

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-479 of 2019

(*Waheed Akhtar v Federation of Pakistan & others*)

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 17.12.2024

Petitioner present in person.

Ms. Wajiha Mehdi, Additional Attorney General.

ORDER

Adnan-ul_Karim Memon,J: The petitioner Waheed Akhatar requests this court to:

1. *Declare that the impugned order dated 12.09.2018 is illegal ab initio avoid and pleased to set aside the same.*
2. *To direct the respondent to fix the petitioner's pay with the revised pay slip issued by AGPR Karachi w.e.f. 12.09.2005.*
3. *Direct to restore office order No. 21-2-2015 NIM(ADMN) and order dated October 17, 2017*

2. The petitioner joined NIM (former NIPA) on deputation in 2003. His parent office upgraded his position to BS-18 in 2005. NIM initially approved the pay upgrade in 2017 but then withdrew the approval. The petitioner is now requesting the court to order NIM to fix his pay in BS-18 according to the original decision.

3. The petitioner who is present in person submits the petitioner submitted that he was an Administrative Officer (BS-17) deputed to NIPA in 2003, and due to the FST judgment of 2011, several posts, including District Accounts Officer and Audit Officer, were upgraded from BS-17 to BS-18 with effect from 12.09.2005. He contended that as he was on deputation at that time, he should also benefit from this upgradation of post, given that his parent office's rules and regulations apply to him; and that the order dated 12-9-2018 is illegal and void because it lacks merit and authenticity. He submitted that the impugned order violates Article 4 of the Constitution. It also violates Section 24-A of the General Clauses Act, of 1897. Besides it fails to provide reasons for the decision, as required by law. The petitioner requests this court to declare the impugned order illegal and void and direct the respondents to fix his pay according to the revised pay slip issued by AGPR Karachi, by restoring Office Order No. 21/2/2015-NIM(Admn) dated: October 17, 2017. The petitioner submitted that he being an Administrative Officer (BS-17) deputed to NIPA in 2003, and due to the FST judgment of 2011, several posts, including District Accounts Officer and Audit Officer, were upgraded from BS-17 to BS-18 with effect from 12.09.2005. He contended that as

he was on deputation at the relevant time, he should also benefit from such upgradation of the post. He requested this court to allow this petition.

4. Ms. Wajiha Mehdi, the Assistant Attorney General argued that the NSPP was established in 2002, incorporating several institutions including NIPA. She contended that the service matters of NSPP employees, including the petitioner, are governed by the NSPP's rules and regulations, which require him to approach the Federal Services Tribunal for redressal. She further argued that the current petition is not maintainable as it violates Article 212 of the Constitution. Therefore, she requested the dismissal of the petition.

5. We have heard the petitioner who is present in person and learned Assistant Attorney General on the maintainability of the petition and have perused the material available on record with their assistance.

6. The petitioner claims that the up-gradation of his post was wrongfully withdrawn without reason. He argued that the up-gradation was lawful and based on the Finance Division's order, not the Director General's. The government's lawyer contends that the up-gradation was not approved by the Selection Committee and was/is contrary to the law. However, the Finance Division clarified that the petitioner was not eligible for the up-gradation on the premise that the petitioner was a permanent employee of the National Institute of Management (NIM) Karachi on the date of approval ie. 24.08.2011 and his lien had been exhausted, therefore, the pay slip issued against the upgraded post of BPS-18 was/is not admissible under the law.

7. The petition regarding the upgraded post and pay fixation are not entertainable for the reasons that such matters are typically handled by administrative or service tribunals, and the legal grounds for this petition are insufficient as such this petition is dismissed, which involves disputed claims and counterclaims on the subject post, therefore this court is not in a position to dilate upon such disputes in constitutional jurisdiction.

JUDGE

JUDGE