

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

CPNo.D-161 of 2021

Abdul Karim Khan and
another

Petitioners: Through Mr. Atta Muhammad Khan, advocate

Respondents No.1 and 2: Through Mr. Abdul Jalil Zubedi, AAG

Respondents No.3 and 4: Through Mr. Arbab Imtiaz Khan, advocate

Date of hearing

& Decision: 13.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. Through this Constitutional Petition, the petitioners have called into question the promotions of seven officials of the Sindh Katchi Abadi Authority (**SKAA**) as disclosed in paragraph No.5 of the memo of the petition.

2. It is inter-alia contended by Mr. Atta Muhammad Khan, learned counsel for the petitioners that in compliance with the judgments dated 12.06.2013 ad 15.01.2015 passed by the Hon'ble Supreme Court of Pakistan in Crl. Org. Petition No.89/2011 (**2013 SCMR 1752**) and Civil Review Petition No.193/2013 Ali Azhar Khan Baloch vs. Province of Sindh and others (**2015 SCMR 456**) and order dated 13.01.2016 issued by the respondents whereby the up-gradation of the aforesaid 07 officers and others were canceled vide notification dated 12.02.2016. Per learned counsel for the petitioners, now again they were allowed proforma promotion in BPS-1 & BPS-18 with effect from the dates mentioned against each officer (vide office orders dated 29.03.2016 & 05.1.2017). Per the learned course for the petitioners, the appointments of the officers including the Advisor are permissible for those who possess such professional/technical qualification and experience and on such terms and conditions prescribed under section 25 read with (3)(2)(g) of Sindh Katchi Abadi Authority Governing Body Business Conduct Regulations, 2008. He further argued that the appointments

and promotions of the aforesaid officials are hit by section 10(1) and section 25 of the Sindh Katchi Abadi Act, of 1887. He further argued that petitioners are also entitled to promotion and seniority with effect from 2010 in BPS-17 and onward that they approached the competent authority for redressal of the grievances but to no avail. He prayed for the direction to the respondents to take action against the seven officers who were illegally restored to service and now they have been allowed to retire from service with all benefits in violation of the dicta laid down by the Hon'ble Supreme Court of Pakistan in the aforesaid cases, whereas the case of the petitioners for promotion has been ignored. He lastly prayed for allowing the instant petition.

3. Mr. Arbab Imtiaz Khan, learned counsel for the respondents, has raised the question of maintainability of the instant petition and argued that the petitioners have been awarded promotions under SKAA Employees Service rules 1993 as per their qualification. He further argued that the promotions of the officers were allowed as per directions of the Hon'ble Supreme Court of Pakistan in the aforesaid cases, as such there is no violation of the dicta laid down by the Hon'ble Supreme Court of Pakistan. He next argued that proforma promotion was awarded under the judgment passed by the Hon'ble Supreme Court of Pakistan by fulfilling all the codal formalities. He next submitted that office orders No.2, 3, and 10 were canceled by the Director General, SKAA in compliance with the orders of Worthy Chief Minister Sindh, besides the file was resubmitted with brief facts on office order No.06 for review of the Chief Minister Sindh as per instructions/directives of the then Minister / Chairman, SKAA. Learned counsel pointed out that petitioner No.1 filed Service appeal No.41/2007 before the Sindh Service Tribunal at Karachi which was dismissed vide judgment dated 29.06.2009, as such he is precluded from agitating his claim under Article 199 of the Constitution. He further submitted that at the time of the appointment of Assistant engineers, the petitioners were working in BPS-11 and BPS-16, thus were not eligible for promotion to BPS-17. He lastly submitted that seniority and promotion cannot be claimed as a matter of right under Article 199 of the Constitution which, even otherwise, falls within the ambit of terms and conditions of service which are expressly barred by Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. He prayed for the dismissal of the instant petition.

4. We have heard learned counsel for the parties and perused the material available on record.

5. In principle, the issue of initial appointment, absorption, repatriation, upgradation, regularization of service, reemployment, consideration of promotion, and deputation could be looked into by this court under Article 199 of the Constitution. Besides, there is the element of enforcement of the judgments of the Hon'ble Supreme Court of Pakistan in terms of Article 187(2) of the Constitution, as such the aforesaid points could be considered by this Court under Article 199 of the Constitution, therefore, the objection over the maintainability of the instant petition is discarded. Even otherwise, the political figures have no role in service matters of the employees subject to the provision made in the rules.

6. Before going ahead on the merits of the case, initially, the subject issue can be looked into by the Chief Secretary, Government of Sindh, the Secretary, Local Government, and the Director General of Sindh Katchi Abadi Authority. Let this exercise be conducted by them in coordination with each other within two weeks with the mandate to see whether the upgradation, seniority, and promotion of the 07 officials as disclosed in paragraph No.5 of the memo of the petition were rightly given in terms of the judgment passed by the Hon'ble Supreme Court of Pakistan or otherwise and whether the petitioners have the requisite length of service and qualification for promotion to the next rank and if they are entitled to under the law, their cases for promotion in the next rank shall be considered positively.

7. This petition stands disposed of in the above terms. A copy of this order be transmitted to the Chief Secretary, Government of Sindh, the Secretary, Local Government, and the Director General of Sindh Katchi Abadi Authority for compliance.

JUDGE

JUDGE

Nadir*