

IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No.D-5307 of 2015

Present.

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Mst. Nazima Khatoon Petitioner

Versus

Province Sindh and others Respondents

Date of Hearing: 31. 01.2018

Mr. Muhammad Saleem Khan, Advocate for the Petitioner.
Mr. Iqbal M. Khurram, Advocate for Respondents No. 2 to 4.
Mr. Chaudhary Muhammad Rafiq Rajorvi, Assistant Advocate
General Sindh.

JUDGMENT

ADNAN-UL-KARIM MEMON, J: - The Petitioner has sought appointment of her son on the basis of son quota in Karachi Metropolitan Corporation (KMC).

2. The facts of the case are that the Petitioner was appointed as Primary School Teacher (PST) in KMC in year 1996. Petitioner has submitted that she retired from service of Karachi Metropolitan Corporation in 1997 vide order dated 19.07.2007. Petitioner has further averred that she submitted an application to KMC authorities for appointment of her son namely Imran Wajahat son of Wajahat Hussain for any suitable job in Education Department, KMC, who had acquired Master's Degree in Business Administration (MBA) from Federal Urdu University Karachi and Bachelors Degree in Electronic from Sir Syed University Karachi.

Petitioner asserts that her son is entitled to be appointed against a suitable post in KMC on son quota, as per settlement arrived between CBA and KDA via Office Memorandum dated 09.04.1989, duly adopted by KMC vide letter dated 10.03.2012. The Petitioner has further submitted that she, as well as, her son moved various applications for employment in KMC against son quota; but to no avail. The Petitioner has further submitted that due to inaction on the part of official Respondents/KMC, her son approached the office of the Provincial Ombudsman (Sindh) on 16.09.2014. The learned Ombudsman strongly recommended the case of Petitioner's son for appointment, but the Respondents/KMC refused to abide by the recommendation of learned Ombudsman on the premise that there is ban on the appointments; but on the contrary they made appointments during the period of alleged ban on the recruitments. Petitioner being aggrieved by and dissatisfied with inaction of Respondents/KMC has filed the instant petition.

3. Upon notice, the Respondents/KMC filed para-wise comments.

4. Mr. Muhammad Saleem Khan, learned Counsel for the Petitioner has submitted that the Petitioner retired as a Primary School Teacher (PST) from KMC; therefore, the Respondents/KMC are under obligation to adhere the policy contained in the Office Memorandum dated 09.04.1989 to appoint her son on the basis of son quota, who is eligible for the job; but, they have declined the petitioner's request on the pretext that there was ban on fresh appointments, which is violation of Article 4, 25, of the Constitution of Islamic Republic of Pakistan 1973. Having

explained his case as hereinabove, he prayed for allowing the instant petition.

5. Mr. Iqbal M. Khurram, learned Counsel for the Respondents No. 2 to 4 has argued that the Office Memorandum dated 09.04.1989 pertains to Education Department of Local Bodies Wing KDA, thus not binding upon KMC. He added that on the directives of learned Ombudsman the case of the Petitioner's son for appointment on son quota was placed before Administrator KMC for approval; but, he regretted due to ban on fresh appointments at the relevant time. The learned Counsel for KMC submitted that there is no policy / law for appointment of sons of the retired employee of KMC on the son quota basis; therefore, the case/request of the Petitioner cannot be considered. Having explained the position as such, prayed for dismissal of the instant Petition.

6. Chaudhary Muhammad Rafiq Rajorvi, learned A.A.G Sindh adopted arguments of the learned Counsel for the Respondents/KMC.

7. We have heard learned Counsel for the parties and perused the material available on record.

8. Important question of law involved in the subject Petition is as follows:

Whether the Petitioner's son is entitled to be appointed on son quota basis in view of office memorandum dated 09.04.1989, approved by Municipal Commissioner KMC vide order dated 10.03.2012?.

9. We have perused the Office Memorandum dated 09.4.1989, which is basically a private settlement dated 02.04.1989 between the management of Karachi Development Authority (KDA) and Collective Bargaining Agent/Mazdoor Union of KDA) which reads as under:-

“2(2). The Departmental candidates be treated at par with out-sider applicants for appointment/promotion to the higher posts against the quota reserved for direct recruitment provided they fulfill the academic qualification.

“2(3) 50% quota of total vacancies has been fixed to have only one son/daughter of K.D.A employee for employment in K.D.A. In case the employee has no un employed son or daughter one grand- son/grand-daughter will be considered.

“2(6) The ratio of percentage is enhanced from 5% to 10% of each categories of post for the grant of advance increments in accordance with the Advance Increments Regulation of K.D.A.

“2(7) The Chief Engineer would look into the matter and submit a Scheme to compensate Class-IV employee whose promotions were affected due to abolition of the post of sub-overseer.

“2(8)A The decision of Works Council vide Item No.1 of their 1st Meeting held on 20.01.1988 to reduce the period of 7 years from Engineers to allow them B-16.

“2(9) 33% post of Lower Division Clerks be filled in by promotion of suitable candidates from amongst the Class-IV employees of K.D.A who fulfill the prescribed qualification and experience.

“2(10) The Steno-typists working in K.D.A may compete with others to prove their proficiency in speed and if they fulfill the prescribed qualification they be appointed as Stenographers.

“2(12) All work charge employees who have completed three years’ service be declared as regular temporary establishment in accordance with the rules in K.D.A.

“2(14) The Government policy with regard to move over be continued to be followed.

“2(15) The age from 45 to 40 years be reduced for exception from passing departmental examination of Auditor, Accounts Department K.D.A

Necessary action may please be initiated to implement the above under intimation to this Secretariat.

The above orders will take effect from 14.03.1989, the date of Governing Resolution No.33 dated 14.03.1989.

10. We have noticed that Respondent-KMC vide letter dated 10.03.2012 decided to finalize all such cases regarding appointment against deceased/son/retired quota in view of agreement between CBA and management of KMC/KDA. But, from arguments of the learned Counsel for the Respondent-KMC, it appears that the proposal was not pursued further, hence, does not help the petitioner's case. Besides, Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 also do not apply in the petitioner's case; because KMC employees are not Civil Servants. Our view is supported by the decision rendered by the learned Division Bench of this Court in the case of Fazal Ahmed Samtio Vs. Province of Sindh through Secretary Local Government and 3 others (2010 PLC C.S 215).

11. We are not impressed by the contention of the learned Counsel for the Petitioner that the Office Memorandum dated 09.04.1989 is binding upon KMC, which has not been adopted by the Respondent-KMC.

12. From the perusal of record and arguments advanced by the learned Counsel for the parties, we are clear in our mind that right of employment of the Petitioner's son never accrued to her; therefore, Respondent-KMC cannot circumvent the law to accede to the request of the petitioner.

13. Reverting to the claim of petitioner that learned ombudsman (Provincial) strongly recommended the case of Petitioner's son for appointment in KMC, suffice it to say that learned Ombudsman (Provincial) has no jurisdiction to entertain service matters.

14. In view of the facts and circumstances of the case, the instant Petition, being meritless, is hereby dismissed along with pending application(s).

JUDGE

JUDGE

Shafi Muhammad P.A