

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr.Justice Irfan Saadat Khan

Mr.Justice Adnan-ul-Karim Memon

C.P No.D-5312 of 2016

Abdullah KhanPetitioner

Versus

Province of Sindh and others.....Respondents

Date of hearing: 19.03.2018

Mr. Muhammad Junaid Farooqui, along with Muhammad Nadeem Khan Advocate for the Petitioner.

Barrister Shahryar Mehar, AAG Sindh for Respondent No.1.

Mr. Usman Tufail Shaikh, Advocate for Respondent No.2.

Mr. Iqbal Khurram, Advocate for Respondent Nos. 3 and 4.

JUDGMENT

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, Petitioner is seeking declaration to the effect he is a permanent employee of Karachi Development Authority (hereinafter called as to KDA) by virtue of his initial appointment Vide office letter dated 16.05.2014.

2. Basically, Petitioner has impugned his relieving order dated 07.09.2016, whereby he has been relieved / repatriated to his parent department that is Karachi Municipal Corporation (hereinafter called as to K.M.C). The reason assigned by the

Competent Authority of KMC, in the said impugned relieving order is that the Honorable Supreme Court of Pakistan passed judgment in the case of Ali Azhar Khan Baloch Vs. Province of Sindh & others (2015 SCMR 456) and directed all the departments of Government of Sindh, including KMC to repatriate their officers/officials wrongly absorbed/inducted in their respective departments, to their parent departments. The Petitioner's claim is that he was initially appointed as Sub-Engineer in BPS-16, Parks and Horticulture Department, (KDA-Wing) of KMC. It is further averred that the KMC started relieving their officers / staff from KMC to their parent departments, in compliance of the order passed by the Hon'ble Supreme Court of Pakistan as discussed supra. Consequently, the impugned relieving letter dated 07.09.2016 was issued by the KMC and the Petitioner was relieved accordingly. Petitioner being aggrieved by and dissatisfied with the relieving order has filed the instant Petition.

3. Para wise comments were filed by the Respondent No.2/KDA controverted the stand taken by the Petitioner.

4. Mr. Junaid Farooqui the learned counsel for the Petitioner has vigorously argued that initially Petitioner was appointed as sub-Engineer in BPS-16 in Parks and Horticulture Department (KDA-Wing) of KMC vide order dated 06.05.2014; that the impugned notice of relieving the Petitioner to report to (HRM) KMC is against the law and cannot be passed by the Respondent-KDA, by taking resort of judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baluch supra; that

the Respondent-KDA failed to appreciate that in KDA the post of Sub-Engineer is in BPS-16 whereas in KMC the said post is in BPS-11, therefore it becomes crystal clear that the parent department of the Petitioner is KDA and not KMC hence relieving order of the Petitioner is contrary to the factual position of the case and law; that the Respondent-KDA has not assigned any reason to relieve the Petitioner from service; that the Petitioner is permanent employee and appointed in accordance with the law, as such cannot be transferred to another Autonomous Authority without consent of the Petitioner; that no show cause notice was given to the Petitioner before repatriating the service of the Petitioner, which is in violation of Article 10-A, 14 and 25 of the Constitution of the Islamic Republic of Pakistan 1973; Learned counsel further contended that the Respondent-KDA by misconception of law and facts repatriated the Petitioner without looking into the Sindh Local Government Ordinance 2001(SLGO-2001 since repelled), Rules and Regulations/ policy of Government of Sindh; that under SLGO-2001 KMC and KDA merged and transformed into City District Government (CDGK) and these two bodies were dissolved and their employees have become the employees of CDGK; that after revival of KDA in the year 2016 KMC and KDA, they started functioning separately and the department of petitioner i.e. Parks and Horticulture Department were exclude from the budget of KMC for the financial year 2016-2017 vide Notification dated 20.6.2016; that Director Parks and Recreation KDA vide letter dated 1.8.2016 issued relieving order of the Petitioner to join parent department parks and recreation KDA; that Petitioner applied for the grant of

leave for 20 days with effect from 22.8.2016 to 23.8.2016 but the same was refused on 15.8.2016. Per learned counsel this became the cause of action to relieve the Petitioner; that Petitioner submitted various applications to the authorities but of no avail; that only the Petitioner has been singled out and all his colleagues have joined the KDA; that no salary has been paid to the Petitioner during the intervening period either by KDA wing KMC or (HRM) KMC. In support of his contentions, the learned counsel referred to various documents attached with the memo of Petition and argued that the judgments of the Hon'ble Supreme Court passed in the case of Cr. Original Petition No.89/2011, contempt proceedings against Chief Secretary (2013 SCMR 1752) and the case of Ali Azher Khan Baloch v. Province of Sindh (2015 SCMR 456) are not applicable to the case of the Petitioner as he is a permanent employee of KDA and not KMC. He further argued that the Petitioner has a right to remain in KDA as a permanent employee and repatriation of the Petitioner is wholly illegal. Learned counsel in the alternative submitted that the Petitioner has not been paid his salaries since his repatriation in KMC and he is running from pillar to post to have his fundamental rights enforced on this behalf.

5. During the course of arguments we asked learned counsel to satisfy as to how this Court can exercise jurisdiction when the Petitioner has been repatriated in compliance of the orders of the Hon'ble Supreme Court. In reply to the said query, the learned counsel for the Petitioner, while referring to various documents

available in the file particularly a Letter dated 06.05.2014, Service book duly issued by the Karachi Development Authority and argued that the Respondent-KDA, while misconceiving the facts and law issued the impugned relieving the order dated 07.09.2016 even without looking into the judgment passed by the Honorable Supreme Court in the cases referred to hereinabove.

6. Mr. Usman Tufail Shaikh, learned counsel for Respondent No.3/KDA did not support the stance taken by the learned counsel for the Petitioner and argued that the basic appointment of the Petitioner is against the law, therefore the stance taken by the Petitioner is illegal; that the Petitioner is not an employee of KDA; that the action of Competent Authority is in consonance with the law and the decision of the Hon'ble Supreme Court of Pakistan.

7. Mr. Iqbal Khurram, learned counsel for the Respondent-KMC has argued that parent department of the Petitioner is KDA and not KMC. In support of his contention he relied upon his statement accompanying documents showing details of service record of the Petitioner, which are reproduced as follows:-

- i) **Notification issued under the signature of Secretary Government of Sindh Local Government Department dated 09.12.2011.**
- ii) **Contract appointment letter dated 06.01.2012 and 19.02.2013**
- iii) **Order No. 1694 dated 06.05.2014 issued under the signature Senior Director HRM, KMC regarding regularization against the post of Sub-Engineer BPS-16.**
- iv) **Application for issuance of MR No. 13251 addressed to Chief Medical Officer KDA Wing, KMC**
- v) **Fitness certificate dated 07.05.2014 issued by Chief medical Officer KDA Wing, KMC**

- vi) Posting order No. 1912 dated 16.05.2014 as Sub-Engineer BPS-16 in Parks and Horticulture Department KDA Wing KMC**
- vii) Assignment of Duty Vide Order DIR (P&H) / KMC/ 63/2015 dated 10.11.2015.**
- viii) Relieving Order No. 091 and 384 dated 01.08.2016 issued by Director Parks and recreation, KDA.**

Learned counsel further argued that complete personal record along with Service Book of the Petitioner rest with parent department i.e Park and recreation, KDA.

8. Mr. Shahyar Mehar, learned AAG has argued that Petitioner was appointed by the Senior Director Human Resources, KMC on contract basis for one year in Baghe-Ibne Qasim Parks and Horticulture Department, (KDA Wing) KMC but no designation was mentioned in the said letter; that the Petitioner was wrongly regularized in BPS-16 as Sub-Engineer by letter dated 06.05.2014 when he was initially appointed on 06.01.2012 without any designation. He lastly prayed for dismissal of the instant Petition.

9. We have considered the submissions of the learned counsel for the parties and perused the material available on record.

10. This Court vide order dated 28.8.2017 noticed that prima-facie, there were serious discrepancies in the service record of Petitioner regarding his appointment, regularization and absorption in KMC/KDA (Sindh Local Government Department), it is well settled law that all appointment are to be made in a transparent manner, after inviting applications through a public notice, the eligibility criteria for the post is prerequisite, the candidate below requires standard is not entitled to be

appointment for the post. Perusal of record prima-facie, suggest all the prerequisite for the post of Petitioner are missing in his service record, which needs serious attention to be looked into by the Respondent No.1.

11. From the facts noted above and the documents furnished by the Respondent-KMC, prima facie it appears that the parent department of the Petitioner is KMC and not KDA.

12. The Hon'ble Apex Court In the case of Ali Azhar Khan Baloch & others (supra) has held at Paragraph No. 121, which is as under:-

“That the impugned judgment is only applicable to Civil Servants and does not cover non civil servants. We, with respect, disagree with the contentions of the learned Counsel. The impugned judgment would be equally applicable to the Government Servants, employees of any statutory or non-statutory organization controlled by the Sindh Government, who were wrongly absorbed in different Cadres, Services, Posts of the Government Departments, and Statutory Organizations against their Service Rules.”

13. Therefore, in our view the Judgment of the Honourable Apex Court is fully applicable to the case of Petitioner.

14. In our view, once the Hon'ble Supreme Court has passed order in the terms that any official working on deputation or otherwise absorbed shall immediately report back to his parent department, this Court has no justification to take contrary view of the same, hence the petition on this aspect merits no consideration. In this context the Hon'ble Apex Court in the order

dated 27.09.2016 passed in the Cr.Org Petition No.106 to 111 of 2016 has held as follows:-

“Once the employees were de-notified in compliance with the judgments of this Court, the employees aggrieved have to approach this Court in review instead of obtaining interim orders from the Sindh High Court.”(Emphasis Added)

15. Similar view was also taken earlier in the order dated 02.02.2016 passed by the Hon’ble Supreme Court in CMA No.243/2016 as follows:

“It has been observed in the Judgment reported as Ali Azhar Khan Bloch (supra) that once the officer is de-notified by the Sindh Government pursuant to the Judgment and /or orders of this Court no Court including the High Court can pass an order suspending such notification. If an officer who was de-notified has any grievance he has to approach this Court by filing review, therefore, any order of the High Court either interim or otherwise will not come in the way of said Government.”(Emphasis Added)

16. In the light of foregoing, we direct the Respondent No. 1/Chief Secretary, Sindh to scrutinize the service record of the Petitioner within a period of two months and determine whether or not he has been legally appointed, regularized and absorbed in KMC/KDA in accordance with the law and directions of the Hon’ble Supreme Court in its judgment rendered in the case of Ali Azhar Khan Baloch (supra) have been adhered to or not and submit compliance report through MIT-II of this Court. The period of two months shall commence from the date of the communication of this Judgment to the Respondent No. 1/Chief Secretary/Sindh who is further directed to implement the judgment of the Hon’ble

Supreme Court rendered in the case of Ali Azhar Khan Baloch supra in letter and spirit. It is however clarified that the Petitioner would be at liberty to claim his salary from the KMC Department from the date he was repatriated from the KDA after his joining in the KMC Department, which however would be subject to the final outcome of report submitted by the Chief Secretary as discussed supra.

17. These are the reasons of our short order 19.3.2018, whereby we have dismissed the instant Petition.

JUDGE

JUDGE

Shafi Muhammad /PA