

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 244 of 2019

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Syed Zahid Hassan Rizvi V/S The Province of Sindh & 03 others

Date of hearing
& decision : 17.03.2020

Petitioner Syed Zahid Hassan Rizvi present in person.
Mr. Ali Safdar Depar, Assistant Advocate General.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through the instant petition, the petitioner is seeking direction to the respondents for up-gradation of his post i.e Compounder in BPS-16.

2. The case of the petitioner, in nutshell, is that on 27.11.1997 he was appointed as Compounder (BPS-06) in Medical Department, District Municipal Corporation (West) Karachi ('DMC'). Petitioner, who is present in person, has submitted that Sindh Government vide Notification dated 13.05.2006 sanctioned up-gradation of various posts falling in different categories of Health Department, Government of Sindh, in the pay scale, resultantly the respondents issued the office order dated 12.10.2010, whereby he was allowed BPS-9 with effect from 13.5.2006. He pleads discrimination on the ground that his colleagues have been placed in BPS-16 and similar treatment may be given to him.

3. In our view, for up-gradation of post, the following conditions are pre-requisite:

i) Firstly, up gradation is restricted to the post and not to the person occupying it.

ii) Secondly, up gradation of posts does not mean automatic up gradation of the incumbents of such posts. In fact the appointment against the upgraded post is required to be made in the manner prescribed in the Recruitment Rules for that particular post.

iii) Thirdly, up-gradation cannot be made to benefit a particular individual.

4. To justify up-gradation, the department needs restructuring, and reform or to meet the exigency of service in public interest. In the absence of the aforesaid

pre-conditions, up-gradation is not permissible under the law. Our view is supported by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Regional Commissioner Income Tax, Northern Region, Islamabad and another vs. Syed Munawar Ali and others, 2016 SCMR 859, wherein it was held in paragraph 6 as under:-

“6. We have heard the learned Counsel for the parties and have perused the record. The expression "upgradation" is distinct, from the expression "Promotion", which is not defined either in the Civil Servants Act or the Rules framed thereunder, and is restricted to the post (office) and not with the person occupying it. The upgradation cannot be made to benefit a particular individual in term of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs re-structuring, reform or to meet the exigency of service in the public interest. In the absence of these pre-conditions, upgradation is not permissible.”

5. Perusal of Record reflects that the competent authority approved and notified the service structure of Para Medical Staff of Health Department from BPS-1 to 15 and accorded sanction for up-gradation of various posts in pay scale (category-I, category-II, category-III) vide Notification dated 18.5.2006. Petitioner's post i.e. Compounder was upgraded from BPS-6 to BPS-9 on the basis of office order dated 12.10.2010 issued by Executive District Officer Health, City District Government (defunct). Prima facie petitioner does not possess minimum length of service to claim up-gradation in BPS-16 i.e. 20 years in BS-9. In our view, up-gradation is not a promotion in stricto-senso, therefore, upgraded post from BS-9 to BS-16 does not mean that the incumbent should be promoted in BPS-16 without mandatory length of service as discussed supra. Since the petitioner was not promoted in BPS-9, he cannot claim up-gradation in BPS-16 as a matter of right for the simple reason that his post was upgraded in BPS-9 which is not promotion and for promotion in BPS-16 the incumbent has to serve for 20 years in BPS-9 which is lacking in the case of petitioner.

6. We have noticed that respondent-department has declined the request of the petitioner for disciplinary reasons and also on the ground that the matter should not be decided against the orders / judgments of the superior Courts, whereby ban has been imposed on personal up-gradation.

7. The grounds agitated by the petitioner in the instant petition that his up-gradation is permissible as per notification dated 13.05.2006, are not tenable for the reasons alluded in the preceding paragraph.

8. In light of the above facts and circumstances of the case and for the reasons alluded herein above, we are not convinced with the assertion of petitioner that he is entitled for up-gradation in BS-16.

9. In view of the above, this petition being misconceived is hereby dismissed along with pending application(s) with no order as costs.

JUDGE

JUDGE

Nadir*