was further held that the transfers and postings

on all senior cadre posts shall be made by order of the IGP pursuant to transparent rules.

17. If the Government will exercise powers under the assumption or guesswork that for surrendering services to the Establishment Division, Government of Pakistan, the consultation with IG is not required then this would amount to circumvention and sidestepping the unequivocal provisions of the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019. The whole ideology of consultation would be frustrated and redundant. In our sight, if violation of self-contained provision is allowed to be deflected or repelled at the whims and caprices of Government then it will lead a situation to chaos and as and when any upright officer is found undesirable or unwanted (not involved in misconduct) then Government instead of adhering to the provisions contained in Article 13 & 17 or to avoid precondition of consultation due to apprehensive or foreseeable opposition of IG against the transfer/posting will directly surrender the services which tantamount to a situation that what cannot be done directly cannot be done indirectly. The eventual and ensuing effect of surrendering services of DIG means the transfer of an officer from his last place of posting with posting of new incumbent. In our outlook Article 13 may not be treated only for interprovincial posting or transfer but surrendering of service without adverting to meaningful consultative process has direct effect and nexus with transfer and posting so without meaningful consultation the services of PSP officers cannot be surrendered, otherwise the meticulous provision premeditated and thought-out to safeguard the independence of IG office and its autonomy for running the administration of police in the province effectively in order to improvise the performance and maintain law and order situation would be superfluous or redundant. No Federal Government Rotation Policy for PSP has been placed on record nor any letter has been produced by the learned A.G to

demonstrate that the Establishment Division has ever called upon Sindh Government to surrender the services of both officers but the record reflects that correspondence was initiated by Section Officer, Services General Administration & Coordination Department, Government of Sindh.

18. The learned Advocate General cited following judicial precedents:

1) 2017 CLC 1195 (Balochistan Medical Association vs. Government of Balochistan and others). To invoke Constitutional jurisdiction of High Court, one was required to first qualify test of being aggrieved person and then to show that his case fell in any of the categories so defined by Art.199 of the Constitution that there was no alternate legal remedy except the petition. To satisfy requirements of an aggrieved person in public interest litigation under Art.199 of the Constitution, petitioner was required to disclose a personal interest in performance of legal duty owed to him which if not performed would result in loss of some personal benefit or advantage or curtailment of a privilege in liberty or franchise

2) PLD 2004 S.C. 482 (Javed Ibrahim Paracha vs. Federation of Pakistan and others). No doubt with the development of new concept of public interest litigation in the recent years, a person can invoke the Constitutional jurisdiction of the superior Courts as pro bono publico but while exercising this jurisdiction, he has to show that he is litigating, firstly, in the public interest and, secondly, for the public good or for the welfare of the general public.

3) 2018 SCMR 365 (Premier Battery Industries Private Limited vs. Karachi Water and Sewerage Board and others). The scope and parameters of public interest litigation does not strictly fall under any part of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. However, it has received judicial recognition enabling the Courts to enlarge the scope of the meaning of 'aggrieved person' under Article 199 of the Constitution to include a public spirited person who brings to the notice of the Court a matter of public importance requiring enforcement of Fundamental Rights.

4) AIR 1989 Andhra Pradesh 51 (Kasani Narayana and others vs. Government of A.P. and others). Even the extended doctrine of locus standi under the public interest litigation would not enable a stranger to challenge the validity of a Government Order, such as the one which has been issued in this case. The effect of the Government Order is merely to grant exemption in relation to the excess land subject to certain conditions. If the exemption is refused, the land would have been treated as vacant land and acquired by the Government. If the exemption has been granted and accepted by the owner the land will be held by the owner subject to those conditions. In either case, the concept of ownership would not permit the intervention of a third party into the domain of enjoyment of the land by the owner. (emphasis applied) The court referred to the case of Soma Venkateswara Rao v. The Government of Andhra Pradesh, (1987) 2 Andh LT 957 in which the court held as under:-.

"No objection raised to the maintainability of a writ petition on the ground that the petitioner is not an aggrieved person should be summarily rejected. That is so even after the entry of that much misunderstood concept of public interest litigation into the field of our Constitutional Jurisprudence which ex-Chief Justice Hidayatullah once openly condemned rather harshly as no more than publicity interest litigation. The reason why such objection deserves serious consideration is that principle of locus standi and the doctrine of aggrieved persons are the very foundations on which the edifice of Judicial Process is erected... The doctrines of locus standi and aggrieved

persons embody in themselves some aspects of that great fundamental constitutional principles of separation of powers. That strict observance of these ground rules is of so paramount importance that their violations can easily lead to loss of judicial credibility and effectiveness. The constitutional train can reach safely and surely to its destination moving only on those rails. It follows that even under the public interest litigation the Courts should not and ought not rush in where the Constitutional principles shudder to enter. The Court's jurisdiction is to render justice to conflicting parties. The law is declared by the Courts in that process only to settle the dispute before the parties. Where 'A' in free exercise of his will allows the State to acquire his land, the Courts will not hear the complaint of 'B' against such acquisition on the ground of constitutional violations. The Courts can hear the complaints only of an aggrieved person but not that of a busy body or a legal vagabond."

19. We glanced at the precedents cited by the learned Advocate General. In the case of Balochistan Medical Association (supra), the learned Division Bench of Balochistan High Court held that to satisfy the requirement of an aggrieved person in public interest litigation under Article 199 of the Constitution, the petitioner was required to disclose a personal interest in performance of legal duty owed to him which if not performed would result in loss of some personal benefit or advantage or curtailment of a privilege in liberty or franchise. In the present case, the petitioners have approached this court for challenging the vires of law in the larger public interest as well as to restrain the government not to violate the express provisions of law. Learned A.G also relied on the case of Javed Ibrahim Paracha (supra) in which the apex court discussed the concept of public interest litigation that the petitioner has to show that he is litigating in the public interest and secondly for the public good. The petitioners before us have approached as *pro bono publico* and in the general public interest. In the case of Premier Battery Industries (supra) the apex court held that the judicial recognition enabling the courts to enlarge the meaning of aggrieved person under Article 199 of the Constitution to include a public spirited person who brings to the notice of the court a matter of public importance requiring enforcement of Fundamental Rights. Whereas in the case of Kasani Narayana (AIR 1989 AP 51) the High Court of Andhra Pradesh held that the doctrines of *locus standi* and aggrieved persons embody in themselves some aspects of fundamental constitutional principles

of separation of powers. That strict observance of these ground rules is of so paramount importance that their violations can easily lead to loss of judicial credibility and effectiveness. The constitutional train can reach safely and surely to its destination moving only on those rails. It follows that even under the public interest litigation the courts should not and ought not to rush where the Constitutional principles shudder to enter. The facts and circumstances of the case in hand and the case cited by the learned A.G are entirely different where the effect of Government order was merely to grant exemption in relation to excess land subject to certain conditions, therefore, the court held that if the exemption has been granted and accepted by the owner the land will be held by the owner subject to those conditions, in either case, the concept of ownership would not permit the intervention of a third party into the domain of enjoyment of the land by the owner. By this judgment, the Andhra Pradesh High Court does not mean to say that the public interest litigation is barred or foreign in their jurisdiction.

20. In the perspective of every citizen and public at large, the good police or bad police both really carry some weight and importance. It is the major responsibility of State to eliminate and eradicate the crime, provide protection to person and property and in order to perform these fundamental responsibilities good policing is necessary which can only be possible if good police officers are posted on merits and allowed to combat against crimes and social evils with accountability but not on basis of sifarish, favoritism or nepotism or with abrupt removal from place of posting with preconceived notion or confrontation and hostility which creates uncertainty. En masse, police is answerable to the people and the law. The honesty, integrity, nice behavior and sober mannerism must be part of ethical practice which is quite essential for good policing and good police officers. They must not only be upright officers but also good citizens as well and should

have the audacity and nerve to listen all persons equally especially to those without social power or status. The everyday job of police include enforcement of laws, prevention of crimes, protection of person and property, investigation of crimes and to respond emergency calls. Making good laws by the corridors of power in the public interest is so virtuous and a good deed but if laws are not implemented in its letter and spirit with the interest of bringing some improvements and or revamping or restructuring any institution then situation obviously leads to lawlessness and turmoil affecting public at large. The learned A.G argued that the officers whose services were surrendered or transferred have not approached this court so the petition is barred under Article 212 of the Constitution. To this argument, we must articulate in commonsensical, why the petitioners have come to this court? Nothing alleged that they are relatives or well-wishers of said two police officers and want to shield their transfers for self-benefits or motivation. No personal bias or mala fide is alleged or argued against them in the counter affidavit. The learned A.G in his arguments did not oppose the maintainability of the main petition but interlocutory application alone which is ancillary and incidental to main proceedings. On the contrary, the nucleus in its entirety is whether the niceties of Article 13 should be kept in mind while surrendering the services of DIG and posting another officer in his place, the consultation of I.G Sindh is mandatory or not? and whether I.G may post Superintendent of Police and Assistant or Deputy Superintendent of Police without interference in terms of Article 17 or not? We cannot oust or nonsuit the petitioners who have challenged the vires of law and aggrieved by the violation of express provisions of law. Seemingly, they have not approached to safeguard any individual or individual interest but the enforcement and dictates of law which they can do even in the genre of whistle blower which concept has been discussed in detail in the case of **2017 MLD 785 (AI-Tamash Medical Society vs. Dr. Anwar Ye Bin Ju and others)**. [Authored by one of us

**(Muhammad Ali Mazhar, J)]** that US civic activist Ralph Nader coined the phrase whistle blower but he in fact put a positive spin on the term in the early 1970s to avoid the negative connotations found in other words such as "informers" and "snitches". A whistleblower is a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public. The information of alleged wrongdoing can be classified in many ways i.e. violation of company policy, rules, law and regulations and or threat to public interest, national security as well as fraud, and corruption. Those who become whistleblowers can choose to bring information or allegations to surface either internally or externally.

21. As a result of above discussion, the ad-interim order passed by us on 16.12.2019 for suspending the operation of notification dated 15.10.2019 with regard to the surrendering the services of Mr. Khadim Hussain Rind, DIG Police and the notification dated 06.12.2019 with regard to Muhammad Rizwan Ahmed Khan, SP District Shikarpur is hereby confirmed with the directions that no decision for surrendering the services and posting of Additional Inspector General of Police or Deputy Inspector General of Police shall be made without meaningful consultation of Inspector General of Police, Sindh in terms of Article 13 of the Sindh (Repeal of the Police Act, 1861 & Revival of Police Order, 2002) (Amendment) Act, 2019. Furthermore the posting of Superintendent of Police and Assistant or Deputy Superintendent of Police shall only be made by the Inspector General of Police within the parameters of Article 17 of the Sindh (Repeal of the Police Act, 1861 & Revival of Police Order, 2002) (Amendment) Act, 2019. Application is disposed of accordingly.

**Judge**

**Judge**

**Karachi.**

**Dated: 29.01.2020.**