

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-7902 of 2018

Attaullah
Petitioner through : Mr. Muhammed Mushaffy and Ms. Sana Amar,
advocates

Respondent No.1
Through : Mr. Muhammad Nishat Warsi, DAG

Respondent 2 to 4
Through : Mr. Farmanullah Khan, advocate

Date of hearing
& order : **14.02.2022**

ORDER

Petitioner seeks enforcement of the directions contained in the orders dated 12.01.2016 and 13.01.2016 passed by the Honorable Supreme Court of Pakistan in Criminal Original Petition No.89 of 2011 and Civil Review Petition No.193 of 2013 respectively.

Relevant facts of the case that have emerged from the petition and documents filed therewith are that the petitioner was appointed in the year 1994 as Career Executive Officer in Sui Southern Gas Company Ltd. Thereafter, he was promoted to Grade-III vide office order dated 26.8.2004. Petitioner averred that his services were requisitioned by the Sindh Government vide office order dated 11.1.2004 on deputation for three (03) years and was subsequently promoted to BPS-18 on regular basis by the order of the competent authority of the Government of Sindh. Finally, he was relieved from the post of Additional Commissioner-I, Hyderabad to report to his parent department i.e. Sui Southern Gas Company Ltd. vide notification dated 12.02.2016 issued by the Chief Secretary, Government of Sindh in compliance with the orders passed by the Honorable Supreme Court in Criminal Original Petition No.89 of 2011 and Civil Review Petition No.193 of 2013.

Mr. Muhammed Mushaffy, learned counsel for the petitioner has submitted that the petitioner is a permanent employee of Sui Southern Gas Company, who is working there in Grade-V. Per learned counsel, the respondents have not implemented the judgment of the Hon'ble Supreme Court of Pakistan passed in Civil Review Petition 193/2013, as the batchmates of the petitioner have already been promoted and are enjoying the higher positions, therefore, he has also written letters to Senior General Manager (HR) for redressal of his grievances, but to no avail; that the actions taken against the petitioner concerning seniority and promotion can be challenged on the ground of malafide of law or malafide of fact; besides that this court can enforce the decision of the Honorable Supreme Court under Article 187(2) of the Constitution; that the

petitioner has been deprived of his service/fundamental rights as guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973.

Mr. Farmanullah Khan, learned counsel for the respondents 2 to 4, has referred to para-wise comments filed on behalf of respondent-SSGC with the assertion that this petition is not maintainable as there are disputed questions of facts in the matter requiring full-fledged trial for their resolution and the same cannot be agitated or resolved in constitutional jurisdiction of this court. Per learned counsel, petitioner had left the service of respondent-SSGC in 2004 to join Sindh Government; at that time he was serving as Engineer in Grade-III; that at present most of the batchmates of the petitioner are serving in Grade-III and Grade-IV; that in principle he should have been in Grade-IV rather than V, however, due to indulgence of respondent-SSGC, he is working in Grade-V. Learned counsel referred to Annexure-R1 attached with the memo of objections and submitted that petitioner has been dealt with under the judgment passed by the Hon'ble Supreme Court of Pakistan as reported 2015 SCMR 456. He prayed for dismissal of the instant petition.

We have heard learned counsel for the parties and perused the material placed on record.

The appointment of the petitioner in Ex-PCS cadre (BPS-17) in Sindh Government had already been declared as illegal by the Honorable Supreme Court and ordered his repatriation to his parent department i.e. Sui Southern Gas Company. An excerpt of the order dated 30.06.2016 passed by the Honorable Supreme Court in CRL.MISC. Application No.351 of 2016 in criminal original petition No. Nil of 2016 in criminal original petition No.89 of 2011 is reproduced as under:-

“Review has been sought by the Petitioner against the Notification dated 12.02.2016, issued by the Government of Sindh, repatriating the Petitioner to his parent department Sui Southern Gas Co.

2. It is contended by the learned counsel for the Petitioner that the Petitioner was inducted in the Sindh Government and his nomination in terms of Wet Pakistan Civil Service (Executive Branch) Rules, 1964, was made by the Chief Minister, Sindh, and according to the judgments of this Court reported as Contempt Proceedings Against Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), he was wrongly repatriated.

3. Mr. M. Sarwar Khan, learned Additional Advocate General, Sindh, submits that the aforesaid order of repatriation of the Petitioner was passed in the light of the directions made by this Court in CrI. M.A.No.354 of 2015, filed by the Provincial Government. According to the learned Law Officer, in the case of Qazi Jan Muhammad, who was an employee of the Ministry of Information, Government of Pakistan, and was inducted in the same manner, was ordered to be repatriated on 12.10.2016. He submits that the Petitioner was an employee of Sindh Southern Gas Co. and he has been rightly repatriated.

4. We have heard the learned Counsel for the Petitioner, the learned Law Officer, and have perused the record. It is not in dispute that the Petitioner was an employee of Sui Southern Gas Co., therefore, the orders passed in CrI. M.A. No.354 of 2015 and CrI. M.A. No.1308 of 2016 covers the case of the Petitioner. The

learned Counsel for the Petitioners claims that other similarly placed employees have not been repatriated to their parent departments by the Sindh Government. He has placed a list of such employees before this Court. The Sindh Government shall respond to the case of each nominee named in the list C.P. No. D-8261 of 2019 Page 6 of 6 as to why they were not repatriated. A report in this respect shall be submitted within three weeks, for our perusal in Chambers.

5. This C.M.A., for the aforesaid reasons, is dismissed.”

The Hon’ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch and others v. Province of Sindh and others, **2015 SCMR 456**, has held that all the officers shall be entitled to their salaries, seniority, promotion, and other perks with their batchmates as if they were never relieved from their parent department. In our view, since the direction of the Honorable Supreme Court in the aforesaid matters is still in the field, we are bound to follow it under the Constitution.

In view of the above facts and circumstances of the case, this petition is disposed of in the light of the ratio of the judgment passed by the Hon’ble Supreme Court of Pakistan in the aforesaid case, whereby the petitioner was directed to join his parent department forthwith. He, on joining, his parent department shall be entitled to seniority and promotion with his batchmates as if he was never transferred or absorbed.

The competent authority of respondent-SSGC is directed to look into the matter of the petitioner and decide the seniority and promotion of the petitioner strictly in the light of the ratio of the judgment passed by the Hon’ble Supreme Court of Pakistan in Ali Azhar Khan Baloch case as discussed supra. The aforesaid exercise shall be undertaken within two weeks after providing meaningful hearing to the petitioner.

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Nadir*