

**IN THE HIGH COURT OF SINDH, AT KARACHI**

Present: Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-2949 of 2014**

Petitioner : Abdullah Mushtaq through Mr. Malik  
Naeem Iqbal, Advocate

Respondents 1&2 : Through Mr. Shahryar Mehar, A.A.G.

Respondent No.3 : Through Mr. Iqbal M. Khurram, Advocate.

Dates of hearing: 28.03.2018 and 10.04.2018.

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:** - Through the Constitution

Petitioner seeks following relief(s):-

- i) Declare that the petitioner has been lawfully appointed in KMC and promoted against the post of Director Parks (Maintenance & Development) KMC, (BS-19) with effect from 16<sup>th</sup> February, 2010 and letters of Respondent No.2 dated 23.09.2013 and 22.05.2014 are illegal, unlawful, malafide, unconstitutional, without jurisdiction. Discriminatory, arbitrary and in violation of principles of natural justice, equity and fairness and set aside the same.***
- ii) Declare that indefinite suspension of the petitioner vide order dated 7<sup>th</sup> February, 2014 without assigning any reason and without any further action is illegal, malafide, arbitrary, unconstitutional, discriminatory and in violation of principles of natural justice equity and fairness and set aside the same.***

- iii) Declare that promotion against the post of Director General Parks (BS-20) KMC can only be effected in accordance with Council resolution No. 228 dated 9<sup>th</sup> March, 1994.**
- iv) Direct the Respondents to consider the case of the petitioner for promotion against the post of Director General Parks (BS-20) KMC forthwith.**

2. Brief facts of the case as per averments of the parties are that on 22.09.1988 Petitioner was appointed as Assistant Director Recreation and Sports in BS-17, on Adhoc basis in Recreation and Sports Department, in the Karachi Metropolitan Corporation (KMC). The Petitioner has submitted that his service was regularized vide order dated 22.09.1988, subsequently he was promoted as Deputy Director Parks and Recreation (Environment) in BPS-18 vide order dated 03.08.1994. Petitioner has averred that on the recommendation of the Departmental Promotion Committee (DPC-1) held on 15.02.2010 he was promoted to the post of Director Parks (Development and Maintenance) in BPS-19 in Parks and Horticulture Department, City District Government Karachi (CDGK now Defunct) vide order dated 16.02.2010. Petitioner has submitted that on 21.05.2012 he joined as Director Parks and Horticulture Department and was later on posted as Director General vide order dated 20.06.2013. Petitioner has further submitted that on 23.09.2013 he was relieved from the post of Director General Parks and Horticulture Department KMC to report to the District Municipal Committee (Karachi West)/ (DMC West) and such Notification dated 17.12.2013 was issued by the Secretary Government of Sindh Local Government Department, whereby he was transferred to the location as discussed supra.

Petitioner has further submitted that the Government of Sindh Local Government Department vide letter dated 22.05.2014 an enquiry Committee was constituted to enquire into the illegal posting and promotion of the Petitioner against the post of BPS-19. Petitioner being aggrieved and dissatisfied with such relieving order dated 23.09.2013 and Notification dated 17.12.2013 has filed the instant Petition on 30.05.2014.

3. Comments were called. The Respondent-KMC and Respondent No.2 submitted their comments.

4. Mr. Malik Naeem Iqbal, learned counsel for the Petitioner has contended that the Petitioner is a permanent employee of KMC and not DMC West as portrayed by the learned counsel for Respondent-KMC; that the promotion of the Petitioner was made in BPS-19 by order of the Competent Authority, which is in accordance with law; that the promotion of the Petitioner cannot be cancelled / withdrawn unilaterally without hearing the Petitioner as provided under the law; that the Petitioner was relieved from his posting vide letter dated 23.09.2013 with malafide intention in order to accommodate the blue-eyed person of the Respondents; that the impugned Notification dated 17.12.2013 is also against the basic spirit of law, whereby the basic rights of the Petitioner have been infringed; that the impugned letter dated 22.05.2014 whereby the Petitioner has been directed to be relieved and directed to report to the DMC West Karachi is issued without lawful authority; that the salary of the

Petitioner has been wrongfully withheld by the Respondent-KMC in violation of law. He lastly prayed for allowing the instant Petition.

5. Mr. Iqbal M. Khurram, learned counsel for Respondent-KMC has contended that on establishment of District Municipal Corporations (DMCs) in Karachi City, and bifurcation of the Parks and Horticulture Department of KMC through the office order dated 07.08.1996 issued by the Government of Sindh Local Government Department, KMC Administration permanently relieved/transferred all the employees, including the Petitioner, attached with the Parks and Horticulture Department of KMC to report to the DMC West without retaining their lien in KMC; that the promotion of the Petitioner on the post of District Officer in BS-19 of Parks and Horticulture is in deviation of Rules and Regulations; that the Competent Authority of KMC, after scrutinizing the service record of the Petitioner found various anomalies and discrepancies in his appointment and promotion in KMC as such he was rightly relieved from the post to report to the DMC West Karachi as he was earlier relieved and was directed to report to DMC West in the year 1996; that, upon knowledge of the above factual position, the Petitioner was again relieved to report to his parent department which is KMC; that upon cancellation of the Notification regarding restoration/ revival of the post of Director, Development and Maintenance BPS-19 of Parks and Horticulture Department KMC, the said post was not highlighted / brought in the Budget estimate at the schedule of the Establishment Parks and Horticulture Department of KMC for the

year 2010 -2011 and 2011-2012 and 2013 vide Notification dated 27.07.2012; that at the time of appointment of the Petitioner he was not possessing the qualification i.e Degree in Agriculture, which was prerequisite for the post in BS-17; that the Petitioner had passed his masters in Science in the year 1989-90 from Sindh Agriculture University Tando Jam, during tenure of his service without permission of the department; that in compliance of the directives of the Hon'ble Supreme Court of Pakistan the Petitioner was relieved/ repatriated to his parent department i.e. DMC West Karachi. In support of his contention he relied upon his statements filed along with certain documents and counter affidavit of Municipal Commissioner KMC. He lastly prayed for dismissal of the instant petition.

6. Mr. Shehryar Mehar learned A.A.G representing Respondents No.2 has supported the stance taken by the learned counsel for the Petitioner and in support of his contention he relied upon the comments filed on behalf of Respondent No.2 and argued that the grievance of the Petitioner has been redressed and he has been declared an employee of KMC vide letter dated 30.06.2017.

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

8. Basic grievance of the Petitioner is that he is a permanent employee of KMC by virtue of his initial appointment Vide office letter dated 22.9.1988 and not DMC-West and was

wrongly relieved from KMC vide office order dated 23.09.2013. The reason assigned by the Competent Authority of Local Government Department Government of Sindh, in the said impugned relieving order is that the petitioner belongs to DMC (West), which is his parent Department and his service is no more required by KMC. To substantiate the claim, Respondent-KMC has filed statement accompanying documents showing details of service record of the Petitioner as well as other documents, which are reproduced as follows:-

- i) Letter dated 07.08.1996 issued by Government of Sindh Local Government.**
- ii) Letter dated 12.08.1996 issued by Office of the Director General Parks Recreation Wildlife & Environment Department.**
- iii) Letter dated 15.02.2010 issued by Government of Sindh Local Government.**
- iv) Letter dated 13.02.2010 issued by Government of Sindh Local Government.**
- v) Letter dated 15.02.2010 issued by City District Government Karachi.**
- vi) Notification dated 15.02.2010 issued by City District Government Karachi.**
- vii) Letter dated 12.02.2011 issued by City District Government Karachi.**
- viii) Notification dated 06.04.2011 issued by City District Government Karachi.**
- ix) Counter Affidavit on behalf of Respondent CDGK dated 19.04.2010.**
- x) Letter dated 27.07.2012 issued by Government of Sindh Local Government.**
- xi) Letter dated 23.09.2013 issued by Government of Sindh Local Government.**

**xii) Letter dated 22.05.2014 issued by Government of Sindh Local Government.**

**xiii) Letter dated 08.03.2016 issued by Government of Sindh Local Government.**

9. Learned AAG has placed on record a copy of the letter dated 3.7.2017 issued by the Government of Sindh Local Government Department, which prima-facie show that the Competent Authority decided that the parent department of the Petitioner is KMC and not DMC West and he was wrongly posted on deputation in that department.

10. 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 DMC (West). In view of the above clear position the Petitioner is entitled to claim his salary from the KMC Department from the date he was repatriated/relieved from the KMC after his joining in the KMC Department.

11. We have noticed that Secretary Local Government Department has cancelled the repatriation order of the Petitioner and opined that the parent Department of the Petitioner is KMC, which is evident from the comments furnished by him on 4.12.2017. In view of such statement of the Secretary Local Government Department, the basic grievance of the Petitioner is redressed.

12. So far as the issue of promotion of the petitioner is concerned, we have found that prima-facie, there are serious discrepancies in the service record of the Petitioner regarding his promotion in KMC (Sind Local Government Department), which needs serious attention that whether the Respondents No.1 has fully implemented the judgment of Hon'ble Supreme Court. The Hon'ble Apex Court in the case of Ali Azhar Khan Baloch & others vs. Province of Sind (2015 SCMR 456) has held at Paragraph No. 121, which is reproduced 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, Statutory Organizations against their Service Rules.”***

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

14. So far as the contention of the Petitioner with respect to his eligibility for promotion is concerned, record reflects that KMC is not observing rules and procedure regarding transfer, posting and promotion of its officials, even promoting the officials to the higher posts, and not reverting them to their original posts. We have also noticed that the appointment orders are made by KMC on contractual basis on higher posts without approval of the Competent Authority as per law. The case of the Petitioner is that



on 22.09.1988, he was appointed as Assistant Director Recreation and Sports in BS-17, on Ad-hoc basis in KMC and his service was regularized on 22.09.1988, subsequently he was promoted as Deputy Director Parks and Recreation (Environment) in BPS-18 on 03.08.1994 and was further promoted to the post of Director Parks (Development and Maintenance) in BPS-19 in Parks and Horticulture Department. In view of the above, we are of the considered view that KMC is required to make appointment in transparent manner strictly in accordance with the law and promotion to BS-19 and BS-20 be made strictly through Departmental promotion committee after approval of the Competent Authority as provided under the law and not otherwise.

15. In the above circumstances, we are not inclined to direct the Respondents to consider the case of the Petitioner for promotion only in accordance with the relevant rules and regulations. It is an established principle of law that in service cases there exists a two pronged criteria for promotions, one being eligibility for promotion and the other being fitness. In service matters, the promotion depends upon eligibility, fitness and availability of vacancy and thus no one including the Petitioner can claim promotion as a matter of right. No employee can claim promotion as his fundamental and vested right. This view finds support from the case of the Secretary, Government of Punjab and other Vs. Dr. Abida Iqbal and others [2009 PLC C.S. 431] and Government of Khyber Pakhtunkhawa and others Vs. Hayat Hussain and others (2016 SCMR 1021).

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 promoted or not, and whether while considering his case for promotion, the directions of the Hon'ble Supreme Court in its judgment rendered in the case of Ali Azhar Khan Balouch (supra) have been adhered to or not and to submit compliance report through MIT-II of this Court. The period of two months shall commence from the date of communication of this order to the Respondent No. 1/Chief Secretary/Sindh.

17. The instant Petition stands disposed of in the above terms along with the listed applications.

Karachi

Dated:-13.04.2018

JUDGE

JUDGE

**Shafi Muhammad P.A**