

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-6563 of 2016

Mazhar Hussain *versus* The Senior Director Culture and Sports Recreation Department and 03 others.

For hearing of CMA No. 7446/2019 (Contempt) :

Date of hearing

& decision: **23.01.2020**

Mr. Abdul Salam Memon, advocate for the petitioner.

Mr. Iqbal Khurram, advocate for KMC.

Mr. Ali Safdar Depar, Assistant Advocate General.

ORDER

This petition was disposed of vide order dated 11.12.2018 with direction to the respondent No.4 to process the case of petitioner in accordance with law and if he qualifies to be appointed / promoted subject to availability of the post, his case may be recommended to Metropolitan Commissioner Karachi for promotion strictly in accordance with the relevant rules and regulations. Petitioner being aggrieved by and dissatisfied with the inaction on the part of alleged contemnors submitted application under Sections 3 & 4 of the Contempt of Court Ordinance, 2003 for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court.

Conversely, learned counsel representing KMC has filed statement dated 15.1.2020 and argued that in compliance of the order of this Court a meeting of Departmental Promotion Committee was convened on 6.12.2019 for considering the case of petitioner for promotion to the post of Librarian (BPS-17) and his case was recommended for promotion to the post of Assistant Librarian (BPS-11) as per seniority and availability of vacant post in KMC. Learned counsel for the petitioner states that order passed in the present petition on 11.12.2018 has not been complied with by the respondents in letter and spirit as the case of petitioner for promotion in BPS-17 to the post of Librarian BPS-17 has not been considered in proper manner.

We have heard the learned counsel for the parties on the listed application and perused the material available on the record and the decision relied upon by the learned Counsel for the alleged Contemnors. Prima-facie this is a simple case of enforcement of the order dated 11.12.2018 passed by this Court as discussed supra.

In view of the above averments, the question before us is as to whether we can enlarge the scope of the main order dated 11.12.2018 and allow the parties to argue the matter on merits of the case in Contempt Proceedings? The answer is not in affirmative.

It is an admitted position that the post of Librarian in BPS-17 is required to be filled under recruitment rules, 50% by promotion on seniority-cum-fitness basis and 50% by direct recruitment, however, petitioner is possessing the degree of Masters in Library, Information Science (MLIS) from Karachi University. As per note sheet issued by the office of KMC, petitioner was appointed on 07.03.1996 as Attendant and was posted to work as Librarian. However, it is matter of record when this petition was disposed of vide order dated 11.12.2018 he was posted as Library Assistant in BPS-08 and prayed for promotion to the post of Librarian which aspect was taken into consideration by the DPC and his candidature for the post of Librarian (BPS-17) on the basis of recruitment rules was regretted. Such compliance report has been submitted through statement dated 15.01.2020.

We have also scrutinized the compliance report submitted on behalf of the alleged contemnors, which explicitly shows that substantial compliance of the order dated 11.12.2018 has been made by issuance of office order.

Prime facie the explanation offered by the Respondents through statement dated 15.1.2020 by placing reliance upon the order of competent authority is tenable under the law. We do not see any malice on the part of alleged contemnors warranting interference of this Court to take action against the alleged contemnors under Article 204 of the Constitution.

In view of the facts and circumstances of the case and for the reasons alluded above, we are satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 11.12.2018 passed by this Court has been made in its letter and spirit. Therefore, at this juncture, no

case for initiating contempt proceedings against the alleged contemnors is made out. Resultantly, CMA No. 7446/2019 is dismissed.

JUDGE

JUDGE

Nadir/-