

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-3844 of 2020

(Ghulam Akbar v. Province of Sindh and 03 others)

Mr. Altaf Hussain, advocate for the petitioner alongwith Mr. Moiz-ur-Rehman, advocate.

Mr. Abdul Jalil Zubedi, AAG Sindh alongwith Mr. Akhtiar Ali, Deputy Director of Agriculture Engineering.

Dr. Liaquat Ali Abro, Consultant Law to Chief Secretary, Government of Sindh

Date of hearing

& Decision: 28.02.2023.

ORDER

Through this petition, the petitioner-Ghulam Akbar is seeking his repatriation to the parent cadre in terms of the dicta of the judgment of the Hon'ble Supreme Court of Pakistan rendered in the case of *Ali Azhar Khan Baloch Vs. Province of Sind* (2015 SCMR 456).

2. Mr. Altaf Hussain, learned counsel for the petitioner, submitted that the petitioner was initially appointed as Junior Clerk in 1989 on adhoc basis under disabled quota, and his services were regularized under the Sindh Civil Servants (Regularization of Adhoc Employees) Act 1989 in the same year. The learned counsel submitted that the respondents vide order dated 26.10.1998 re-designated his post and posted him as Junior Store Keeper. It is urged by the petitioner that retention of his service other than his parent cadre is illegal and violates the dicta of the judgment of the Hon'ble Supreme Court of Pakistan rendered in *Contempt Proceedings against Chief Secretary Sindh* (2013 SCMR 1752). He prayed for his repatriation to his parent department/cadre with all benefits including seniority along with his batch mates.

3. Mr. Abdul Jalil Zubedi learned AAG argued that the post of the petitioner was re-designated from Junior Clerk (BPS-5) to Junior Store Keeper and accepted the post of Store Keeper, however, after the lapse of more than 20 years of service as Store Keeper, the petitioner is asking for the cancellation of his posting and requesting for repatriation after enjoying the benefits of the administrative post. The learned AAG pointed out that the petitioner had undertaken that he will not claim seniority of another cadre except Junior Clerk and was accordingly repatriated by canceling his re-designation of the post vide order dated 18.09.2019 in the existing Scale i.e. BPS-11 in the light of order dated 09.02.2019 issued by the Finance Department, Government of Sindh, but

he failed to relinquish the charge of the post of Senior Store Keeper and refused to hand over the charge of Central Store to his successor.

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

5. It appears from the record that the petitioner was appointed as Junior Clerk in the Directorate of Agricultural Engineering Sindh Hyderabad in 1989 on adhoc basis and his service was regularized vide office order dated 26.11.1989 and consequent upon redesignation of the post of Junior Clerk (BPS-5) to Junior Store Keeper (BPS-5) vide office order dated 26.10.1998, which redesignation of the post was canceled and he was repatriated to his original post i.e. Junior Clerk (BPS-11) vide order dated 18.9.2019. Petitioner also moved the application for his repatriation in terms of the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan as discussed supra along with undertaking dated 24.6.2019 to the effect that he will not claim seniority of further cadre except Junior Clerk. At this stage, learned AAG referred to the inquiry report dated 10.03.2020 whereby the petitioner was found responsible for all the missing items from the Central Store, and the inquiry committee recommended disciplinary action as per rules. Be that as it may, it is for the respondent department to take stock of things at their end under the law after providing the opportunity of hearing to the petitioner on the subject issue.

6. The law of absorption has been illumined by the Honourable Supreme Court in Ali Azhar Khan Baloch v. Province of Sind (2015 SCMR 456) hence, prima facie, the post of petitioner ought not to have been redesignated from Junior Clerk to Junior Store Keeper by the DPC vide order dated 26.10.1998, which was rightly canceled vide office order dated 18.9.2019.

7. Primarily, retaining the petitioner to the post of Store Keeper after the decision of the Honorable Supreme Court is contemptuous action on the part of the competent authority including the beneficiary/petitioner. Let competent authority take up the matter on his end and fix responsibility on the delinquent officials, and after doing so, the ancillary issues of the petitioner may be taken care of in the terms of the dicta of the judgments of the Honorable Supreme Court in the cases of Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Baloch case.

8. The captioned petition stands disposed of in the above terms.

JUDGE

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