

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-5250 of 2016

Zia uddin Sabir.....Petitioner

V/s

Province of Sindh and others.....Respondents

Date of hearing: 27.11.2018.

Mr. Muhammad Arshad Khan Tanoli, Advocate for the Petitioner.

Mr. Shahriyar Mahar AAG a/w Mr. Khalid Hyder Shah, Secretary Local Government Department & Mr. Zahid Khemtio, Deputy Secretary, Local Government Department.

Mr. Iqbal Khurram Advocate & Ms. Azra Muqem, Advocate for the Respondents No.3&4.

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ORDER

Adnan-ul-Karim Memon , J:- The captioned petition was disposed of by this Court vide order dated 22.12.2016 with the following observations:-

“2. The Metropolitan Commissioner KMC, Finance Advisor KMC, Deputy Director H.R. KMC and Director H.R. KMC all are present in court and submit that they will examine the record and if the petitioner is found batch mate of Shoaib Muhammad Khan as asserted by him, he will be allowed posting in BPS-19. At this juncture, the learned counsel for the petitioner also pointed out page 49 which is Office Order dated 05.10.2011 issued by Executive Director, Human Resource Management Department, City District Government Karachi to show that on the recommendations of the Departmental Promotion committee-1, the petitioner was promoted to BS-19. Let all these documents be examined by Director, H.R. KMC thereafter if the claim of the petitioner is found correct he will be allowed posting in BPS-19. This exercise shall be completed within one month. Petition is disposed of alongwith pending application. Copy of this order may be transmitted to the learned counsel for the KMC.”

2. This court observed in the order dated 6.12.2017 that the recommendation of the Departmental Promotion Committee will be sent to Respondent No.2 and in turn he will pass an appropriate order in accordance with law.

3. Mr. Muhammad Arshad Khan Tanoli, learned counsel for the petitioner has vehemently contended that certain directions were issued by this Court vide order dated 6.12.2017 to the alleged contemnor for passing an appropriate order within fifteen days, but the same has not been complied with by the alleged contemnor, which is sheer violation of the orders passed by this court in the aforesaid matter which entails contempt proceedings against the alleged contemnor.

4. Comments were called from the alleged contemnor, who is also present in person and has submitted that the Respondent-KMC was requested vide letters dated 05.01.2018, 26.03.2018, 16.10.2018 & 05.11.2018 to furnish views/comments and provide details enabling him to submit compliance report before this Court. He added that, since no information as requested was furnished by the Commissioner Metropolitan Corporation, therefore no order could be passed as directed by this court vide order dated 17.10.2018. In support of his submission, he has placed on record copy of letter dated 05th November, 2018. We queried from the Secretary Local Government that under what law and authority he demanded certain documents from the Commissioner KMC. He in reply to the query has submitted that since the minutes of the meeting in which the case of the petitioner was considered for promotion in BPS-19 has not yet been approved by the Government of Sindh under Rule-2017, therefore, he demanded the aforesaid information from the Commissioner KMC to take further action in accordance with law.

5. At this stage Mr. Arshad Khan Tanoli has refuted the claim of Secretary Local Government and argued that the case of the petitioner had already been approved for promotion in BPS-19, vide office order

dated 28.9.2011, therefore, the question of demanding certain documents from Respondent-KMC does not arise; that since KMC had already prepared the working papers of the petitioner with the assertion that he fulfills all the requirements for promotion in BPS-19. Beside above, they did not find departmental or anticorruption enquiry pending against the Petitioner; that no minor or major penalty has been imposed upon the Petitioner during his tenure of service. He further submitted that in view of the qualification, experience of about 20 years, his qualified service in the KMC meets the requirement for promotion, therefore, he was rightly recommended for promotion in BPS-19 against available vacant post. He next argued that the alleged contemnor was only required to issue posting order and nothing else. He lastly prayed for taking drastic action against the alleged Contemnor and in the meanwhile prayed for issuing directions to the Secretary Local Government for releasing the posting order in favour of the petitioner.

6. M/s. Iqbal Khurram and Azra Muqem, counsel for Respondent-KMC have supported the stance of the petitioner and argued that the Secretary Local Government is required to issue posting orders of the petitioner in BPS-19 in compliance of the aforesaid order passed by this Court.

7. Mr. Shahriyar Mehar, learned AAG has contested the claim of the petitioner and argued that the documents as demanded by the Local Government Department from Respondent-KMC are necessary for reaching to a just conclusion as to whether the minutes of the meeting as furnished by the KMC are in accordance with law or otherwise, regarding consideration of the case of petitioner for promotion in BPS-19. He further added that unless and until the documents as requested vide letter dated 5.11.2018 are furnished the department would not be able to approve the aforesaid minutes of the meeting under the Recruitment Rules notified on 05.05.2017. At this stage, he seeks direction to the

Commissioner KMC to furnish the aforesaid documents, at the earliest to enable the Secretary Local Government Department to submit compliance report as per the directions given by this Court.

8. We have heard the parties at length on the listed application and have perused the material available on record.

9. Upon perusal of the disposal order dated 22.12.2016 passed by this Court, which explicitly show, that the case of Petitioner will be examined if he is found batch-mate of Shoaib Muhammad Khan, his posting order will be issued in BPS-19. At this stage, learned AAG has invited our attention to the letter dated 05.11.2018 issued by the office of Secretary, Local Government Department, addressed to the Commissioner-KMC to furnish views / comments in the light of Recruitment Rules notified on 05.05.2017 for further action in the case of Petitioner. Record does not reflect that the aforesaid information was provided to the Secretary, Local Government Department.

10. Upon perusal of minutes of the meeting of the Departmental Promotion Committee held on 28.11.2017, which prima-facie suggest that the aforesaid minutes/recommendation is conditional, subject to approval of the Government of Sindh and this is the requirement of Recruitment Rules notified on 05.05.2017, which provide that the promotion in BPS-19 is to be made with the approval of the Government subject to fulfillment of all the codal formalities as provided under the law.

11. Before taking cognizance of the matter, we deem it appropriate to direct the Commissioner-KMC to furnish the documents to the Secretary Local Government Department, Government of Sindh vide letter dated 05.11.2018 within a period of two weeks from the date of receipt of the order of this Court, on receiving the aforesaid documents, the Secretary

Local Government Department is directed to submit compliance report before this Court within a period of one month positively.

12. In view of the above facts and circumstances of the case and the reasons alluded above; the contempt application bearing CMA No.9776/2018 stands disposed of in the above terms.

JUDGE

JUDGE

Karachi

Dated: 30.11.2018.

Nadir/PA