

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2483 of 2016

Murad Ali Jatoi Plaintiff

Versus

Sindh Industrial Trading Estate (S.I.T.E) Defendants

1. For hearing of CMA No.16406/2016
2. For hearing of CMA No.17584/2016

Date of hearing: 20.06.2017

Date of Order: 20.06.2017

Plaintiff: Through Mr. Mohsin Shahwani, Advocate

Defendant No.2: Through Mr. Samiullah Soomro, Advocate

Defendant Nos.5&6: Through Mr. Ahmed Ali Ghumro, Advocate

ORDER

Zulfiqar Ahmad Khan, J:- Through this order, two applications would be disposed of. One being CMA No.16406/2016 where suspension of notifications dated 31.10.2016 and 03.11.2016 is sought by the Plaintiff, and second being CMA No.17584/2016 made under order VII Rule 11 CPC, where a prayer has been made for the rejection of the plaint by the Defendants No.5 & 6.

2. The controversy at hand is that the Plaintiff was appointed by direct recruitment as Sub-Engineer in Grade-14 on 10.08.1993, whereafter having served 16 years, he was promoted to Assistant Engineer in Grade-17 on 19.05.2009, which position was confirmed by the Board of Governors/Recruitment Committee-I on 04.06.2010 and since then he is holding that post with Defendant No.1.

3. The cases of the Defendant Nos. 5 & 6 are that while they were holding B.E Degrees in Civil Engineering upon seeing an advertisement placed by the Defendant No.1 dated 04.12.2004 applied for the post of Sub-Engineer (BPS-14), whose job qualification was "3 years Diploma in Civil + 3 years". The reason for doing so remains a mystery and Defendant Nos. 5 & 6 (now present in person) are not able to satisfy this Court when they were holding B.E (Civil) degrees and post of Engineers in Grade-17 were also advertised in the same advertisement, then why they did not choose to apply for Grade-17 post, rather applied for Grade-14 job. Be that as it may, they were inducted in Grade-14 through that advertisement. Rules provided that one has to have 5 years of service before he could be promoted from Grade-14 to Grade-17, which was however by passed vide Notification dated 23.10.2008 when both of the defendants were promoted to Grade-17.

4. In pursuance to the Apex Court's judgment in the case of Criminal Petition No. 89 of 2011 reported as 2013 SCMR 1752, where through this landmark judgment those who were granted out of turn promotions, were reverted. The Defendant No.1 in compliance thereof issued an Office Order dated 25.02.2015 where the Defendant No.6 seen at Serial No.5 and through another Office Order dated 01.04.2015 Defendant No.5 is seen at Serial No.9, were both demoted from Grade-17 to Grade-14. Against such demotion, they preferred to file a Review, where the Hon'ble Apex Court was pleased to direct the Sindh Industrial Trading Estate (SITE) to enforce these reversion notifications (dated 25.02.2015 and 01.04.2015) in letter and spirit, as well as, it was held that neither the H.R Committee nor the High Court was competent to sit against the finding of the Supreme Court by granting any relief against the judgment of the Apex Court in this matter where

demotion was ordered. Further, by order dated 24.10.2016 specific directions were given to the Managing Director of the Defendant No.1 to streamline the service structure of the said organization by confirming to the principles enunciated in the case reported as Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Baloch vs. Province of Sindh (2015 SCMR 456) in letter and spirit within 15 days.

5. In pursuance thereof a Committee was constituted on 28.10.2016 where the Chairman alongwith Secretary and Chief Engineer SITE were given the assignment to look into the matter of service structure in the light of the Hon'ble Supreme Court's Judgments. Subsequent thereto, by Notification dated 31.10.2016 Defendant No.1 for unknown reasons removed the names of the Defendant Nos. 5 & 6 (alongwith another person Syed Murad Hussain Shah) from the orders dated 25.02.2015 and 01.04.2015 issued by the Defendant No.1 under the Apex Court's judgment, where both the Defendants were demoted from Grade-17 to Grade-14. Thus effectively through the instant notification of 31.10.2016, the Defendants were reverted back in Grade-17 for no cogent reasons given. The counsel for the Defendant Nos. 5 & 6 submits that it was so done on account of the Defendant Nos. 5 & 6 preferring a Review of the Apex Court's judgment, however, neither the order dated 31.10.2016 referred hereinabove or Apex Court's orders made in the said Review show that the persons who were rightly demoted, would be restored to their pre-Apex Court judgment position without giving any reasons and those too not having been communicated to the Apex Court.

6. Be that as it may, having the earlier order recalled, Defendant Nos. 5 & 6 were again permitted to serve in BPS 17. A compliance report was though filed with the Apex Court, a copy of

which is available on Page No.291, wherein at Paragraph-7 promotions of certain employees have been mentioned through office Notification SITE/PS/27, SITE/PS/28, SITE/PS/29 and SITE/PS/30, however, it is pertinent to note that notification issued in respect of Defendant Nos. 5 & 6 referred as SITE/PS/23 is not included in the list of documents produced before the Apex Court in compliance of Apex Court's orders. Thus as rightly contended by the counsel for the Plaintiff, that this mischievous fact was not brought to the Apex Court's knowledge that the notifications of demotion of Defendant Nos. 5 & 6 have been recalled by the Defendant No.1 in utter violation of the Apex Court's orders.

7. Having put in Grade-17, ironically again on 03.11.2016 they both were promoted from Grade-17 to Grade-18, whereas rules provide that for promotion from Grade-17 to Grade-18, length of service has to be 7 years in Grade-17, which was not clearly the case at hand.

8. In summary, the crux of the matter is that Defendant Nos. 5 & 6 while holding the degree of Civil Engineering choose to apply as Sub-Engineer in 2004 therefore should have been dealt with the cadre of Grade-14 and would have been treated with their contemporaries. It is for the reason as the outcome of the Apex Court judgment, Defendant Nos. 5 & 6 promoted out of turn were demoted from Grade-17 to Grade-14, while the cancellation of the said demotion achieved mischievously was never brought to the knowledge of the Apex Court. Story does not stop here. Within three days of their re-erection to Grade-17, they were promoted to Grade-18 on 03.11.2016.

9. The case of the Plaintiff on the other end of the horizon is that he had B-Tech (Hons.) degree and he was inducted in the service in 1993 in Grade-14, whereas the Defendant Nos. 5 & 6 were inducted in the same department in Grade-14 in 2005 had reached to Grade-18 in the year 2016 but the Plaintiff has only been promoted from Grade-14 to Grade-17 after the lapse of 16 years of service. It is also interesting to note that a specific case was filed against the Defendant Nos. 5 through Suit No.2298 of 2016 where Defendant who was illegally given OPS in Grade-18 his OPS notification was suspended by this Court.

10. It is an established position that an employee's seniority and promotion is driven by his own cadre in which he had chosen to be inducted (in Grade-14 in the case at hand), while holding a B.E Degree, the Defendants could not be given benefit of B.E Degree until unless they apply and get selected for the post on the strength of their B.E Degrees. While holding a B.E Degree, Defendant Nos. 5 & 6 not only usurped two seats of Diploma holders, they have also encroached upon the rights of Civil Engineers, who had joined the establishment after 2005 as surprisingly the Defendants' seniority was calculated from 2005, as if they had joined the service as Engineers in Grade-17.

11. The case of the Defendants is stockpiled with layers of illegality and dishonesty. While their joining in Grade-14 was incompetent as they did not possess the necessary qualification, they deprived two diploma holders from their possible livelihood. Be that as it may, if they had chosen to be employed in Grade-14, they must be treated at par with other employees in their Grade. But by not following the rules they were promoted to Grade-17, this illegal act is evident from the fact that both of them were demoted to Grade-14 in compliance of the Apex Court's landmark

judgment. But they managed to throw dust in the eyes of the Apex Court and got their demotion orders reversed by a house committee, for which Apex Court had given clear ruling that such Committees, not even the High Courts would be able to obstruct the letter and spirit of the Apex Court judgment. As recalling of demotion notices was never brought to the knowledge of the Apex Court. Having achieved their designs, once again they got promoted from Grade-17 to Grade-18 in utter violation of the applicable rules. It is thus must that this illegal trail be put to an end.

12. In support of his Order VII Rule 11 application, the learned counsel for the Defendant Nos. 5 & 6 submitted that since it was through the Apex Court order passed in Review application therefore appropriate remedy for the Plaintiff is that to approach the Apex Court and file a Review also. This contention is utterly unfounded. The fact is that the demotion notices of Defendant Nos. 5 & 6 were only recalled by a house committee of Defendant No.1 vide Notification dated 31.10.2016 which was never presented to the Apex Court, rather mischievously engineered to be kept away from the Apex Court by not incorporating it in the text of the compliance Report (Page 291) filed in the Apex Court. Thus there is no connection with the reverting notification dated 31.10.2016 with the Apex Court's judgment and which, in strict compliance of these judgments could have never been issued.

13 I am for the aforementioned reasons, of the view that the Plaintiff has made out a case that the impugned notification dated 31.10.2016, which was seemingly pretended to be issued in the light of the Apex Court's judgment had actually done the inverse. The said notification does not hold any merit and is declared unlawful. Having done so with regard to notification dated

03.11.2016 where the Defendant Nos.5 & 6 were promoted from Grade-17 to Grade-18 becomes infructuous as the Defendants No.5 and 6 upon having notification dated 31.10.2016 declared unlawful, reverted back to Grade-14 as per the Apex Court's judgment as substantiated by issuance of office orders dated 25.02.2015 and 01.04.2015. Accordingly, the Order VII Rule 11 application (CMA No.17584 of 2016) being meritless is dismissed and the injunction application (CMA No.16406 of 2016) succeeds.

JUDGE

Barkat Ali/PA