

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-4106 of 2020

(Muhammad Inam and another v. the Secretary Local Government and 05 others)

Malik Altaf Hussain, advocate for the petitioners

Mr. Iqbal Khurram, advocate for KMC

Mr. Abdul Jalil Zubedi, AAG

Date of hearing
& decision : 14.03.2023.

ORDER

Petitioners have called in question the vires of the notification dated 03.07.2020, whereby respondent No.6 Dr. Taj Muhammad was upgraded from BPS-17 to BPS-18 with retrospective effect i.e. 18.11.2015.

2. On 9.2.2016 his said upgradation was recalled/canceled because of the order passed by the Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch 2015 SCMR 456.

3. The Petitioners who are also serving in BPS-17 in KMC and/or Senior to Respondent No.6 have impugned the order dated 03.07.2020 whereby respondent No.6 has once again been upgraded from the post of Deputy Director Veterinary BPS-17 to BPS-18. It is urged that after canceling/withdrawing the upgradation of respondent No.6 he could not be upgraded, especially because of the judgment passed by the Supreme Court. As per petitioners, the post has to be upgraded not a person occupying the post.

4. Learned counsel for the petitioners has submitted that when the promotion channel is available then the post of Director and Deputy Director could not be upgraded. Learned counsel has prayed for setting aside the impugned notification dated 30.07.2020.

5. Mr. Iqbal Khurram, learned counsel for KMC, has submitted that in compliance with the order dated 26.4.2022 passed by this court, the upgradation order of respondent No.6 has been canceled/withdrawn vide letter dated 13.3.2023. He prayed for the dismissal of the instant petition.

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

7. Since the upgradation letter dated 23.11.2015 issued by Section Officer-V, Local Government Department, Government of Sindh, has been canceled and/or withdrawn vide letter dated 13.3.2023 issued by the office of KMC, as such an upgradation order keeping in abeyance does not deface the order of withdrawal with the reasoning of complying with the judgment passed by the Supreme Court as discussed supra, therefore we treat its complete withdrawal from a person specific upgradation, which is not permissible under the law.

8. This petition is disposed of in terms of withdrawal of the upgradation order dated 23.11.2015 vide office order dated 13.3.2023 issued by the competent authority of KMC. However, it is made clear that if the respondents act upon the person-specific upgradation order in violation of the judgment passed by the Supreme Court, the petitioner shall be at liberty to call into question the legality of the action of the respondents under Articles 187(2) and 204 of the Constitution.

JUDGE

JUDGE

Nadir*