

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-340 of 2013

Mohammed Saleem Khan *versus* Province of Sindh and 02 others.

Date of hearing

& decision : **03.02.2020.**

Mr. Khadim Hussain Thahim, advocate for the petitioner.

Mr. Usman Tufail Shaikh, advocate for KDA.

Mr. Hakim Ali Shaikh, Additional Advocate General.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through the captioned petition, the petitioner is seeking declaration to the effect that he is/was entitled for proforma promotion against the post of Assistant Executive Engineer (AEE) (BS-17) with effect from year 1993, according to Resolution No.226 passed by the defunct City District Government Karachi (**CDGK**).

2. We asked learned counsel to satisfy this Court with regard to maintainability of this petition on the ground that he stood retired from the government service in year 2009, on attaining the age of superannuation, as Electrical Supervisor (BS-16) and he was allowed proforma promotion as Electrical Supervisor (BS-16) with effect from 06.8.1978 instead of 09.1.1993 vide office order dated 27.3.2008.

3. Mr. Khadim Hussain Thahim, learned counsel for the petitioner, has argued that the petitioner was entitled to the post of Assistant Executive Engineer (BPS-17) with effect from 1993 according to Resolution No.226 on the analogy that the aforesaid post was upgraded / re-designated in BPS-17 in year 1991 by Governing Body of the City District Government Karachi, therefore, the petitioner ought to have been given the proforma promotion from the date of up-gradation of the post; that denial of the aforesaid financial benefits by the respondents were unjust, malafide, discriminatory, unfair and unlawful and liable to be discarded. In support of his contention, he relied upon the case of Askari Hasnain V/S Secretary Establishment and others, 2016 SCMR 871, and argued that proforma promotion after retirement is permissible under the law.

4. Mr. Usman Tufail Shaikh, learned counsel for KDA / respondent No.2, raised the question of maintainability of the instant petition. Learned Additional Advocate General supported his stance.

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

6. The foremost question involved in the present proceedings is whether prior to devolution of KDA and merger in CDGK, the Governing body of CDGK was competent authority in case of up-gradation of the post of Electrical Supervisor from BPS-16 to BPS-17 and whether petitioner is/was entitled for proforma promotion as Electrical Supervisor BPS-16/17 with effect from 1991 or otherwise?

7. It appears from record that the petitioner stood retired from the post of Electrical Supervisor (BPS-16) in year 2009 and he filed the instant petition in the year 2013, which *prima facie* is hit by the doctrine of laches for which learned counsel relied upon the judgment of Askari Hasnain *supra*. This judgment of the Hon'ble Supreme Court deals with the proviso to Fundamental Rule-17 which authorizes the competent authority to give proforma promotion after retirement of a government servant subject to certain conditions enumerated in the aforesaid rule, however, the present case is distinguishable from the facts of the case discussed *supra* on the premise that petitioner after his retirement from service is seeking proforma promotion with retrospective effect which is not permissible under the law. Record reflects that the petitioner has already availed the full pensionary benefits, therefore, no further payment is required to be paid to him on the ground that the post of Electrical Supervisor was upgraded / re-designated in year 1991 through Resolution.

8. We are of the view that the post cannot be upgraded / re-designated merely by passing the Resolution by defunct CDGK, the law has to take its own course and to be followed for the aforesaid purpose for which the petitioner has failed to justify his entitlement for proforma promotion with retrospective effect.

9. It is well-settled that proforma promotion cannot be awarded to a retired government servant with retrospective effect as per dicta laid down by the Hon'ble Supreme Court in the case of *Government of Pakistan and others vs. Hameed Akhtar Niazi and others* , **PLD 2003 SC 110**,.

10. We, for the aforesaid reasons, and in the given circumstances hold that this petition is not maintainable, which is accordingly dismissed alongwith pending applications with no order as to costs.

JUDGE

JUDGE