

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-1174 of 2014

Muhammad Abdul Moeti Atif.....Petitioner

Versus

Government of Sindh & another.....Respondents

For order on CMA No.987/2019 (114).

Date of hearing: 13.05.2019

Date of Order: 13.05.2019

Syed Shoa-un- Nabi, advocate for the Petitioner.

Syed Meeran Muhammad Shah, AAG a/w Ms. Nigar Afaque, State Counsel.

ORDER

ADNAN-UL-KARIM MEMON, J:- The captioned Petition was disposed of vide Judgment dated 13.12.2018, with the following observations:-

“13. Reverting to the second plea of the Petitioner that he belonged to UC Buffer Zone-II, North Nazimabad, Karachi, suffice it to say, that record does not reflect that when the Petitioner initially applied for the post of JST, he submitted his application form from Union Council, Buffer Zone-I that is why NTS issued Final Merit List of UC Buffer Zone-I, wherein his name appeared at Sr. No.9 which is not disputed by the Petitioner, however, he asserted that he moved an application to the Chief Programme Manager RSU for correction in the Merit List by producing certain documents in support of his stance. At this stage, the parties are leveling allegations and counter allegations against each other, in our view, we have limited jurisdiction to dilate upon the allegations and counter allegations.

14. After perusal of the material placed before us, in our view, the Petitioner has failed to substantiate his claim for the post of JST from Union Council, Buffer Zone-II, Taluka North Nazimabad, Karachi, which prima-facie show that the Petitioner belonged to UC North Nazimabad Buffer Zone-I and not Buffer Zone-II, therefore, his claim is untenable under the law.”

On 02.1.2019, the Applicant filed an application under Order 47 read with Section 114 of Civil Procedure Code (CMA No.987/2019) for review of the judgment dated 13.12.2018 passed by this court.

At the very outset, we directed the learned Counsel for the Petitioner to satisfy this Court regarding maintainability of the review application (CMA No. 987/2019).

Syed Shoa-un- Nabi, learned Counsel, representing the Applicant, in reply to the query, has referred to the Annexure-P, Page-13, attached with the memo of review application and argued that the aforesaid factum has not been appreciated in its true

perspective, in the impugned judgment; therefore, the impugned judgment needs to be reviewed on this score alone. He next argued that the applicant belonged to UC-9 Buffer Zone-II Taluka North Nazimabad Town Karachi and he has wrongly been non-suited in the impugned judgment without appreciating the factual as well as documentary evidence available on record in favour of the applicant. He emphasized that the applicant is permanent resident of House No.3-7, ST-5, Mohalla, Sector 15/A-5, Buffer Zone-II, UC-9, Karachi Central, but he has been treated as resident of Buffer Zone-I which is erroneous decision and come in the way of applicant in future; that the documents available on record explicitly show that the Petitioner does not belong to UC-10. He next added that this matter may be reopened and decided in accordance with law on the basis of the documents available on record. He lastly prayed for allowing the listed application and matter may be posted for hearing.

We are not in agreement with the contention of the learned Counsel for the Petitioner for the simple reason that the NTS result explicitly show his name at Sr. No.9, who applied from the UC Buffer Zone-I Taluka North Nazimabad Karachi, from the general seat of JST and obtained 73 marks, whereas Respondent No. 3 Noor Illahi belonged to UC-10 North Nazimabad, Buffer Zone-II who obtained 69 marks. As per record, i.e. the National Testing Service final merit result shows that Respondent No.2 applied for the post of JST from Taluka North Nazimabad, UC Buffer Zone-II and was offered the appointment to the post of JST in BPS-14 vide letter dated 11.4.2014.

We have scanned the record and found the contention of the learned Counsel for the Petitioner untenable, in view of the Teachers Recruitment Policy 2012 and material produced before us and on the basis, we have reached at the conclusion that the Petitioner applied for the aforesaid post from UC Buffer Zone-I, North Nazimabad, Karachi wherein the last candidate secured 84 marks plus 20 gender marks total score 104 and as per record there was only one vacancy occurred for the post of JST.

The plea of the Petitioner that he belonged to UC Buffer Zone-II, North Nazimabad, Karachi is not supported from the record, as we have noticed that when the Petitioner initially applied for the post of JST, he submitted his application form from Union Council, Buffer Zone-I that is why NTS issued Final Merit List of UC Buffer Zone-I, wherein his name appeared at Sr. No.9 which is not disputed by the Petitioner, however, he asserted that he moved

an application to the Chief Programme Manager RSU for correction in the Merit List by producing certain documents in support of his stance.

We have further noticed that the Petitioner has raised the disputed question of fact, in the instant review application, in our view, we have limited jurisdiction to dilate upon the factual controversy under review jurisdiction.

Syed Meeran Muhammad Shah learned AAG has also supported the impugned judgment passed by this Court.

Perusal of record shows that the Petitioner has not assailed the judgment dated 13.12.2018 passed by this Court, before the Honorable Supreme Court and the same has attained finality.

In our view, the review of the order can only be made by the party, if there is mistake or error apparent on the face of the record as provided under Order XLVII (Section 114 CPC). The Petitioner through the review application has attempted to call in question the validity of the judgment dated 13.12.2018 passed by this Court without assailing the same before the Appellate Forum.

The grounds taken by the Petitioner in the review application were considered at the time of hearing of main petition and the request of the Petitioner regarding the factum that he applied for the aforesaid post from Buffer Zone-II UC- 9 Karachi Central vide judgment dated 13.12.2018 on merits. Therefore, the question of reviewing the judgment does not merit consideration.

For the aforesaid reasons, we are not persuaded by the contention of the learned Counsel for the Petitioner that any case of review is made out. Therefore, the review application merits dismissal, which is accordingly dismissed as, in our view, the judgment dated 13.12.2018 passed by this court was based on correct factual as well as legal position of the case and we do not find any inherent flaw floating on the surface of the record requiring our interference.

Consequently, the application bearing CMA No.987/2019 is dismissed. These are the reasons of our short order dated 13.05.2019, whereby we have dismissed the listed application.

JUDGE

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