

HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2428 of 2018

Ghulam Hussain Shaikh Petitioner

Versus

Project Director, SMBB towns & others Respondents

Date of hearing: 13.09.2018

Mr. Naseer Ahmed Khan Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner is seeking directions to the Respondents to pay Project Allowance and Deputation Allowance on the premise that he had worked in the Shaheed Mohtarma Benazir Bhutto (SMBB) Town Project in Sindh with effect from 01.10.2012 to 14.09.2015.

The grievance of the Petitioner is with regard to the payment of Project Allowance and Deputation Allowance. Petitioner has submitted that the service of the Petitioner was requisitioned by Director General (LDA) Karachi and he was posted therein on deputation vide letter dated 15.01.2009. Petitioner has submitted that in compliance of the order dated 05.01.2015 passed by the Hon'ble Supreme Court of Pakistan in Civil Appeal No. 404/2011 and Civil Review Petition regarding repatriation of deputationist to their parent departments, the deputation period of the Petitioner was cancelled by the competent authority vide

order dated 14.09.2015. As per the Petitioner he was repatriated to his parent department i.e. Hyderabad Development Authority. (HDA). Petitioner has submitted that since he had worked on the Project i.e. Shahed Mohtarma Benazir Towns in Sindh as Divisional Account Officer in BPS-17 as such he was entitled for the Project Allowance w.e.f. vide 10.08.2012 to 14.09.2015. Petitioner has submitted that the Respondents are not releasing the Project Allowance as well Deputation Allowance and encashment of leave with effect from 2009 to 2015 for working in LDA Karachi. Petitioner being aggrieved by and dissatisfied with the in action on the part of Respondents has approached this Court on 22.02.2018.

Mr. Naseer Ahmed Khan, learned counsel for the Petitioner has contended that the Petitioner is entitled for the Project Allowance as well as Deputation Allowance as per Office Memorandum dated 5th August 2011 issued by the Government of Sindh, Finance Department and Office Memorandum dated 01st July 2005 issued by the Government of Pakistan Fiancé Division; that the Respondents are avoiding to pay the aforesaid allowances to the Petition with mala fide intention and ulterior motives. He lastly prayed for allowing the instant petition. Learned counsel for the Petitioner, due to the urgency pointed out in the matter has argued the entire case on merits.

Upon query by this Court as to how the instant Petition is maintainable for grant of Deputation Allowance as well as Project Allowance, the learned counsel for the Petitioner has argued that the Petitioner is entitled for the aforesaid allowances as the same has been allowed by the Office Memorandums as discussed supra.

We have heard the learned counsel for the Petitioner and have perused the material available on record.

Admittedly, the Petitioner was posted in Lyari Development Authority (LDA) on deputation. The Hon'ble Supreme Court of Pakistan took cognizance of the matter of deputationist vide order dated 05.01.2015 passed in Civil Appeal No. 404/2011 and the Petitioner's deputation was declared a nullity, thereafter he was repatriated to his parent department i.e. Hyderabad Development Authority (LDA) vide letter dated 14.09.2015.

The question which arises in the present proceeding as to whether Petitioner is entitled to the Project Allowance as per the Government Policy?

As per record Petitioner was working as Divisional Accounts Officer in HDA, the Office Memorandum dated 05.08.2011 provides as under:-

OFFICE MEMORANDUM

SUB:- RATIONALIZATION OF PROJECT ALLOWANCE FOR PROJECTS/PROGRAMMES, POLICY UNITS/POLICY CELLS, AUTHORITIES, COMPANIES AND OTHER SUCH ENTITIES.

In continuation of this office memorandum No. FD(SR-III) 5/29-2008)(A) and (B) dated 16th February, 2009 and in supersession of all other notifications/ orders/ office memorandums/ circulars allowing Project allowance/ pay package/ Special incentives in relaxation of Government policy to regular employees of Government of Sindh, Officers and staff working in various government entities/ projects/programmes/authorities/companies, the Competent Authority i.e. Chief Minister Sindh is pleased to order rationalization of Project Allowance at uniform rates for all the regular government employees, Officers and Staff working in development projects/ programmes, priority programmes, companies, authorities and other such government entities as are entitled to the project allowance as per government policy.

Project Allowance will be admissible at the notified uniform rates with effect from 1st August, 2011.

All others terms and conditions relating to the admissibility of Project Allowances and down in this department's OMs referred to above will remain same and applicable"

In view of the foregoing office memorandum, prima facie the case of the Petitioner does not fall within the ambit of aforesaid Office Memorandums; therefore he is not entitled for the Project Allowance. So far as Deputation Allowance is concerned the same cannot be granted to the Petitioner for the simple reason that his deputation in LDA or any other department Government of Sindh has been declared illegal by the order of the Hon'ble Supreme Court of Pakistan vide order dated 05.01.2015 therefore he cannot claim the benefit of Deputation Allowance also.

In the light of the aforesaid judgment of the Honorable Supreme Court of Pakistan, the grievance of the Petitioner cannot be entertained under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973. Therefore, the forum chosen by the Petitioner by invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law. Consequently, the instant Petition being meritless stands dismissed in limine alongwith the listed applications.

JUDGE

JUDGE