

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –558 of 2018

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Muhammad Younus

Versus

Province of Sindh and 03 others

Date of hearing & order : 21.12.2020

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

Mr. Iqbal Khurram, advocate for KMC a/w Saeed Akhtar, Senior Director (Law) of KMC.

Mr. Ali Safdar Depar, Assistant A.G.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner has approached this Court for the following relief(s):

- a) *To issue directions to the Respondents to promote the Petitioner to the post of Head Clerk with effect from 20.06.1992, when the juniors of the Petitioner were promoted with all legal dues and back benefit.*
- b) *To declare that the Petitioner is also entitled to get promotion as "Office Superintendent" w.e.f. 22.08.1998, as his seven (07) Junior employees were promoted as 'Office Superintendent'."*

2. The petitioner claims that since 1985 he was never promoted. He ultimately exhausted the remedy by moving an appeal before the Appellate Tribunal Local Council, which considered his case and directed the respondents to consider his promotion in terms of the relevant rules and regulations, failing whereof he would be deemed to be promoted from the date of the order.

3. Syed Shoa-un-Nabi, learned counsel for the petitioner, submits that though petitioner was promoted under the rules and regulations, but perhaps since his promotion was matured long ago he ought to have been considered for promotion from the date his promotion was matured along with his batch mates.

4. Mr. Iqbal Khurram, learned counsel for KMC, has referred to his statement and argued that the petitioner was promoted in BPS-16, however, this assertion has been refuted by learned counsel for the petitioner by pointing out the notification dated 08.3.2017, which shows that the subject post has been upgraded instead of promoting the petitioner. Learned counsel further states that

the number of his junior officers had been promoted as such same treatment ought to have been given to the petitioner as well. He further argued that respondent-KMC promoted seven (07) Head Clerks to the post of Office Superintendent vide office order dated 22.08.1998 and he was ignored without his fault. He emphasized that due to the aforesaid illegal acts of respondent-KMC he was made to suffer and continuously suffering. In support of his contention, he relied upon the objections on the counter affidavit filed by respondents 2 to 4 along with case-law cited therein.

5. We have heard learned counsel for the parties on the subject issue and perused the material available on record.

6. We have noticed that the petitioner was appointed as Clerk / Typist in Grade-05 in Finance & Accounts Department KMC Civic Centre Karachi, on 02.12.1980. Upon enhancing his qualification i.e. Graduation, he was allowed to be placed in BS-06 with effect from 14.06.1986, and since then he is working in the same grade/post as a graduate clerk and has not been considered for promotion to a higher rank even after the lapse of thirty (30) years. He being aggrieved by and dissatisfied with the aforesaid action of the respondents preferred statutory Appeal No.7/2015 under Section 143 of The Sindh Local Government Act, 2013, read with Rule 4 of The Sindh Councils (Appeal) Rules, 1982 before the Appellate Tribunal Local Councils Sindh, Karachi, which was disposed of vide order dated 22.11.2016 with direction to the competent authority of KMC to consider his case under the law, in case of failure he was treated to be promoted in the next rank from the date of receipt of the aforesaid order. The record reveals that in compliance with the aforesaid order, respondent-KMC vide order dated 07.04.2017 allowed his promotion as Head Clerk (BPS-14) in Abbasi Shaheed Hospital KMC with effect from the date of Special Departmental Promotion Committee i.e. 07.02.2017. Prima facie, this was not a promotion but was upgradation.

7. We have noticed that the Government of Sindh, Finance Department, vide letter dated 04.08.2016 upgraded the post of Assistant / Head Clerk, Senior Clerk in BS-16, whereas his juniors have been shown promoted/upgraded in BPS-18 /19, which anomaly needs to be looked into in its entirety whether a post of Junior Clerk can be promoted/upgraded up to the level of BS-18 & 19 or otherwise. In this regard, we have to look into the Recruitment Rules for the subject post which provides that the post of Head Clerk / Council Clerk BS-11 can be filled (1) 25% from amongst graduate clerks on the seniority and fitness basis (2) 75% by

promotion on seniority and fitness from amongst senior clerks / cashiers / receptionists / storekeepers (Eng.) and Urdu Typists.

8. Basically, the petitioner was appointed as a Clerk in BPS-05 on 02.12.1980 and his grade was enhanced and placed in BPS-06 vide office order dated 27.10.1985. Prima-facie, his juniors have been promoted in various grades whereas the petitioner has been ignored without disclosing his ineligibility or otherwise.

9. Keeping in view the above facts and circumstances of the case, we have no option but to direct the competent authority of the respondent department to consider his case for promotion along with his batch mates within one (01) month from the date of receipt of this order. This petition stands disposed of along with pending application(s) in the above terms with no order as to costs.

J U D G E

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Nadir*