

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-133 of 2006

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon.

Taj Muhammad ----- Petitioner

Vs.

Govt. of Sindh through
Secretary Live Stock & Fisheries ----- Respondent

Date of Hearing: 04.03.2019

Mr. Mumtaz Ahmed Lashari, advocate for petitioner.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. - The instant petition was disposed of vide order dated 20.12.2006 with following observation:-

“The petitioner, who was Assistant Warden Fisheries in the Fisheries Department Government of Sindh, retired in the year 1995. While the petitioner was in service the recruitment promotion rules were revised vide Notification dated 18.1.1984, because of which amendment the petitioner could not be promoted as a Warden. The petitioner, while he was still in service, filed a petition, bearing C.P. No.D-193 of 1993, before this Court. The said petition was disposed of vide order dated 9.10.1996, directing the respondent No.1 to expedite the process of amendment in the above rules so that the amendment may be made within three months. However, unfortunately the petitioner had already retired in the year 1995. The respondent’s instance is that the amendment in the rule cannot have retrospective effect. However, the Secretary, Government of Sindh Live Stock, and Fisheries Department, in his comments has stated that this is a hardship case and the petitioner has suffered because of the intervening change in the relevant rules. The order passed by this Court in pursuance whereof the rules have now been amended for the benefit of the category of employees to which the petitioner belonged was passed by this Court on the petition filed by the present petitioner and it was keeping in view his grievance that such orders were passed.

Thus in the peculiar circumstances of the case, we would direct the Secretary concerned to reconsider the petitioner's case on humanitarian ground and pass appropriate orders within a month from today.

The petition stands disposed of."

2. On 23.12.2010, petitioner filed application (MA No.8126 of 2010) under Section 3 & 4 of the Contempt of Court for initiating contempt proceedings against the alleged contemnors.
3. Mr. Mumtaz Ahmed Lashari, learned counsel for petitioner has argued that this court directed the Secretary concerned to reconsider the petitioner's case on humanitarian ground and pass appropriate orders within a month from today but no concrete efforts have been taken to comply the direction of this court; that the rules were amended on his application, but its benefits is not being given to him; that the petitioner, who was Assistant Warden Fisheries in the Fisheries Department Government of Sindh, retired in the year 1995. While the petitioner was in service the recruitment promotion rules were revised vide Notification dated 18.1.1984, because of which amendment the petitioner could not be promoted as a Warden; that he has been deprived from his legal right under the new rules which are not applicable to his case. He next added that after retirement from the service of the respondents petitioner is still entitled for the benefit of move over/promotion with effect from the date when his juniors were promoted. He next submitted that the case of the petitioner is on equal footing with the case of Rana Abdul Waheed to whom the respondents have paid the arrears of move over; that this is hardship case therefore this court may seek compliance of the orders passed in the aforesaid case. He lastly prayed for strict action against the contemnors.
4. We have heard learned counsel for the petitioner on the listed application and perused the material available on record.

5. The basic grievance of the Petitioner is that his representation for promotion be decided in pursuance of the Order dated 20.12.2006 passed by this court. We have noted that his representation was decided and his request for the benefit of move over/promotion with effect from the date when his juniors were promoted was declined vide order dated 17.1.2007 passed by Secretary Live Stock and Fisheries on the premise that Rules cannot be applied retrospectively in the case of the petitioner, therefore the case of the petitioner cannot be supported.

6. Through the application bearing (MA No.8126 of 2010), the Petitioner agitate that he was not considered, for profarma promotion as per his entitlement. Perusal of the record explicitly shows that the case of the petitioner was considered by the respondents and decided as per law. Law provides that a retired Civil Servant cannot be granted promotion from back date as per dicta laid down by the Hon'ble Supreme Court in the case Government of Pakistan and other Vs. Hameed Akhtar Niazi and other (PLD 2003 SC 110).

7. In the light of judgment rendered by the Honorable Supreme Court in the case of Hameed Akhtar Niazi supra, we are clear in our mind that promotion from back date to the retired Civil Servant cannot be granted, except certain exceptions as provided under the law, particularly in the present case when the Petitioner stood retired from service on attaining the age of superannuation in the year 1995, whereas the instant Petition was disposed of vide Order dated 20.12.2006 with direction to the Respondents to reconsider the petitioner's case on humanitarian ground. In our view humanitarian ground cannot circumvent the legal position of the case to award certain benefits which are not permissible under the law. We cannot enlarge the scope of disposal order dated 20.12.2006 passed by this Court and allow the parties to bypass the Rules to benefit the petitioner. We are of the view that the Respondent has submitted compliance report as discussed supra. We have also gone through the Contempt Application,

the reply of the alleged Contemnor to the effect that they had complied with the aforesaid orders of this Court in its letter and spirit.

8. In view of the facts and circumstances of the case and for the reasons mentioned as above, we are satisfied with the explanation furnished by the alleged contemnors that substantial compliance of the order dated 20.12.2006 passed by this Court has been made in its letter and spirit, therefore, at this juncture, no case for initiating contempt proceedings is made out against the alleged contemnors. Thus, we are not persuaded to continue with any further on the listed application bearing (MA No.8126 of 2010), having no merits, is accordingly dismissed.

JUDGE

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