

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1580 of 2012

Abdul Majeed Khan Petitioner

Versus

Federation of Province Respondents

Dates of hearing: 01.10.2018

Abdul Majeed Khan Petitioner present in person.

Ms. Dil Khurram Shaheen, advocate for Respondent No.2.

Shakih Liaquat Hussain, AAG.

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ORDER

ADNAN-UL-KARIM MEMON, J: Petitioner claim to have served the Respondents Custom Department for about 29 years and is seeking pensionery benefits i.e. gratuity and benevolent fund.

2. Brief facts of the case as per averments of the parties are that the Petitioner applied for the service in the Custom department, Customs House Karachi in the year 1982-1983. Petitioner has submitted that he was appointed as peon on daily wages at Air Freight Unit (AFU) office, Government of Pakistan Customs Karachi Airport, Karachi. Petitioner in support of his claim has relied upon the certificate dated 09.06.1986 issued by

the Principal Appraiser Air Freight Unit Karachi and curfew area pass-essential service (Malir) issued on 28.07.1987 by Airport Manager and First Class Magistrate Karachi Airport. Petitioner has submitted that no formal appointment letter was issued by the Respondent department and only daily wages card was issued to him in the year 1987. Petitioner has asserted that he performed duties for about 29 years with keen interest and devotion without any complaint therefore, he may be regularized. He further added that the Respondents have regularized the services of other contingent/ daily wages employees, but he was left out; that he started corresponding with the Respondents on the issue of regularization of his service but no response was given to him. Petitioner being aggrieved by and dissatisfied with the aforesaid action on the part of the Respondents filed the instant petition on 24.04.2012.

3. Upon notice, the Respondents filed para--wise comments and denied the allegations leveled against them.

4. We have heard the Petitioner who is present in person, as well as learned counsel for the respondents and learned AAG and perused the material available on record.

5. During the course of arguments, we asked from the Petitioner as to how he was entitled for pensionary benefits from the Respondents as no formal appointment letter for the post of peon was issued to him. In reply to the query he stated that the

Respondents had acknowledged/ admitted his appointment in the Custom department by issuing curfew Area pass on 28.07.1987 in connection with performance on official duty at Pakistan International Airport. At this juncture, learned counsel for the Respondent No.2 has refuted the claim of the Petitioner and argued that the Petitioner was never appointed in Custom Department as peon and he has no documentary evidence in this regard to claim regularization of his service or pensionary benefits. She further contended that the Petitioner was simply a private worker, who performed his duties in canteen and other sections of the department privately, thus not entitled for any relief from this Court.

6. Learned AAG has endorsed the view of the learned counsel for the Respondent No.2.

7. The pivotal point in this matter whether the Petitioner was appointed as peon in the office of Airfreight Unit at Karachi Airport, Pakistan Custom Karachi?

8. The appointments to the post is required to be made i.e. by promotion by transfer and by initial appointment. Record does not reflect that any post of peon was advertised or Petitioner was either appointed on contingency basis or on ad-hoc basis. Merely relying upon a certificate issued by the Principal Appraiser Airfreight Unit Karachi, which in no manner can be treated as appointment letter. Upon perusal of the contents of CMA No. 11239 of 2018 along with annexures which prima facie show that Petitioner submitted an

application to the Assistant Collector of Custom Airfreight Unit Quaid-e-Azam International Airport Karachi for permission to install for photocopying machine on no profit no loss basis, which permission was accorded on 12.02.2000 and he continued corresponding the department for extension and the Respondent department directed that Petitioner may not be displaced on 12.12.2000. These documents prima facie suggest that the Petitioner was doing private work and not official duty. Record reflects that Petitioner has crossed the age of superannuation i.e. 60 years; therefore, his claim for regularization of his private service is misconceived.

09. We under the aforesaid circumstances and keeping in view the factual position of the case do not find any documentary evidence with regard to the appointment of the Petitioner in Respondent department either on contingency or ad-hoc basis. In view of lack of the documentary evidence, no relief can be granted to the Petitioner for regularization of his service. We are of the considered view that regularization of service is not an initial appointment but it is a confirmation of an existing employment. Therefore in absence of appointment order no premium can be given to the Petitioner to claim regularization of his service.

10. We are cognizant of the fact that, prima facie the Petitioner had worked in the canteen and other section of the Respondent department as a private person for about 29 years and it is for the

Respondent department to give sympathetic consideration to the request of the Petitioner without prejudice to their right.

11. In view of the foregoing, this petition merits no consideration, thus is dismissed along with the listed application(s).

JUDGE

JUDGE

Shafi Muhammad/P.A