

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –1400 of 2015

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Lt. Commander (Retd.) P.N Engineer Abdul Aziz Narejo

Versus

Karachi Port Trust and 04 others

For orders on CMA No.6746 of 2020 (Contempt)

Date of hearing & order : 16.11.2020

Mr. Abdul Salam Memon, advocate for the petitioner.

Syed Abdul Waheed, advocate for respondents 1 to 3.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. The present application for initiating contempt proceedings, against the alleged contemnors, arises out of the order passed by this Court on 22.11.2019 in the aforesaid matter whereby direction was given to the respondents to regularize the services of the petitioner and so also to consider his case for promotion, in case any post is falling vacant that may commensurate to his credentials and experience.

2. On 29.02.2020, petitioner filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No. 6746 of 2020) for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional, and deliberate act of disobeying the above-mentioned judgment passed by this Court.

3. Mr. Abdul Salam Memon, learned counsel for the applicant, has submitted that since alleged contemnors had failed to comply with the judgment / orders passed by this Court in the aforesaid matter, contempt proceedings may be initiated against them.

4. Syed Abdul Waheed, learned counsel for the alleged contemnors, has refuted the claim of the applicant, and referred to the statement dated 16.09.2020 filed by the alleged contemnors and argued that the respondents have fully complied with the order dated 22.11.2019 passed by this court in its letter and spirit. He relied upon the copy of the compliance report submitted on behalf of the respondents and argued that nothing is left on their part. In support of his contention, he relied upon the documents attached with the compliance report and argued that the respondents have confirmed the service of the petitioner from

ad-hoc to regular and learned counsel further stated that the petitioner reached the age of superannuation and collected an amount of Rs.1,521,360 (Rupees one million five hundred twenty one thousand three hundred and sixty only).

5. We have heard learned counsel for the applicant and learned counsel appearing on behalf of the respondents on the listed application.

6. We have also scrutinized the compliance report submitted on behalf of the alleged contemnors; prima-facie the explanation offered by the respondents vide compliance statement dated 16.09.2020 is tenable under the law, for the reason that ad-hoc appointment of the petitioner was regularized with effect from 22.11.2019. The petitioner stood retired from service of KPT on attaining the age of superannuation on 01.01.2020 and the respondents in compliance with the order passed by this Court as discussed supra, confirmed his service with effect from 22.11.2019. So far as the promotion of the petitioner is concerned, we are of the considered view that in the seniority / promotion case no vested right / fundamental right can be claimed as the promotion depends upon the various factors, which require consideration for the promotion of the employees and the respondent-KPT has declined the promotion to the petitioner with certain reasoning. It is well-settled law that the period of adhoc appointment cannot be counted towards service, the seniority in grade is to be taken effect from the date of regular appointment to a post and it cannot be conferred retrospectively. Since the service of the petitioner was confirmed admittedly with effect from 22.11.2019 as such promotion cannot be claimed by him without the requisite length of service except from the date of regular appointment. This reduces to the dictum that an ad-hoc appointee would only be entitled to seniority from the date of his regularization and not from the date of initial appointment. The petitioner accordingly is neither entitled for retrospective seniority nor promotion. This view is cemented by the judgment delivered in the case of Province of Sindh and others vs. Ghulam Farid and others, **2014 SCMR 1189**, and Secretary to Government of Punjab and others vs. Muhammad Khalid Usmani and others, **2016 SCMR 2125**.

7. In our view, the compliance reports submitted on behalf of alleged contemnors are in line with the order dated 22.11.2019 passed by this court in letter and spirit. Resultantly, the contempt application is dismissed.

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