

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -1702 of 2020

Hameedullah

Versus

The Province of Sindh and 04 others

Date of hearing &
Decision : 02.02.2021

Mr. Irfan A. Memon, advocate for the petitioner.
Mr. Ali Safdar Depar, Assistant Advocate General.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this petition, the petitioner is seeking directions to the respondent-Enquiries and Anti-corruption Establishment Sindh (`E&ACE`) for issuance of his retirement notification and releasing his salaries up to 21.7.2013, wherein he has served for 10 years.

2. The case of the petitioner is that he joined the police department as Assistant Sub-Inspector in the year 1975 and subsequently promoted to the post of Sub-Inspector in the year 1996, thereafter his services were placed on the disposal of the respondent- E&ACE on a deputation basis and was absorbed as Sub-Inspector in E&ACE by way of transfer in the year 2008 and promoted to the post of Assistant Director (Executive) (BS-17). Per petitioner, his matter of retirement from service was under process, meanwhile vide judgment dated 12.06.2013 passed in Crl. Original Petition No.89 of 2011, the Hon'ble Supreme Court canceled all the out of turn promotions and absorption of the persons from cadre to ex-cadre posts. Per petitioner, he approached to the Hon'ble Supreme Court on the issue of retirement. The Hon'ble Supreme Court of Pakistan vide order dated 23.10.2018 directed to the Chief Secretary Sindh to pass a final decision on his retirement for which he moved various applications but to no avail and due to lethargic attitude of respondents he has suffered a lot and he has been deprived of his salary and pensionary benefits.

3. Mr. Irfan A. Memon, learned counsel for the petitioner, contended that the petitioner is entitled to pensionary benefits from the Anti-corruption

department being its permanent employee; that the Chief Secretary Sindh failed to appreciate that the appointment of the petitioner in the respondent-department was strictly under the recruitment rules and existing policy for which the petitioner has requisite qualification for the subject post; that he applied for his retirement from the E&ACE vide application dated 09.5.2013 and same was processed by the department vide letter dated 15.5.2013 i.e. before the passing of judgment dated 16.6.2013 by the Hon'ble Supreme Court of Pakistan, hence the petitioner is entitled to avail his pensionary benefits from the Anti-corruption Establishment wherein he served for about ten years. He placed reliance on the case of Secretary, Agriculture Government of Punjab and others v. Muhammad Akram, 2018 SCMR 349. He lastly prayed for allowing the instant petition.

4. In rebuttal, learned Assistant Advocate General Sindh has contended that the petitioner has not yet joined Sindh Police due to which his retirement order has not yet been issued. Despite repeated letters to petitioner to appear before Additional IGP Special Branch along with original service book copies of relieving order, LPC, and Pay Slip for finalization of his pension matter but petitioner neither appeared before Additional IGP Special Branch nor required documents were provided by him to the respondents No.2 & 3 due to which his case of issuance of retirement order from Police Department is still awaited. He prayed for dismissal of the instant petition.

5. We have heard the learned counsel for the parties and perused the material available on record as well as the case-law cited at the bar.

6. On the issue of deputation in E&ACE, the Hon'ble Supreme Court of Pakistan vide order dated 12.11.2015 passed in Crl. M.A No.486 of 2013 in Crl. Org. Petition No.89/2011 has provided the guiding principles about the period of deputation i.e. three years and not beyond it.

7. In the light of above discussion, we are only concerned as to whether the decisions rendered by the Honorable Supreme Court of Pakistan in the case of Contempt proceedings against the Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) have been complied with by the official respondents on the premise that the absorption of all the employees working in different departments of Government of Sindh were declared nullity in the eyes of law, thus the status of the petitioner became deputationist only and in our view, a deputationist could not be treated as an

aggrieved person, because he has no vested right to remain on a post as deputationist forever or for a stipulated period and can be repatriated at any time to his parent department more particularly in the light of aforesaid decisions of the Honorable Supreme Court. Reference is also made to the case of Dr. Shafi-ur-Rehman Afridi vs. CDA, Islamabad through Chairman and others (2010 SCMR 378).

8. In view of the foregoing, we are clear in our mind that the Competent Authority has no unbridled powers to first appoint on deputation and then absorb any person in the E&ACE, without fulfilling the conditions as outlined in the recruitment rules, thus, prima-facie the word "absorption" is not akin to the word "confirmation", in service, which has its meaning and procedure provided in-service law, there is no proper mechanism provided either under the Sindh Civil Servant Act 1973 and ACCE Rules for permanent absorption of any Civil Servant. The Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch had recorded the following findings which is reproduced as under:-

"No Civil Servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process. A Civil Servant can be transferred out of cadre to any other department of the Government subject to the restrictions contained under Rule 9(1) of the Rules of 1974."

9. We are of the considered view that the petitioner could not be allowed to be absorbed and subsequently promoted in E&ACE for the reasons as discussed supra. We are clear in our minds that no department can be allowed to absorb any employee of another department/cadre except with certain exceptions as set forth by the Honorable Supreme Court of Pakistan in the cases referred to above.

10. Primarily the parent department of the petitioner is the police department and his deputation in E&ACE and subsequent absorption by way of transfer in the year 2008 and promotion to the post of Assistant Director (Executive) (BS-17), Anti-corruption Establishment on regular basis was done away by the orders of Honorable Supreme Court as discussed supra. The Hon'ble Supreme Court vide order dated 23.10.2018 directed the Chief Secretary Sindh to pass a final decision on his retirement issue. Prima-facie the directives of the Honorable Supreme Court have been complied with by the Chief Secretary, Sindh vide order dated 07.10.2019 with direction to Sindh Police department to issue his retirement notification one date before attaining the age of superannuation along with pensionary benefits.

11. Since there are certain directions of the Hon'ble Supreme Court of Pakistan in the matter of petitioner, therefore, we cannot substitute our findings on the subject as the directions contained in the order dated 23.10.2018 has been complied with, therefore, no further indulgence of this Court is required in the matter on the grounds agitated by the petitioner in the present proceedings.

12. In the light of the above facts and circumstances of the case, the competent authority of respondents/Home Secretary, Government of Sindh is directed to issue his retirement notification within two weeks and release his pensionary benefits under the law within a month from the date of receipt of this order and submit compliance report through MIT-II of this court.

13. Petition stand disposed of in the above terms with no order as to costs.

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