

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 2761 of 2011

Sadiq Ali Khan vs. University of Karachi and another.

Date of hearing
& decision : 10.01.2020.

Mr. Faizan H. Memon, advocate for the petitioner.

Mr. Ali Ahmed Turab advocate holding brief for Mr. Moin Azhar Siddiqui, advocate for respondents.

Mr. Hakim Ali Shaikh, Additional Advocate General.

ORDER

ADNAN-UL-KARIM MEMON, J. : Through the captioned constitutional petition, petitioner is seeking declaration to the effect that the decision of the respondent-university dated 25.10.2008 is illegal, whereby his candidature for the post of professor was not considered.

2. At the very outset, we asked learned counsel to satisfy this Court with regard to maintainability of the instant petition on the premise that the original order dated 25.10.2008 was assailed before the appellate authority who had already passed order on 21st May, 2010 by dismissing his appeal being barred by time and the petitioner without impugning the appellate order has filed the instant petition, though the original order was merged into the appellate order dated 21.5. 2010.

3. Mr. Faizan Hussain Memon, learned counsel for the petitioner, in his abortive attempt justified filing of this petition against the original order dated 25.10.2008 passed by the respondent-university and argued that the petitioner had already superannuated in the year 1992 but the decision of the respondents on the basis of report of the Committee is illegal, though petitioner was eligible to be appointed against the post of Professor; that petitioner is a retired Associate Professor and is fully eligible for benefit admissible to Professor rather than Associate Professor; that petitioner has been treated discriminatory at the time of appointment in the year 1986. He lastly seeks disposal of the instant petition by directing the respondent-university to pay him the benefits of the post of Professor and not Associate Professor.

4. We are not convinced with the arguments of the learned counsel for the petitioner on the ground that he stood retired from the post of Associate

Professor in the year 1992 and he filed the instant petition in the year 2011 after considerable time after his retirement from service by assailing the original order dated 25.10.2008 which order stood merged into the order dated 21.5.2010 passed by the appellate authority. There is no cavil to the proposition that if the remedy of appeal is available to a party under the statute, availing such statutory remedy, and without calling in question the appellate order, only seeking setting aside the original order in the Constitutional jurisdiction of this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is not proper under the law.

5. The decision which is impugned before this Court has already been rejected by the appellate authority; therefore, the impugned order is merged into the appellate order which has lost its sanctity even the same is not impugned before this court therefore we will refrain ourselves to observe anything against the appellate order and it is for the petitioner to seek an appropriate remedy under the law.

6. In view of the above, this petition is wholly misconceived and is accordingly dismissed with no order as to costs.

JUDGE

JUDGE

Nadir/-