

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -5639 of 2020

Khalid Kamal Syed & 18 others

Versus

The Government of Sindh and 03 others

Date of hearing & order : 12.01.2021

Mr. Ali Tahir, advocate for the petitioners.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this constitutional petition, the petitioners are asking for payment of arrears on account of time scale / upgradation of their respective posts i.e. Statistical Assistant (BS-11) to Statistical Officer (BS-17)) on the grounds that they were initially appointed as Statistical Officer in Health Department, Government of Sindh; and, the aforesaid posts were upgraded/ re-designated in pursuance of the order dated 01.02.2012 passed by the learned Division Bench of this Court in C.P No.D-07/2012.

2. The grievance of the petitioner is that their colleagues were given the back benefits of the subject post from the date of approval given by the competent authority i.e. 30.10.2007, whereas, they have been deprived of the aforesaid back benefits and arrears of upgradation.

3. We asked the learned counsel as to how this petition is maintainable under Article 199 of the Constitution, against the alleged recovery of the differential amount.

4. Mr. Ali Tahir learned counsel for the petitioners has heavily relied upon the order dated 01.02.2012 passed by the learned Division Bench of this Court in C.P No. D-07/2012 and argued that the post of the petitioners was upgraded and the benefit of the notification dated 19th July 1987 was ordered to be given to the petitioners vide summary dated 30.10.2007. Per learned counsel, they are entitled to the back benefits/arrears with retrospective effect i.e. 30.10.2007.

5. We have the learned counsel for the petitioners on the maintainability of this petition and perused the material available on record.

6. Prima-facie, the prayer made by the petitioners through the instant petition is untenable on the premise that such alleged back benefits/arrears can only be claimed through appropriate proceedings require through the probe.

7. Adverting to the contention that the order dated 01.02.2012 order passed by this Court is in their support, prima facie the aforesaid order is distinguishable from the facts and circumstances of the present case for the reason that the order cited supra does not speak about the grant of back benefits; and, even otherwise the respondent-finance department issued notification dated 24th April 2015 extended the benefit of upgradation and re-designation of the post as statistical officer BS-16 / 17 subject to fulfillment of all codal formalities/qualification, etc. and criteria as laid down in the Finance Department Policy / Circular dated 19.07.1987 and 14.05.1991 with effect from 30.10.2007 without arrears. Therefore, no fundamental/vested right of the petitioners is involved in the matter to claim benefits/arrears as discussed supra with retrospective effect.

8. In light of the above facts and circumstances, this petition is dismissed in limine along with the pending application(s) with no order as to costs.

J U D G E

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Shahzad*