

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

CP. No. D- 2969 of 2020

(Khursheed Khalil Khan v. Province of Sindh and 07 others)

Date	Order with Signature(s) of Judge(s)
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For hearing of main case

16.03.2022

Petitioner present in person
Mr. Javed Ali Sangi, advocate for KDA
Mr. Khurram Ghayas, advocate for SBCA, Master Plan Department
Mr. Ali Safdar Debar, AAG
Jamaluddin Jelani, Senior Director, & Ms. Shahana Iqtidar, Deputy Director
(Admn & Accounts), Sindh Master Plan Department

Through this petition, the petitioner has prayed that the respondents may be directed to release his monthly salary from December 2019 to date, *inter alia*, on the ground that his salary has been withheld by the respondents on account of his repatriation from Master Plan Department KDA (now merged into SBCA) to the Secretariat of KDA. Petitioner has averred that he is a regular employee of the Master Plan Department, and not an employee of the office of Director General KDA as per the letter dated 14.12.1996 and subsequent relieving order dated 19.12.1996. He further submitted that he joined the respondent- Master Plan Department vide joining report dated 19.12.1996, however, due to office maneuvering his services were transferred to the office of Director General KDA vide letter dated 27.11.2019 without any lawful authority, and since then he has been deprived of his salary. Petitioner has submitted that law does not permit the respondents to deprive him of his lawful monthly salary, as such, the petitioner has become rolling stone, being Senior Officer BPS-19 of Master Plan Department SBCA; that the petitioner filed many applications to the respondents but no fruitful result came out, compelling him to approach this court on 30.05.2020.

The stance of the respondent- Master Plan Department SBCA is that petitioner was repatriated to his parent department i.e. KDA in compliance with the orders of the Hon'ble Supreme Court of Pakistan passed in Criminal Original Petition No.89/2011; that the petitioner has failed to join his service in the office of the Director-General KDA; and, this is the reason he has not been paid his salary.

The petitioner who is present in person has refuted the claim of the respondents and has submitted that he was initially appointed in KDA in 1985, however, his services were placed under the disposal of the Master Plan Department along with his colleagues; and, he continued to serve there when he was ordered to be repatriated to KDA Secretariat vide office order dated 16.5.2017, without assigning any reason; and/or showing the order of the Honorable Supreme Court. Petitioner has submitted that the Master Plan Department had been merged in SBCA from the Secretariat of KDA long ago along with employees working therein, and all his colleagues have been retained in Master Plan Department and he is the only person who has been singled out after rendering the services for about 30 years in Master Plan Department now merged into

SBCA. He further submitted that the Secretary KDA vide letter dated 7.8.2020 informed the Master Plan Department, SBCA that the petitioner never worked nor drawn a salary from KDA since his posting in Master Plan Department SBCA vide letter dated 31.8.1999 with the further assertion that the petitioner is a permanent employee of Master Plan Department and he had been sent back to the parent department i.e. the Master Plan Department vide letter dated 11.7.2017.

Senior Director, Master Plan Urban Designing, Master Plan Department, present in Court has submitted that the petitioner was initially appointed in KDA and the office of Director General KDA is his parent department, however, mere working in Master Plan Department does not justify his absorption in the Master Plan Department, SBCA. He prayed for a direction to the petitioner to join his parent department i.e. the Secretariat of KDA.

The aforesaid stance has been belied by the learned counsel representing the KDA and referred to the Counter-Affidavit and submitted that the KDA was the head of all departments before division, Master Plan Building and Control Authority, were part and parcel of KDA. Hence, all postings and transfers in these departments were made from the Secretariat of KDA as such the order of the Hon'ble Supreme Court of Pakistan for repatriation of concerned officers to KDA is not applicable other than all employees of Master Plan Department as well as Building Control Authority. However, they were transferred and posted in Master Plan and Building control authority by KDA at that time therefore petitioner is not a permanent officer of Master Plan Department SBCA as well. Per learned counsel, petitioner was repatriated vide order dated 16.5.2017 whose joining was not accepted in KDA as per order dated 11.7.2017 with remarks that the said officer was transferred and posted against the clear vacant post in MPD vide office order dated 31.08.1999 by the requirement or requisition of MPD at the time MPD was a part and parcel of KDA. Learned counsel emphasized that MPD was separated from KDA in 2014 and merged in SBCA therefore, repatriation orders of the Hon'ble Supreme Court of Pakistan could not be implemented in MPD, otherwise all employees of MPD ought to be repatriated in KDA not only the petitioner; furthermore, the orders of MPD regarding the repatriation of the petitioner was rejected by the office vide letter dated 07.8.2020. On the issue of salary, learned counsel submitted that the petitioner shall be paid a salary by MPD and not by KDA. Finally, he supported the stance of the petitioner.

The learned AAG has submitted that the petitioner is not an employee of the Sindh Master Plan Authority, therefore, in compliance with the judgment of the Hon'ble Supreme Court of Pakistan in Criminal Original Petition No.89/2011, he was directed to be relieved/repatriated to his parent department as discussed supra; that he then approached for cancellation of his repatriation orders; thereafter he joined KDA and requested for withdrawal of office order dated 11.7.2017 and joined Master Plan Department and pressurized high-up for releasing his salary so the office of Sindh Master Plan Authority adjusted his salary for some period vide order dated 06.09.2017 since then he continued to draw his salary; that during this tenure of service in Sindh

Master Plan Authority, his performance was very poor and he was a financial burden on MPD, with effect from 2017 to 2019.

Learned AAG further submitted that the dispute arose when he had joined his assignment in Korangi Division PUD; and, he demanded the Special Pay which was not admissible to him under rules, so he approached the Administrative Officer for such concession; that in compliance with the aforesaid directives, the order dated 06.09.2017 regarding adjustment of his salary in MPD was withdrawn and he then relieved to join his parent authority i.e. KDA vide order dated 27.11.2019; that the petitioner joined KDA, but after 09 months period, the KDA refused to accept his joining/service vide letter dated 07.08.2020 without payment of salary during nine months period with the request to cancel his repatriation order; that the Master Plan Department has also intimated to the Secretary KDA, that the petitioner was appointed in Engineering Department (C&E) PHS, KDA, therefore, MPD could not cancel his repatriation order to avoid the violation of the order of the Hon'ble Supreme Court of Pakistan vide letter dated 09.09.2020. He lastly prayed for the dismissal of the instant petition.

The record reflects that the petitioner was initially appointed as Stenographer (BPS-15) in KDA in the year 1985, and he joined as Project Manager (C&E) PHS KDA vide order dated 16.10.1985; that his parent department is Engineering Department (C&E) Public Housing Scheme KDA and after his appointment, he was transferred from Engineering Department (C&E) Public Housing Scheme KDA to DP&UD KDA vide order dated 31.08.1999; during his service, he was awarded a minor penalty of stoppage of three annual increments on 01.12.1999, 1.12.2000 and 1.12.2001 on account of irregularity in attendance; however his willful absence from duty for the period from 24.4.1998 to 11.1.1999 was treated as extraordinary leave without pay.

We have been informed that neither the KDA nor Sindh Master Plan Authority is accepting the petitioner, both the departments of the Government of Sindh are at loggerheads on the subject issue as discussed supra.

Let at the first instance, Chief Secretary, Government of Sindh take an appropriate decision after providing meaningful hearing to the parties, within two weeks and ascertain the parent department of the petitioner. In the intervening period, the petitioner shall be paid his outstanding salary by the office of the Sindh Master Plan Authority, with effect from his purported repatriation to the office of the KDA Secretariat. However, it is made clear that if the salary of the petitioner for the intervening period is not paid to the petitioner within one week, contempt proceedings shall be initiated against the head of the Sindh Master Plan Authority without providing him a further opportunity of hearing.

To come up after three weeks.

A copy of this order shall be transmitted to the Chief Secretary, Sindh, and head of the Sindh Master Plan Authority for compliance in time.

JUDGE

JUDGE