

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 2405 of 2019

Abdul Nasir,

Petitioner through:

Mr. Muhammad Abid Rajput advocate

Date of hearing:

05.09.2019

Date of order:

05.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J:- The case of the petitioner is relatively simple and straight forward. Our attention has been drawn to the office order dated 02.03.2019, which relates to the transfer and posting of the petitioner from Linen Store to College of Nursing (JPMC). Petitioner has premised his case that in pursuance of an advertisement dated 24.09.1983 published in daily Jassarat, he applied for the post of Assistant Store Keeper in BPS-07 and since then he has been working on the aforesaid post without any further steps of up-gradation on the part of the Respondent-JPMC. However, the administration of JPMC had promoted him in the year 2010 as Store Keeper (General) but no charge was handed over to him as per law; that after completion of five years as Store Keeper (General) the next promotion is as Assistant Director (General-II); that his post is isolated post and still in BPS-07, which needs to be upgraded as well. It is further urged that the promotion of the petitioner is virtually blocked and there is no further venue of the promotion of the petitioner.

2. Mr. Muhammad Abid Rajput, learned counsel for the petitioner has highlighted the grievances of the petitioner and endeavored to argue the core issue of transfer and posting of the petitioner as well as up-gradation for the post as discussed supra. Learned counsel states at the bar that the petitioner is eligible and qualified to be promoted in the next rank, however, his promotion was ignored for the reasons best known to the administration of JPMC. In this regard, he moved various applications to the competent authority but to no avail. He lastly attempted to approach the Executive Director of JPMC in the month of November, 2018 but

of no use. Learned counsel states that the transfer order dated 02.03.2019 is against the basic spirit of the Judgment dated 16.01.2019 passed by Hon'ble Supreme Court of Pakistan in Civil Appeals No. 125-K to 131-K and 2306 to 2309 of 2016 and connected petitions, whereby Hon'ble Supreme Court of Pakistan has declared the transfer / devolution of JPMC to be unconstitutional without lawful authority and has no legal effect, therefore, his transfer order, which is impugned before this Court is also nullity in the eyes of law. He prays for declaration to that effect as well as prays for grant of benefits of up-gradation and other allied benefits accrued thereon.

3. We queried from the learned counsel for the petitioner as to how this petition is maintainable against the transfer and posting order, which falls within the ambit of terms and conditions of his service. He reiterated his submissions and relied upon the aforesaid judgment of the Hon'ble Supreme Court of Pakistan. We have gone through the judgment passed by Hon'ble Supreme Court of Pakistan as discussed supra. We are of the considered view that this judgment pertains to transfer and devolution of five institutions i.e. SZMC, JPMC, NICVD, NICH and NMP, of Sindh Government, which has nothing to do with the case of the petitioner at hand. Learned counsel further states that this is a case of hardship, therefore, the impugned order may be set-aside. We are not in agreement with the assertion of the learned counsel for the petitioner for the simple reason that the petitioner being a Government Servant is bound to serve where the administration requires him to serve as provided under the law for which he cannot call in question his transfer and posting order and to claim particular post at particular place.

4. We asked the learned counsel to satisfy this Court with regard to his claim of up-gradation of the post as equal to his basic pay after his promotion in the year 2010. Learned counsel emphasized that up-gradation is distinct from the expression promotion, which is restricted to the post and not with person occupying it; that there is no further venue for the promotion of the petitioner as such the post of the petitioner needs to be upgraded. We asked the learned counsel to produce the recruitment rules for the post he is occupying at present so that this Court may ascertain as to whether there is venue of the promotion of the petitioner or

otherwise but learned counsel failed to bring on record such recruitment rules, thus we could not benefit of looking at the same, however, in our view the expression up-gradation which is quite distinct from expression promotion. We are of the considered view that for up-gradation the following conditions are pre-requisite:-

- i) *Firstly up gradation is restricted to the post and not with the person occupying it.*
- ii) *Secondly up gradation of posts does not mean automatic up gradation of the incumbents of these posts as well, in fact the appointment against the up graded post is required to be made in the manner prescribed in the Recruitment Rules for that particular post.*
- iii) *Thirdly up-gradation cannot be made to benefit a particular and individual.*

5. To justify up-gradation the respondent department is required to establish that the department needs restructuring, reform or to meet the exigency of service in the public interest, in the absence of the aforesaid pre-conditions, up-gradation is not permissible under the law. Petitioner was well aware of the fact, when he applied for the post of Assistant Store Keeper BPS-07 that the promotion venue of the same post is very dim but he applied and succeeded in obtaining the appointment order in his favor and continued his service till 2010 when he was promoted as Store Keeper. Since nothing has been brought on record to claim the benefit of up-gradation as this is policy decision and yet to be taken care by the competent authority of JPMC more particularly in service matter. In our view without fulfillment the pre-conditions as discussed supra the post cannot be upgraded.

6. Let us come to the main issue of transfer and posting of the petitioner vide office order dated 02.03.2019 as discussed supra, which prima-facie shows that the respondents have simply issued general transfer and posting order of its employees, therefore, no vested right can be claimed to be posted at the particular place of posting.

7. In the light of above facts and circumstances of the case the instant petition is wholly misconceived is dismissed in *limini* along with pending applications.

JUDGE

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