

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D –6100 of 2014

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Zaheer Ahmed

Versus

Province of Sindh and others

For Orders on MIT-II's report dated 29.10.2010 :

Date of hearing & order : 05.11.2020

Petitioner Zaheer Ahmed Shaikh in person.

Mr. Iqbal Khurram, advocate for KMC.

Mr. Ali Safdar Depar, Assistant A.G Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. The instant petition was disposed of by this Court vide order dated 01.10.2019 with the following observations:-

“Although we have heard the matter at length, insofar as the question of alleged promotion with effect from the date of he took over the charge of the designated post is concerned, however, during the course of the arguments, learned counsel for Respondents No.3 and 4 informed that the appeal is yet to be decided by the Secretary concerned. In view of the above, we have enquired from the counsel for the petitioner who has also conceded this. We deem it appropriate to direct the Secretary, Local Government Sindh to decide the appeal of the petitioner preferably within a period of three weeks from the date of communication of this order with a compliance report to MIT-II of this Court. This petition stands disposed of in the above terms.”

2. On 19.10.2019, MIT-II of this Court submitted report to the effect that no compliance of the order dated 01.10.2019 passed by this Court has been made.

3. Mr. Iqbal Khurram, learned counsel for respondents No.3 & 4 /KMC vide statement dated 05.11.2020 has submitted a compliance report dated 27.10.2020.

4. We have heard the petitioner who is present in person and Mr. Iqbal Khurram learned counsel for respondents No.3 & 4 / KMC on the MIT-II's report dated 29.10.2019.

5. It appears from the record that the applicant was appointed as octroi Clerk (BS-05) in the year-1968. He was promoted as Senior Clerk (BS-06) in the year-1977 & succeeded in getting the selection grade (BS-09) in the year 1989. He was further promoted to the post of Head Clerk (BS-11) in the year 1996. Surprisingly he was directly inducted to the post of Deputy District Officer (BPS-17) vide office order dated 09.08.2005, though his next channel of promotion was Office Superintendent (BPS-16). Prima-facie, he superseded his 22 senior colleagues (Head Clerks) with the approval of the then Administration of KMC. The record further reflects that the applicant was only drawing a salary from the Zoo & Aquarium Department but he was working in the Medical & Health Department continuously. Now he has approached for proforma promotion with retrospective effect i.e.04.10.2000 on the premise that respondent No.4 gave a verbal order to him to work against the post of Deputy Director Officer (Admin) Zoo Suffari & Aquarium in addition to his duty and the same was actualized vide orders dated 22.06.2001 and 28.02.2002. An excerpt of the report is reproduced as under:-

“As far as further demanding of Mr. Zaheer Ahmed for allowing the benefit of up-gradation of the post from BPS-17 to BPS-18 w.e.f. 31.12.2003 is concerned, it is very much clear that the applicant was promoted in BPS-17 vide order No.361 dated 09.08.2005 and he is entitled to benefits of BS-17 from the date of his promotion in Grade 17 and he is not entitled to back benefits. Further, the post of Directors, Deputy Directors, and Assistant Directors was up-graded for the persons who were only holding the post vide Notification dated 30.12.2003. at that time the applicant was Head Clerk (BS-11) and was not holding the post of Director, Deputy Director, Assistant Director and his case does not cover within the Notification dated 30.12.2003 and his claim for promotion in BS-17 from his first application i.e. 04.10.2001 has no legal worth nor he is entitled to retrospective benefits of the up-graded post in BS-18. And the appeal of the applicant has no legal value in the eyes of Law, so that case is dismissed.”

6. We have noticed that the service profile of the applicant is sketchy and he stood retired from the service of the respondent on 01.12.2007 and now he seeks proforma promotion with retrospective effect i.e.04.10.2000, which cannot be allowed under the law. We are fortified by the decision rendered by the Hon'ble Supreme Court in the case of Hameed Akhtar Niazi v. The Federation of Pakistan and others (PLD 2003 S.C 110).

7. Reverting to the contention of the petitioner that his departmental appeal dated 31.01.2006 has already been decided by the Appellate Authority vide order dated 14.06.2020, whereby he was allowed to be promoted as Deputy District Officer (BS-17) w.e.f. 04.10.2000 and other benefits including upgradation in terms of the notification dated 31.03.2003 in BPS-17 to BPS-18. The assertion of the petitioner is wholly misconceived on the premise that the Secretary Local Government Department vide order dated 01.10.2020 decided his appeal and remanded the matter to Municipal Commissioner, Karachi for the decision on merit. The respondent-KMC has submitted a compliance report through a statement dated 05.11.2020 and dismissed his appeal for the reasons alluded in the appellate order dated 27.10.2020. Even otherwise, this court took up the matter on 07.09.2020, 01.10.2020, and 14.10.2020, petitioner never pointed out that his appeal had already been decided by the then Secretary Local Government vide order dated 14.07.2020 even he was not bothered to submit the said report before this Court on the aforesaid dates.

8. In view of the above, this Court directed the Secretary Local Government on the aforesaid dates to decide the appeal of the petitioner. The Secretary Local Government took up the appeal and remanded the case of the petitioner to the competent authority of KMC for afresh decision on merit which has now been done. So far as the decision dated 14.07.2020 is concerned, which order has never been placed on record by the Secretary concerned or petitioner himself and now we have received the compliance report which prima facie shows that the matter of the petitioner has been decided on merits, therefore, no further action is required. Hence office is directed to consign this file to record.

J U D G E

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Shahzad*