

## IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D- 6319 of 2019**

**Naseem Ahmed**

Petitioner : In person.

Respondents No.1 & 2

Through : Mr. Ali Safdar Depar, AAG.

Respondent No.3 to 6

Through : Malik Altaf Hussain, advocate.

Date of hearing : **28.09.2021**

Date of order : **28.09.2021**

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Petitioner through instant petition, seeks direction to the Audit Department of Karachi Municipal Corporation KMC to remove the objection in respect of the fixation of his pay in BPS 17 on the strength of office order dated 31.08.2018 issued by the KMC, whereby the post of Assistant Account Officer (BPS-16) held by him was upgraded from BPS 16 to BPS-17, from the date of approval of Government of Sindh and streamlining the service structure of Engineering Department of KMC.

2. Petitioner who is present in person has submitted that basically, he has received the arrears of pay of BPS-16 as Assistant Accounts Officer but his grievance is that his upgradation from BPS 16 to BPS 17 has not been actualized and benefits accrued thereon has not been paid to him due to unnecessary objection raised by the audit department of KMC. In support of his contention, he has relied upon the office order dated 31.08.2018 whereby the post of Assistant Account Officer (BPS-16) held by him was upgraded in BPS-17 from the date of approval of the Government of Sindh, subject to the condition that arrears to this effect will not be claimed/disbursed to him.

3. At this stage, we reminded him that up-gradation is distinct from the promotion; and, is restricted to the post and not with the person occupying it; that the up-gradation cannot be made to benefit a particular individual in terms of promoting him to a higher post; and, to justify the 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; and, in the absence of these pre-conditions, up-gradation is not permissible. He replied that this is a hardship case, as such direction may be issued to the respondent KMC to fix his pay in BPS 17 along with ancillary benefits in the light of office order dated 31.8.2018. However, he emphasized that the competent authority of the respondent department is required to formulate the service structure of the Engineering Department of KMC. Petitioner referred to various documents attached with the memo of the petition and extensively submitted that the instant petition may be allowed as prayed.

4. Learned AAG has submitted that the petitioner is not entitled to the upgradation of his post. He urged that the office order dated 31.08.2018, issued by the respondent KMC is erroneous on the premise that the person-specific up-gradation is not admissible under the law, therefore, this petition is liable to be dismissed. He emphasized that up-gradation is carried out without necessarily creating posts in the relevant scales of pay. It is carried out under a policy and specified scheme. It is reported only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Up-gradation under the scheme is personal to the incumbents of the isolated posts, to address the sluggishness and frustration of the incumbent on a particular post for sufficient length of service on the particular post without any progression or avenue of promotion. Primarily upgradation is carried out under a scheme and or a policy to encourage and to give financial benefits without creating additional vacancies of higher grade, upgradation by no standards could be treated and or considered as a promotion to the higher grade. Incumbents occupying ungraded posts retain their substantive grades; therefore, the order of the Honorable Supreme Court relied upon the petitioner is of no help to the petitioners for the aforesaid reasons.

5. We have heard the petitioner who is present in person and learned AAG as well as learned counsel representing respondent-KMC.

6. Essentially in service jurisprudence, upgradation and its ancillary parts are not part of the terms and conditions of service of a civil/government servant, however, the same could be treated as a policy decision of the Government. We are of the view that the post cannot be upgraded merely bypassing the order by the KMC, the law has to take its course and to be followed for the aforesaid purpose for which the petitioner has failed to justify his entitlement for the actualization of up-gradation in BPS 17 with retrospective effect, which cannot be interfered with under the constitutional jurisdiction.

7. In the earlier round of litigation petitioner approached the Hon'ble Supreme Court in Civil Petition No.25-K of 2017. The Hon'ble Supreme Court disposed of his petition with a direction to the Municipal Commissioner KMC to examine his case and pass an appropriate order on his application. Petitioner sought implementation of the order passed by the Honorable Supreme Court by filing Cr. Original Petition No.9-K/2017, whereby the Hon'ble Supreme Court vide order dated 21.11.2017 disposed of the application with the observation that there was no direction for upgradation of the petitioner, for convenience sake an excerpt of the orders dated 17.03.2017 and 21.11.2017 of the Hon'ble Supreme Court are reproduced as under:-

“We have heard the Municipal Commissioner KMC, Director (Admin), Engineering and Senior Director, HR, KMC. It is the responsibility of the Engineering department as well as HR of the KMC to comply with the order dated 17.11.2016 of the High Court, which was in fact defeated willfully for which no explanation has been offered by the Director Engineering or Senior Director HR. the High Court has allowed the promotion to the Petitioner from BS-11 to BS-16 since 2011 and that order was passed on the statement of the Director Administration of the Engineering Department, KMC and the petition was disposed of. In spite of this order, the compliance was not made, and instead the Petitioner was kept running from pillar to post.

2. We record our displeasure over the conduct of these two officers one of whom is serving as Director on OPS. An undertaking has been given by the Municipal Commissioner, KMC that the arrears of BS-16 shall be paid to the petitioner within a week from today and henceforth he shall be paid as a BS-16 officer. The petitioner claims that his Service Book and even the attested copies of his Service Book were misplaced intentionally besides the post of Account Officer was upgraded in BS-17 in the entire Sindh and a letter in this regard too was misplaced. We will not travel into this issue for the time being. If

the petitioner is entitled to any further benefit, the Municipal Commissioner shall examine the same and pass an appropriate order on the proper application by the petitioner.

3. The petition is disposed of in the above terms. The person who is holding the post on PS shall be reverted to his original position. Compliance report in this behalf shall be submitted for our perusal in chambers.”

**Criminal Original Petition No.9-K/2017**

“A concise statement has been filed by counsel for the alleged contemnor Dr. Asghar Abbas in which it is stated that the order of this Court dated 17.03.2017 has been complied with. The petitioner, present in person, states that he has received the arrears of pay of BS-16 and is receiving the salary/benefits of BS-16 but his grievance is that he is not being upgraded to BS-17. It is stated by counsel for the alleged contemnor that such aspect of the matter has been referred to the Secretary, Local Government. He further states that as and when the same is decided, further action will be taken in accordance with law. We have not passed any order of upgrading the petitioner’s post from BS-16 to BS-17 as the same has to be done by the KMC in accordance with law. This petition has borne fruit and, therefore, disposed of accordingly.”

8. We have gone through the office order dated 31.08.2018 issued by the Senior Director Human Resources Management KMC which prima-facie show that the post of Assistant Accounts Officer (BPS-16) held by M/s Naseem Ahmed and Mr. Ubaidullah Baig, Engineering Department, KMC, and Abbasi Shaheed Hospital M&HC, KMC was upgraded in BPS-17, subject to the approval of the Government of Sindh and as per learned AAG, the same approval could not be granted by the respondent Local Government on the premise that up-gradation order dated 31.08.2018 was person-specific, not admissible under the law. As an excerpt of the order is reproduced as under:

“The posts of Assistant Accounts Officers (BPS-16) held by M/s Naseem Ahmed, and Mr. Ubaid Ullah Baig, Engineering Department, KMC and Abbasi Shaheed Hospital, M&HC, KMC respectively are hereby upgraded in BPS-17, from the date of approval of Government of Sindh, subject to the condition that arrears to this effect will not be claimed / disbursed.”

9. In view of the above discussion, we are clear in our mind that the petitioner proceeded on erroneous premises. On the issue of actualization of up-gradation of his post in BPS 17 and ancillary benefits. On the subject, we are guided by the decisions of the Honorable Supreme Court rendered in the cases of the Government of Pakistan M/o. Railways v. Jamshed Hussain Cheema and others, 2016

SCMR 442, Regional Commissioner Income Tax, Northern Region, Islamabad, and another Vs. Syed Munawar Ali and others (2017 PLC (C.S.) 1030) and Federal Public Service Commission v. Anwar-ul-Haq (2017 SCMR 890). Therefore, in our view, the petitioner has been unable to make out a case for the actualization of upgradation of his post in BPS 17 and ancillary benefits with retrospective effect, based on the office order dated 31.8.2018.

10. We, for the aforesaid reasons, and in the given circumstances hold that this petition is not maintainable, which is accordingly dismissed along with pending applications with no order as to costs.

11. These are the reasons for our short order dated 28.9.2021, by which we have dismissed this petition.

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Shahzad Soomro