

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-2569 of 2011

(Mahmood-ul-Hassan v. the Chairman & 05 others)

Mr. Muhammad Ahmer, advocate for the petitioner

Mr. Muhammad Khalil Dogar, advocate for respondents
No.3&4

Ms. Dilkhurram Shaheen, advocate

Date of hearing
& decision : 15.03.2023.

ORDER

Through this petition, the petitioner has challenged the legality of office orders dated 05.7.2011 & 11.7.2011 issued by the Additional Collector of Customs (HQ) Model Customs Collectorate (Preventive) Karachi in respect of the termination of lien and withdrawal of officiating charge of valuation officers assigned to the petitioner.

2. Petitioner has submitted that he joined the service of Controller Valuation as Upper Divisional Clerk in 1984. In the year 2001, the competent authority decided to promote the officials of the department on the officiating basis to the post of Valuation Officers (BPS-14) to streamline the work and after determining, the eligibility and fitness, the petitioner along with other officers were allowed to work as Valuation Officer vide office order dated 26.12.2001, in the intervening period petitioner successfully passed the departmental courses/training at National Institute of Public Administration (NIPA) and petitioner was allowed to hold the post of importation audit. The petitioner being qualified applied for the post of Appraiser through proper channels and his interview was conducted by the officers of MCC officers and was selected for further training after completing the course in the year 2005, he was appointed as Appraiser in Model Customs Collectorate Karachi. As per the petitioner, office order No.154/2005-Estt was circulated and in compliance whereof the parent department of the petitioner issued a released order of the petitioner. The petitioner joined the Model Customs Collectorate as Appraiser on 11.05.2005 and since then he has been discharging his duties as Appraiser, however, all of sudden to the utter shock and dismay of the petitioner the respondent issued an

office order dated 11.7.2011 withdrawing the officiating charge of valuation officer by reverting the petitioner to the post of Deputy Superintendent from officiating as Valuation Officer. As per the petitioner, the aforesaid order was based on the letter issued by the Federal Board of Revenue (FBR) dated 4.7.2011. However, another letter dated 05.7.2011 was issued whereby the lien of the petitioner for the post of Deputy Superintendent (BS-10) was terminated, and both the impugned orders have been assailed through the instant petition.

3. Mr. Muhammad Ahmer, learned counsel for the petitioner, contended that Office Order No.127/ 2011 dated 11-07-2011 and the letter 05-07-2011 do not align with the settled principles of law, and the lien of a permanent employee cannot be canceled even with his consent. Learned counsel submitted that the letters impugned depict instant reaction instead of going with the record have failed to act fairly and reasonably by adopting a course in contradiction to the facts arrive from 2001 onward. He further submitted that in the year 2001, there were 26 vacancies vacant for the post of Valuation Officer and to fill the vacancies a Committee was formed to interview selected Officers of the Department, the interviews were conducted and among others, the petitioner was found eligible for the post, however, he elevated as officiating Valuation Officer against 26 vacant posts, the petitioner deserved to be elevated on the permanent basis, such proposition is supported by the law laid down. Per counsel, the impugned letters No.127 / 2011 11-07-2011 and 05-07-2011 are half-truths, the author of the letter has not taken care of the fact that in 2004 & 2005 a new Collectorate was created under the name of Model Customs Collectorate (PaCCS), this Collectorate Computerize function which was also called as PAPER FREE COLLECTORATE requiring a staff of specific and specialized trained Officer for specialized jobs of the Collectorate, the jobs were circulated within departments of C.B.R dealing with the tax and related functions. In response to such circulation, the petitioner applied for the job of Appraiser (BS-14), the Collectorate of PaCCS along with representatives of the then C.B.R the interviews were conducted and Officers who qualified for the interviews were put to certain training courses after qualifying for such courses. Office Order No.154/2005–Estt dated 9-5-2005 was issued wherein the petitioner was appointed as Appraiser, the Office Order is annexed with the petitioner as "K". Per counsel, since 2005 the petitioner has been discharging his duties as Appraiser and has successfully worked in three Collectorate and presently posted at Collectorate of Preventive; that dealing with the affairs of the job of the petitioner without application of mind by the Superiors can destroy and cause serious damage to the interest of the petitioner; the interest of the Civil Servant

has to be protected and cannot be jeopardized is the fundamental principle. According to learned counsel, the petitioner has the requisite eligibility and fitness to hold the post of Valuation Officer (BS-14) against 26 vacant posts before 2004 and thereafter the post of Appraiser when he was APPOINTED as Appraiser (BS-14) by the M.C.C (PaCCS) in the year 2005 against vacant posts. It is further submitted that the authority permitted to follow a certain course and created a legitimate expectation, the petitioner followed the course opened for him through an interview of the Selection Committee and appointments as such the authority cannot be permitted to take a different course to the detriment of the petitioner; that the petitioner was neither transferred nor sent deputation at any point as such these terms does not apply to the case of the petitioner. He referred to Articles 3 & 4, 14 & 25 of the Constitution.

4. Mr. Muhammad Khalil Dogar, advocate for respondent Nos.3&4 has raised preliminary objections about the maintainability of the petition. He submitted that the petitioner has approached this court without exhausting the remedy available to him before the appellate tribunal. He submitted that a petition has been filed against the transfer and posting order dated 11.5.2005 without prejudice to the above the subject petition is also hit by the laches, therefore, the same is liable to be dismissed on this account also; that petitioner was just allowed to work as officiating valuation officer which shows that he was not promoted. Learned counsel submitted that office orders dated 11.7.2011 and 05.7.2011 are correctly issued by the Directorate General of Customs Valuation. Learned counsel further submitted that the petitioner has been relieved from the officiating position, therefore, no violation of Articles 3, 4, 14 & 15 of the Constitution of the Islamic Republic of Pakistan, 1973. He prayed for the dismissal of the petition.

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

6. The question is whether the petitioner was promoted to the post held by him or merely was given the officiating position which was later on withdrawn within the parameters of the law.

7. Since the petitioner has retired from service as Deputy Superintendent/Officiating Appraiser (BPS-10) vide notification dated 10.05.2019, therefore, we deem it appropriate to refer the case of the petitioner for consideration of his case for proforma promotion

8. Since this is a policy matter of officiating promotion, therefore, we deem it appropriate to direct the competent authority of the respondent department to decide the issue raised herein above, in terms of the ratio of the judgment passed by this court in CP No.D-2603/2020, within one month, after providing a meaningful hearing to the petitioner.

9. This petition is disposed of in the above terms.

JUDGE

JUDGE

Nadir*