

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-3664 of 2022

(Muhammad Zafar Khan Baloch v. Province of Sindh and 05 others)

Mr. Nehal Khan Lashari, advocate for the petitioner
M/S Amel Khan Kasi & Khurram Ashfaq, advocates
for respondent No.6
Mr. Ali Safdar Depar, AAG

Date of hearing : 13.03.2023.

Date of decision : 15.05.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this petition the Petitioner has prayed for issuance of the writ of quo warranto in respect of the appointment, promotion, and posting of respondent No.6 as Chief Engineer (Civil) BPS-20 in Engineering Department (TS) KMC. The petitioner has also sought directions to be issued to the Chief Secretary, Government of Sindh, to repatriate the services of respondent No.6 to his parent department i.e. Karachi Water and Sewerage Board (**KW&SB**).

2. Mr. Nehal Khan Lashari, learned counsel for the petitioner has submitted that the respondent No.6 is holding the public office i.e. Chief Engineer (Civil) BPS-20 in KMC and falls within the purview of Sub-Clause (1) (b) (ii) of Article 199 of the Constitution, which permits this Court to issue “Writ of Quo-warranto” requiring to show under what authority or law the respondent No.6 claims to hold the said Office.

3. The learned counsel for the petitioner has submitted that transferring the services of respondent No.6 from his original department i.e. KW&SB to Karachi Municipal Corporation (**KMC**) and then to Sindh Solid Waste Management Board (**SSWMB**) is illegal and in violation of the principles laid down in the judgments penned down by the Supreme Court of Pakistan in the cases of *Contempt proceedings against the Chief Secretary, Sindh* (2013 SCMR 1752) and *Ali Azhar Khan Baloch vs. Province of Sindh* (2015 SCMR 456).

4. The learned counsel further submitted that the promotion and posting of private respondent in KMC and SSWMB vide notifications dated 02.06.2022 and

08.06.2022 are illegal and contrary to the dicta laid down by Supreme Court of Pakistan in the case of *Ali Azhar Khan Baloch vs. Province of Sindh*. The learned counsel further submitted that respondents 1 to 4 time and again withdrew absorption and repatriation of respondent No.6 and directed him to join his parent department; however, on account of political influence competent authority could not succeed in transferring him to KW&SB department. His permanent posting in KMC is a nullity as per the Supreme Court judgments.

5. The learned counsel for the petitioner emphasized that this Court can execute the decision of the Supreme Court of Pakistan under Article 187(2) of the Constitution. He next submitted that his continuance stay in KMC as Chief Engineer (Civil) BPS-20 ex-facie contemptuous and not only he, but even the authority responsible needs to be proceeded against contempt proceedings under Article 204 of the constitution. The learned counsel argued that the private respondent is in league with official respondents of KMC and Sindh Government to defeat the aforesaid judgments of the Supreme Court which cannot be tolerated. Learned counsel added that official respondents misused their authority and flouted the law laid down by the Supreme Court. He lastly prayed for allowing the instant petition.

6. Mr. Amel Khan Kasi, learned counsel for respondent No.6, has disputed the submissions made by the learned counsel for the petitioner and strongly contended for dismissal of the petition on the ground that the petitioner has no locus standi to file the petition against the private respondent since he is not an aggrieved person to invoke the constitutional jurisdiction of this court. He further argued that the judgments passed by the Supreme Court in the cases of *Contempt proceedings against the Chief Secretary*, and *Ali Azhar Khan Baloch* supra do not apply to the case of respondent No.6 as he is neither beneficiary of out-of-cadre posting nor has obtained out of turn promotion, rather he was appointed in KWSB on merit and obtained promotion based on seniority cum fitness in his parent department (KMC).

7. The learned counsel highlighted that after graduating from N.E.D University in 1989 as Civil Engineer, respondent No.6 was appointed as Assistant Executive Engineer (BS-17) in KWSB on an ad-hoc basis; and, submitted that at the relevant time, the KWSB was not working as an independent body but was a branch of KMC.

8. The learned counsel contended that KWSB was formed under Sindh Local Government (Amendment) Ordinance, 1983 which amended the Sindh Local Government Ordinance, 1979 to establish the KWSB; that KWSB continued to operate under KMC, with the 'Board' of KWSB comprising Mayor KMC, Deputy Mayor KMC, and two members of KMC, as per Section 121(3) of Amendment Ordinance, 1983. Furthermore, the Mayor of KMC was also the Chairman of KWSB as per Section 121(4) of the Amendment Ordinance, 1983.

9. The learned counsel stressed on the point that respondent No.6 was eventually regularized on 15.08.1991, as Assistant Executive Engineer, BS-17 in KWSB, and thereafter the Karachi Water and Sewerage Board Act, 1996 was enacted which he claims have altered the structure, functioning, and statutory provisions regulating the operation of KWSB in the year 1996.

10. The learned counsel submitted that respondent No.6 was appointed to serve with KWSB when it was operated as a branch of KMC, to manage the water and sewerage needs of Karachi, as is evident from the bare reading of Section 121(1) of the Amendment Ordinance, 1983, and not a separate statutory entity. Per learned counsel stressed on the point that before the enactment of the KWSB Act, 1996, in the year 1994, the services of respondent No.6 were transferred to another branch of KMC with the consent of Chairman KMC and respondent No.6 continued serving as Assistant Executive Engineer (BS-17), and his salary was also transferred from the account of KWSB to Parks Recreation Wildlife & Environment Department of KMC, vide notification dated 25.10.1994. Furthermore, while respondent No.6 was allowed to be promoted to Executive Engineer (BS-18) in KWSB, vide order dated 03.11.1994, he did not claim the said promotion and preferred to continue his services at KMC in BS-17. Thus, it could not be said that respondent No.6 was appointed or transferred in KMC in violation of any law and judgment of the Supreme Court

11. The learned counsel continued submissions that respondent No.6 was appointed and served under different departments of KMC as per his qualifications, capacities, and provisions of law and he was not absorbed in KMC; that respondent No.6 did not impair or offend the statutory rights of any individual while working in KMC; that the service of respondent No.6 within KMC in different postings was/is not absorption. Furthermore, respondent No.6 acquired a Bachelor's degree in Civil Engineering but also obtained a Master's degree in Civil Engineering from Ryerson University, Toronto. Moreover,

respondent No.6 was never given out-of-turn promotions/shoulder promotions under Section 9-A of the Sindh Civil Servants (APT) Rules 1974. He next argued that respondent No.6 was not a beneficiary of the aforesaid practice and was instead promoted in 2007 to BPS-18, in 2009 to BPS-19, and in 2017 to BPS-20 in KMC against vacant posts, which matched his qualifications. He lastly prayed for dismissal of instant Petition with cost.

12. Mr. Ali Safdar Depar, learned AAG has adopted the arguments of learned counsel representing private respondents without filing comments.

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

14. In the first place, we would like to answer the issue of maintainability of instant Petition under Article 199 of the Constitution.

15. The basic purpose of issuance of the writ of quo warranto is to settle the legality of the holder of a statutory or constitutional office and this court has to decide whether the private respondent was/is holding such public office under the law or against the law; therefore, the petition for the writ of quo warranto can be filed by an individual though he may not have been directly aggrieved person under Article 199 of the constitution. The issue of locus standi is irrelevant in quo warranto.

16. Prima-facie, the post held by a private respondent in KMC is a Public Office/Public Post, falls within the purview of Sub-Clause (1) (b) (ii) of Article 199 of the Constitution. So the argument of learned counsel for respondent No.6 that the Constitutional Petition is not maintainable under Article 199 of the Constitution of Pakistan against the private respondent is not sustainable in the law and the Petition is maintainable under Article 199 of the Constitution.

17. On merits, it is agitated that KWSB was established in 1981. Later in 1983, the Government of Sindh supported the establishment of KWSB by promulgating the Sindh Local Government (Amendment) Ordinance of February 1983 leading to the creation of KWSB within the Karachi Metropolitan Corporation (KMC). In the year 1996, a new Act called the Karachi Water & Sewerage Board Act 1996 was enacted, which served to separate KWSB from KMC and placed them under the Government of Sindh as an autonomous body.

18. It is not disputed that respondent No.6 was appointed in KWSB on ad-hoc basis in the year 1989 as Assistant Engineer. His appointment was not made through competitive process. However, his appointment was regularized in the year 1991 in Karachi Water & Sewerage Board. It is also not disputed that he was an employee of KW&SB and was transferred in KMC without any lawful authority the learned counsel for the respondent No.6 or learned AAG have failed to provide any material to satisfy this court as to how an employee of Karachi Water & Sewerage Board can be transferred and posted in KMC. They have also failed to show any rule authorizing either KMC or Sindh Government to transfer an employee of KW&SB to KMC or SSWMB. The transfer and posting of respondent No.6 to KMC or to its any wing will not change the status of respondent No.6 and he will continue to remain an employee of KW&SB. At best such an act on the part of officials of KMC and Sindh Government will be termed transfer on deputation. The KMC will not become the parent department of employee of KW&SB, whose progression will remain in KW&SB and they cannot be horizontally allowed to travel / posted in any branch of KMC nor they can be absorbed or promoted in KMC, which is the spirit of the judgments of the Supreme Court in the cases of Contempt proceedings against the Chief Secretary, and Ali Azhar Khan Baloch supra. Even no rules of KMC permits such type of absorption.

19. We therefore allow this petition and direct the competent authority and Chief Secretary Sindh to immediately repatriate respondent No.6 to KW&SB and he will be entitled to retain his original seniority with his batch mates of KW&SB. The order be complied with in 7 days and report compliance for our perusal in chamber.

20. This petition stands allowed in the above terms along with the pending application(s).

JUDGE

JUDGE

Nadir*
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