

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –19 of 2019

Sikandar Ali Mallah

Versus

Province of Sindh and 02 others

Date of hearing

& order : 19.10.2020

Mr. Ahmed Ali Ghumro, advocate for the petitioner.

Mr. Hakim Ali Shaikh, Additional Advocate General Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. – The petitioner has impugned his retirement notification dated 06.12.2018, whereby he has been allowed to retire from service in BS-17 rather than in BPS-18.

2. Petitioners case is that he stood retired from service on 31.12.2011 on attaining the age of superannuation and the impugned order of his reversion from BPS 18 to BPS-17 is violative to the law laid down by the Honorable Supreme Court in the case of Haji Muhammad Ismail Memon (PLD 2007 SC 35). Petitioner has averred in the pleadings that he was appointed as Lecturer BS-17 on ad-hoc basis vide notification dated 17.02.1990 in Government of Sindh, Education & Literacy Department, and his service was subsequently regularized in pursuance of Sindh Civil Servants Regularization Act 1994 vide notification dated 12.12.1994. Per the petitioner, he was promoted from BPS-17 to BPS-18 on the recommendation of the Departmental Promotion Committee (DPC) with the approval of the competent authority vide notification dated 25.10.2002. However, the said promotion of the petitioner was recalled having based on misrepresentation of facts. Later on, another DPC was convened on 01.11.2010 whereby his promotion in BPS-18 was deferred for want of Performance Evolution Reports (PERs) / Annual confidential reports, finally, he reached the age of superannuation on 31.12.2011. The respondents issued impugned notification dated 6.12.2018 whereby he has been shown to have retired from service in BPS-17 rather than in BPS-18 with effect from 31.12.2011. The petitioner being aggrieved by and dissatisfied with the aforesaid notification has filed the instant petition on 01.01.2019.

3. Mr. Ahmed Ali Ghumro learned counsel for the Petitioner states that Respondents have given lame excuses after the delay of 9 years in releasing the dues of the Petitioner. He next added that the main grievance of the Petitioner is the delay of pensionary benefits due to the lethargic attitude of the Respondents for that he has suffered in litigation, therefore, he is entitled to the increases on the payment. He lastly prayed for directions to the Respondents to clear the pensionary benefits of the Petitioner in BPS-18 under the judgment passed by the Honorable Supreme Court as discussed supra.

4. Mr. Hakim Ali Shaikh, Additional Advocate General Sindh has referred to the para-wise comments filed on behalf of the respondents and supported the stance of the Government of Sindh. We asked the learned AAG whether any inquiry was pending against the petitioner, when the departmental promotion committee was convened on 1.11.2010, under Efficiency and Discipline Rules, or the adverse findings had been recorded against him. He replied in negative.

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

6. Petitioner's main grievance is that he was fully qualified for promotion based on fitness-cum-seniority under the rules but he had been deferred based on incomplete Performance Evolution Reports (PERs). We have noticed that the Departmental Promotion Committee was convened on 01.11.2010 whereby his promotion in BPS-18 was deferred for want of Performance Evolution Reports. In our view, eligibility for promotion and determination of fitness are two different criteria. Eligibility primarily relates to the terms and conditions of service and their applicability to the civil servants whereas the question of fitness is a subjective evaluation based on objective criteria. Prima-facie the decision taken therein against the petitioner on the aforesaid analogy was/is illegal and against principles of natural justice, leaving the petitioner to superannuate on 31.12.2011. However, his retirement notification was not issued, compelling him to file constitutional petition No.1534 of 2014 before this court, which was allowed vide order dated 8.10.2018 with the following directions:-

“The petition has been heard at length and after hearing the Counsel for the parties, with their consent, the petition stands disposed of as under:-

That the matter of the petitioner with regard to his pensionary and other benefits would be decided by the Secretary Education & Literacy Department, Government of Sindh strictly in accordance with law and as per the relevant rules and regulations after giving an opportunity of hearing to the petitioner preferably within a period of two months from the date of receipt of this order.

With these observations, the instant petition stands disposed of along with pending applications.”

7. In compliance with the aforesaid directions of this court the respondents issued notification dated 6.12.2018 whereby he has been shown to have retired from service in BPS-17 rather than in BPS-18 with effect from 31.12.2011. An excerpt of the notification dated 06.12.2018 is as under:-

NOTIFICATION

No. SO (HE-II) 2(S-726)/2015:- Whereas, the appellant preferred an appeal before the Honorable High Court of Sindh for issuance of his retirement notification w.e.f. 31-12-2011.

2. Whereas, the Honorable High Court at Karachi passed order dated 08-10-2018 that the Secretary College Education Department may decide the matters of petitioner on in accordance with law by giving an opportunity of hearing within a period of two months.

3. Whereas, the appellant was called by the Secretary to Government of Sindh, College Education Department on 31-10-2018 for personal hearing along with relevant documents, if any, relating to his claim that he was promoted as Assistant Professor (BS-18) on 25-10-2002. The hearing was attended by the concerned dealing Officers of College Education Department. The appellant has failed to provide any documentary evidence relating to his claim that he is in BS-18 and as per available record of the Department he was appointed as Lecturer in Economics (BS-17) on 17-02-1990 on adhoc basis. His services were regularized on 12-12-1994. As per his contention, he was promoted by the Department in BS-18 in 2002, was totally wrong and baseless as the approved minutes of meeting held on 22-05-2002 transpires that Lecturers (BS-17) from seniority No. 1 to Seniority No.178 were considered and promoted by DPC as Assistant Professor (BS-18) whereas the name of appellant is at Seniority No.1408 of Seniority List of Lecturers (Government Cadre) (Collegiate Branch) (Men's Section) as stood on **31-12-1998**, as such, any question of promotion of appellant does not arise.

4. Whereas, it is further clarified that the batch mates of appellant were promoted to the post of Assistant Professor (BS-18) by the DPC held on 01-11-2010 whereby the appellant was deferred for want of PERS.

5. on the basis of available record of the Department, Mr. Sikandar Ali Mallah, Lecturer in Economics (BS-17) is hereby allowed to retire from government service on attaining the age of superannuation i.e. 60 years w.e.f. **31-12-2011** subject to condition that he is not facing Departmental Enquiries/Anticorruption/NAB or Court of Law and no dues are outstanding against him.

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COLLEGE EDUCATION DEPARTMENT**

8. This is a matter of grave concern that for several years, the long and unjustified delay in the payment of pension has been a source of tremendous hardship and humiliation to retiring officials and their families. Despite the strictures and orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government, petitions on account of delay persist.

9. Perusal of the aforesaid notification explicitly shows that due to intervention of this Court the respondents issued the retirement notification of the petitioner, however, it should have been issued on the eve of the retirement of the petitioner in the year 2011, which act on the part of the respondents cannot be appreciated at all, even otherwise the same act is in disregard of the Judgment passed by the Hon'ble Supreme Court in the case of Haji Muhammad Ismail Memon (PLD 2007 SC 35).

10. We have also noticed that the petitioner gave various reasons to claim the interest on the delayed payments. In these circumstances we are of the considered view that the respondents have unnecessarily delayed his promotion case (now proforma promotion after his retirement), leaving his colleagues to supersede him during his tenure of service and failed and neglected to issue his retirement notification in time as well as withheld the retirement benefits to the petitioner in BPS-17/18.

11. In view of the foregoing discussion, the competent authority of respondents is directed to issue a retirement order of the petitioner in BPS-17/18 under the law and to pay his full pensionary benefits, from the date of attaining the age of superannuation i.e. 31.12.2011 as admissible to him under the law within one month from the date of receipt of this order. The competent authority of the respondent is also directed to recalculate the pensionary benefits of the petitioners and increases accrued thereon the withheld pensionary benefits with effect from 31.12.2011 to date. Petition and pending applications are allowed in the above terms with no order as to costs.

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Shahzad*