

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-861 of 2023

(Aziz Ahmed Khan and 9 others v. Province of Sindh and 6 others)

Constitutional Petition No.D-862 of 2023

(Muhammad Naveed Uddin Qadri and 9 others v. Province of Sindh and 5 others)

Syed Shoa-un-Nabi, advocate for the petitioners

Date of hearing

& Decision:

14.02.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. The captioned petitions were heard together and are being disposed of by this common order as common questions of law and facts are involved therein.

2. Through these Constitutional Petitions filed by the petitioners under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, they have prayed that their posts may be upgraded from BPS-7 to 14 in the Health Services Department of Karachi Metropolitan Corporation (KMC), *inter-alia*, on the ground that the petitioners joined the KMC as Dresser/Telephone Operators (BS- 7) in Medical and Health Services Department on different dates and posted in Abbasi Shaheed Hospital. Since then they continued to work in the same grade.

3. Syed Shoa-un-Nabi, learned counsel for the petitioners heavily relied upon the letter dated 23.08.2016, whereby different posts of KMC employees have been upgraded. He submitted that the Government of Sindh also upgraded different posts while issuing Notifications dated 04.08.2016 and 22.07.2019, therefore, as the rule of consistency the posts of petitioners may also be upgraded from BPS-7 to BPS-14 in KMC. Learned counsel averred that the petitioners are fully qualified to be allowed upgradation as telephone Operators BS-14 because of professional training credentials and length of 15 years' service. Declining such right is utterly malafide, illegal, against the principle of natural justice, and discriminatory in as much as in violation of fundamental right article 25 of the

constitution of the Islamic Republic of Pakistan. Learned counsel emphasized that the matter of upgradation does not fall within the ambit of policy decision but it depends upon the upgradation of the service structure of the post, therefore this court has the jurisdiction to entertain the constitutional petition in the light of the decision rendered by Hon'ble Supreme Court of Pakistan. He lastly prayed for allowing the instant petitions.

3. We have heard the learned counsel for the petitioners on the maintainability of the petitions and perused the record with their assistance.

4. The entire case of the petitioners rests on the policy decision of the Government of Sindh vide policy decisions dated 04.08.2016 and 22.07.2019, which pertains to different departments, Government of Sindh and has no bearing with the case of petitioners who admittedly belong to separate cadre i.e. Telephone Operator and Dresser in Abbasi Shaheed Hospital. The petitioners have claimed their alleged rights based on a policy decision of the Government of Sindh for the reason that up-gradation is distinct from the promotion; and, is restricted to the post and not to the person occupying it; the up-gradation cannot be made to benefit a particular individual in terms of promoting him to a higher post; and, to justify the up-gradation, the respondent KMC is required to establish that the concerned department needs restructuring, reform or to meet the exigency of service in the public interest; and, in the absence of these pre-conditions, up-gradation is not permissible.

5. Learned counsel for the petitioner submitted that this is a hardship case, as such direction may be issued to the respondents to formulate the service structure of the department of the Respondent KMC. Petitioners referred to various documents attached with the memo of the petitions and extensively submitted that the instant petitions may be allowed as prayed.

6. Essentially in service jurisprudence, up-gradation, and its ancillary parts are not part of the terms and conditions of service of a civil/government servant, however, the same could be treated as a policy decision of the respondents. On the subject, we are guided by the decisions of the Honorable Supreme Court rendered in the cases of the Government of Pakistan M/o. Railways v. Jamshed Hussain Cheema and others, **2016 SCMR 442**, Regional Commissioner Income Tax, Northern Region, Islamabad, and another Vs. Syed Munawar Ali and others, **2017 PLC (C.S.) 1030** and Federal Public Service Commission v.

Anwar-ul-Haq, 2017 SCMR 890. Therefore, in our view, the petitioners have been unable to make out a case for the up-gradation of their post and ancillary benefits with retrospective effect, until and unless the respondents start restructuring the service structure of the subject posts, and/ or either adopt the policy decision of the Government of Sindh.

7. We, for the aforesaid reasons, and in the given circumstances hold that the petitions are not maintainable, which are accordingly dismissed in limine along with pending applications with no order as to costs.

JUDGE

JUDGE

Nadir*