

IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-162 of 2021

Syed Jamil Hassan Kazmi versus Chief Secretary Sindh and 05 others

1. For order on CMA No.24544/2021. (Granted)
2. For order on CMA No.24545/2021. (stay)
3. For order on CMA No.24546/2021. (Review)

Date of hearing: 28.09.2021

Date of Order: 28.09.2021

Mr. Mehmood-ul-Hassan, advocate for the petitioner.

Mr. Ameer-uddin, advocate for respondents No.2&3.

Mr. Obaid-ur-Rehman, advocate for respondent No.6.

ORDER

ADNAN-UL-KARIM MEMON, J:- The captioned Petition was allowed vide order dated 18.09.2021, with the following directions:-

“19. In view of the above, this petition is allowed and, we direct the competent authority to hold a fresh interview of the petitioner and respondent No.6 for the appointment of the Dean Faculty of Science in Karachi University on merit under the law within two weeks from the date of this order strictly in the light of the law enunciated by Hon’ble Apex Court in the aforesaid cases.

20. These are the reasons for our short order dated 16.9.2021, whereby we have allowed the instant petition in the above terms.”

2. On 27.9.2021, the Applicant/respondent No.6 filed an application under Order 47 read with Section 114 of Civil Procedure Code (CMA No. 24546/2021) for review of the order dated 18.09.2021 passed by this court.

3. At the outset, we directed the learned Counsel for respondent No.6 to satisfy this Court regarding the maintainability of the review application (CMA No. 24546/2021), on the premise that he has a remedy under Article 185 of the Constitution.

4. Mr. Obaid-ur-Rehman, learned Counsel, representing the Applicant, in reply to the query, has referred to paragraphs 11 and 12 of the order under question and argued that this Court while allowing the instant petition has erred in not considering the seniority of the teachers of the respondent-university as envisaged under the Teacher’s Seniority Rules 1990, he while relying on Rule 8(b) supra, urged that in case more than one teacher is appointing in particular cadre with effect from the said date, the seniority of

the teacher shall be determined according to their seniority of the previous cadre. Per learned counsel petitioner was appointed as Assistant Professor in the year 1997, whereas respondent No.6 was appointed as Assistant Professor in the year 1994 more than three years before the petitioner, thus it could not be said that the petitioner is senior to respondent No.6; that the aforesaid factum has not been appreciated in its true perspective under the law, in the impugned order; therefore, the impugned order needs to be reviewed on this score alone. He next argued that the service of the applicant is governed under the aforesaid seniority rules but the impugned order suggests that the petitioner was senior to respondent No.6 based on age criteria, however, the rule position is contrary to the factual position as depicted in the order under review, for the simple reason that seniority in such a situation is to be reckoned according to their previous cadre of service and not based on age criteria; and, respondent No.6 as per her previous cadre as Assistant Professor inducted earlier in service, is senior to petitioner in all respect. He next added that this matter may be reopened and decided under the law based on the documents available on record. He lastly prayed for allowing the listed application and matter may be posted for hearing.

5. We have scanned the record and found the contention of the learned Counsel for respondent No.6 untenable, for the simple reason that this Court considered the aforesaid submissions of the learned Counsel at paragraph Nos.10 to 14 and gave finding on the issue of seniority and directed the competent authority to hold a fresh interview of the petitioner and respondent No.6 for the appointment of the Dean Faculty of Science in Karachi University on merit, which he is now raising in the Review Application.

6. A perusal of the record shows that respondent No.6 has not assailed the order dated 18.09.2021 passed by this Court, before the Honorable Supreme Court yet. In our view, the review of the order can only be made by the party, if there is a mistake or error apparent on the face of the record as provided under Order XLVII (Section 114 CPC). Respondent No.6 through the review application has attempted to call in question the validity of the order dated 18.09.2021 passed by this Court without assailing the same before the Appellate Forum.

7. Prima facie, the grounds taken by respondent No.6 in the review application belied the factual as well as the legal position of the case, for the reason that as per record, respondent No.6 was temporary appointed as Assistant Professor vide his joining order dated 25.10.2001 (Page-153) attached with her counter-affidavit, whereas, it is well-settled law that the

Seniority is to be reckoned from the date of regular appointment, and if we consider her case in that perspective, and treat her as a regular employee, that will take effect from the aforesaid date and not with retrospective effect, as portrayed by the respondent No.6. The aforesaid factum does not support her case in terms of Rule 8(d) supra so far as the seniority is concerned, therefore, reviewing the order does not merit consideration.

8. For the aforesaid reasons, we are not persuaded by the contention of the learned Counsel for respondent No.6 that any case of review is made out. Besides that the subject matter was heard and decided, not only based on age factor but also merit was considered, therefore, the review application merits dismissal, which is accordingly dismissed as, in our view, the order dated 18.09.2021 passed by this court was based on correct factual as well as the legal position of the case and we do not find any inherent flaw floating on the surface of the record requiring our interference.

9. Consequently, the application bearing CMA No.24546/2021 is dismissed along with CMA No.24545/2021.

JUDGE

JUDGE

