

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Constitutional Petition No. D – 2191 of 2021

Saeed Akhtar

Versus

The Government of Sindh and others

Date of hearing & Order : 15.04.2021

Mr. Abdul Sallam Memon, advocate for the petitioner.

Mr. Altaf Hussain, advocate for respondent 3.

Mr. Ali Safdar Depar, Asst. Advocate General.

ORDER

Adnan-ul-Karim Memon, J. Through the instant Petition, the Petitioner seeks the declaration to the effect that the impugned notification dated 19.03.2021 is illegal, unlawful, and without jurisdiction, hence of no legal consequence and is liable to be set aside. He also seeks directions to the official respondents to transfer and post the officers of the Law Department, KMC, in terms of rules and schedule of the Law Department.

2. Mr. Abdul Salam Memon, learned counsel for the petitioner submits that the petitioner is working in BPS-19 in Karachi Metropolitan Corporation (KMC) as Senior Director, Law department, and his case for promotion for the post of Senior Director Law (BPS-20) was recommended by the Departmental Promotion Committee, however, in the intervening period vide impugned transfer order dated 19.03.2021, he has been posted as Senior Director Coordination to Administrator Secretariat KMC for legal matters, which post according to the learned counsel for the petitioner does not exist, hence, he has been placed and posted on non-existence post. He further states that respondent No.5 is also a Grade-19 officer in KMC has been posted as Senior Legal Advisor KMC in the same transfer order. Per learned counsel, no such post of Senior Legal Advisor, KMC exists, therefore, both the actions taken vide transfer order dated 19.03.2021 are illegal and uncalled for. Learned counsel referred to page 69 of the file, where a description of the available post has been mentioned wherein neither any post about the Senior Director Coordination nor Senior Legal Advisor exists. He prayed for allowing the instant petition.

3. On the contrary, learned counsel representing respondent No.3 has referred to the letter dated 01.04.2021 issued by Senior Director Human Resource

Management, KMC whereby the office order dated 29.03.2021 directing the transfer and posting of officers of Law Department, KMC has been withdrawn. He further submits that a fresh transfer and posting order shall be issued under the schedule of the establishment of Law Department KMC under law. At this juncture, learned counsel for the petitioner has placed on record copies of the letters dated 30.03.2021 and 02.04.2021 and argued that respondent No.5 is still holding the post of senior legal advisor, KMC despite the restraining order passed by this Court on 29.03.2021. He prayed for initiating contempt proceedings against respondents No.3 and 5. Respondent No.5 present in person submits that she is working as a legal advisor, KMC and not as a Senior Legal Advisor, KMC, however, she admits that her designation in the letter dated 30.03.2021 and 02.04.2021, has wrongly been mentioned as Senior Legal Advisor, KMC rather than Legal Advisor, KMC.

4. We have heard learned counsel for the parties on the subject issued and perused the material available on record.

5. Prima facie, the purpose of filing this petition has been served, in the light of a letter dated 01.04.2021 issued by Senior Director Human Resources Management KMC, however, learned counsel for the petitioner has a little bit of reservation on the designation of respondent No.5 as Senior Legal Advisor KMC. Per petitioner, he is the most Senior Officer in KMC as per seniority list; and, respondent No.5 in the guise of Senior Legal Advisor, KMC poses herself as Senior Director Law KMC, in complete violation of norms and justice, nearly to quench the thrust of her ego to be at the top in the respondent department without realizing that it is her inviolable obligation to follow and adhere to the Constitution and law. Primarily, this petition has served its purpose, which is disposed of in the terms, whereby the competent authority of the respondent-department is directed to issue posting and transfer orders of the petitioner and the private respondent, if no disciplinary proceedings are pending against them, strictly under the schedule of the establishment of law department KMC, with correct description/designation of their respective posts as per their entitlement under the law. The said exercise shall be undertaken within two weeks from the date of this order.

6. This petition stands disposed of with no order as to costs.

J U D G E

J U D G E