

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

C.P. No.D — 23 of 2009.

Present.
Mr. Justice Muhammad Shafi Siddiqui.
Mr. Justice Irshad Ali Shah.

Date of Hearing: 20.10.2020.
Date of Judgment: 27.10.2020.

Petitioner: Through Mr. Arbab Ali Hakro Advocate.
Respondent No.1: Through Mr. Kamaluddin Advocate.
Respondents No.2 to 4: Through Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

J U D G M E N T

MUHAMMAD SHAFI SIDDIQUI, J.- Petitioner has filed this petition for his move over from BPS-20 to 21 w.e.f. 1.12.1996 to 17.09.2005 and for his consequential pensionary benefits and also for a declaration that the Resolution of the Syndicate of the respondent dated 16.08.2008 conveyed to him through a letter dated 14.10.2008 by not accepting the revised rate of the pay and pensionary benefits of the petitioner be declared as null and void.

2. On 29th March 2005, petitioner filed 1st C.P. No.D-98 of 2005 for grievances of the petitioner to be decided by the Chief Secretary Government of Sindh and Secretary Services General Administration and Co-ordination Department. That term of notification dated 09.12.1989 decided that the benefit of move over is extended from BPS-20 to 21 or BPS-22 to the employees belonging to the Technical / Professional categories on account of meritorious cases. Petitioner as a consequence thereof and in pursuance to above notification claimed to be entitled to move over in the next high-up grade from BPS-20 to BPS-21 and accordingly his pay be fixed at Rs.14005/- on or w.e.f. 01.12.1996.

3. While petitioner was serving with the respondent No.1 he was promoted w.e.f. 01.02.2006 in terms of Annexure-I. However, the primary concern of the petitioner as prayed in the petition is a move over from BPS-20 to BPS-21 w.e.f. 1996 to 17.09.2005, with obvious consequential increase in salary, however, a part of this period i.e. from 2001 to 2005, he was serving LUMHS.

4. Notices of this petition were served upon respondents and they have filed their parawise comments. Respondent No.1 in their comments have categorically stated that the move over was not granted to the petitioner by the Government of Sindh while he was with the Government of Sindh and that the promotion of the petitioner w.e.f. 2001/2005 is not an issue with them since it has already been dealt with accordingly when he was promoted in 2006, and petitioner has not raised any grievances in this regard in terms of the prayer clause.

5. We have heard the learned counsel and perused the material available on record. While this petition was pending, an order was passed on 13.03.2018 with the consent of the counsel that the petitioner may make representation to the Chief Secretary who shall decide the matter of his move over based upon the particulars prevailing at the relevant time, within a period of 45 days. As a consequence thereof the order was passed by the Chief Secretary to the Government of Sindh dated 23.11.2018.

6. The history that led to this ultimate order is that the petitioner started his career as Senior Registrar Pediatrics (BS-18) w.e.f. 21.08.1980 and was promoted as Associate Professor of Pediatrics (BS-19) on acting charge basis from 17th March 1985, and was accordingly transferred and posted as Professor of Pediatrics (BPS-20) from 8th February 1989 on his own pay scale and assumed the charge of post of Professor of Pediatrics (BPS-20) on acting charge basis on 03.03.1991 and was regularized as Professor (BPS-20) on 07.05.1995. The services were transferred to LUMHS which is an Autonomous Body. In pursuance of the order of the Sindh Service Tribunal he was given

promotion from BPS-19 to 20 on regular basis w.e.f. 07.05.1995. As a consequence of above facts and in consideration thereof he couldn't reach maximum pay scale till June 2001 when the scales were revised and as a result whereof in exercise of the powers conferred in terms of Rule 3(i) of Sindh Civil Servants (Appeals) Rules 1980, the representation was dismissed.

The contention of the petitioner that the issue of his move over has already been decided favoring him, is thus not borne out of the record. The University of Medical and Health Sciences Jamshoro on 1st February 2006, has already decided the case while the services of the petitioner was with the LUMHS, as per Statutes regarding promotions to meritorious professors (BPS-21) of Higher Education Commission Islamabad. His re-fixation of pay on account of move over from BPS-20 to 21 was also declined by LUMHS as he has failed to submit and satisfy that there was an approval accorded to the petitioner of his move over as alleged w.e.f. 01.12.1996 to 17.09.2005. Vide letter dated 24th April 2005, the Section Officer of the Government of Sindh, Health Department pleased to forward a letter to the Vice Chancellor of LUMHS that the official concerned (petitioner) was working with the Medical College of Government immediately before the promulgation of Liaquat University of Medical Health Sciences Ordinance and soon thereafter stood transferred to the University under section 4 of the Ordinance for services. His all connections with Government stated to have been served. As such all his service matter including those pertaining to the period during which he was serving in the Health Department of the Government of Sindh, unless otherwise provided in the rules framed under the said section are to be dealt with / be decided by the University, as stated in the letter.

8. Petitioner was never transferred with such move over or with such benefits which could be considered by the University while he joined services of respondent No.1. Nothing was placed on record to establish this fact that the case of move over has already been concluded by Government. Thus the LUMHS would not be responsible for any arrears or for move over w.e.f. 1996

to 2001 whereas for a period subsequent to his transfer to LUMHS petitioner has no case as he has been promoted in the year 2006 while he was with LUMHS. For the period w.e.f. 1996 to 2001 no case of move over is made out in presence of order of Chief Secretary dated 23.11.2018 which is not impugned before us.

These are the reasons of the short order announced earlier on 20.10.2020.

JUDGE

JUDGE

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