

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1004 of 2013

Muhammad Khalid

Versus

Federation of Pakistan through Secretary, Ministry of Finance and
others

Date of Hearing:	24.02.2020
Petitioner by:	Mr. Abdul Rehman Khan, Advocate
Respondents by:	Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General Mr. M.A. Rehman Qureshi, Advocate for respondents No.2 and 3

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Khalid, impugns order No.83, dated 27.01.1999. Furthermore, the petitioner seeks a direction to the House Building Finance Company Limited/respondent No.2 (“H.B.F.C.”) to treat him as having been promoted to the post of Manager in the year 1998, and accordingly to modify order No.779, dated 29.11.2011.

2. The record shows that vide H.B.F.C.’s office order No.716, dated 22.06.1998, the petitioner was allowed a change of cadre from general cadre to technical cadre. This order was passed after the petitioner had opted for his seniority to be counted in the technical cadre.

3. Vide H.B.F.C.’s office order No.781, dated 04.08.1998, the petitioner was one of the six officers in the technical cadre who were promoted as Managers (Grade-II) on the recommendations of the Departmental Promotion Committee (“D.P.C.”).

4. Vide H.B.F.C.’s office order No.83, dated 27.01.1999, the above-mentioned office order No.781, dated 04.08.1998, was withdrawn till the fresh consideration of promotion cases by the D.P.C. The petitioner’s induction order (i.e. order No.716, dated 22.06.1998) was stated to have been reviewed and modified. The said office order conveyed the decision of the competent authority that officers of general cadre desirous of being inducted in the

technical cadre shall be considered as inducted in the technical cadre from the date of issuance of such induction orders.

5. On 27.01.1999, H.B.F.C. issued a provisional seniority list of officers in the technical cadre. The said list was issued on the basis of the above-mentioned office order No.83, dated 27.01.1999. The petitioner's name appeared at serial No.18 in the list of Assistant Managers.

6. Aggrieved by the issuance of office order No.83, dated 27.01.1999, the petitioner preferred representation dated 15.02.1999 before the Managing Director, H.B.F.C. On 20.05.1999, the petitioner's said representation was turned down.

7. The petitioner submitted an appeal to the General Manager (P&S), H.B.F.C. on 24.03.2001 against the withdrawal of office order No.781, dated 04.08.1998. The said appeal was turned down on 24.04.2001 on the ground that the petitioner's earlier representation had already been disposed of.

8. Vide H.B.F.C's office order No.26, dated 17.01.2002, the petitioner was one of the officers in the technical cadre who were promoted from Assistant Managers (Grade-III) to Managers (Grade-II).

9. On 06.08.2004, the petitioner submitted another representation to the Managing Director, H.B.F.C. praying for office order No.83, dated 27.01.1999 to be set-aside and to treat him as having been promoted as Manager (Grade-II) with effect from 04.08.1998. On 03.11.2004, the said representation was also turned down.

10. After the turning down of his representation, the petitioner filed writ petition No.3384/2006 before this Court. On 21.10.2008, this Court recorded the contention of the learned Legal Advisor of H.B.F.C. that in case the petitioner moves an application, the department would reconsider his case for ante-dated promotion. Vide order dated 21.10.2008, the said writ petition was disposed of and H.B.F.C. was directed to decide the matter within two months.

11. On 29.10.2008, the petitioner submitted an application to the Managing Director, H.B.F.C. requesting for office order No.83, dated 27.01.1999 to be set-aside and to treat him as having been promoted as Manager (Grade-II) with effect from 04.08.1998. On 12.01.2009,

the said application was dismissed by H.B.F.C. In H.B.F.C.'s letter dated 12.01.2009, it was explained to the petitioner that in order to remove the disparity/discrimination and variations in the effective dates of induction in the technical cadre, a uniform policy was formulated by the then management of H.B.F.C. to the effect that all inductions in the technical cadre as a result of change of cadre shall be reckoned from the date of the issuance of such induction order. The issuance of the said policy had resulted in the withdrawal of two promotion orders including that of the petitioner.

12. Dissatisfied with the rejection of the petitioner's said application dated 29.10.2008, he filed writ petition No.189/2009 before this Court.

13. On 06.06.2011, H.B.F.C. issued a circular according to which, all the costs incurred by H.B.F.C. in defending suits, petitions, appeals etc. initiated by an employee and which are ultimately withdrawn and/or dismissed shall be recovered from the salary of such employee.

14. Vide H.B.F.C.'s letter dated 04.11.2011, the petitioner was called upon to submit an indemnity bond prior to the issuance of his promotion orders. The petitioner was also provided with the draft of the indemnity bond which he was required to submit. After the indemnity bond submitted by the petitioner was not to the satisfaction of H.B.F.C., he submitted another indemnity bond on 17.11.2011. In the said indemnity bond, the petitioner had stated that he had withdrawn writ petition No.189/2009 since all his grievances which were the subject matter of the said petition had been addressed to his entire satisfaction, and that no other suit or petition filed by the petitioner against H.B.F.C. is pending in any Court.

15. On the recommendations of D.P.C., the petitioner was promoted as Chief Manager (Grade-I). The decision to promote the petitioner was conveyed by H.B.F.C. vide office order dated 29.11.2011. After the issuance of his promotion orders, the petitioner, on 28.12.2011, submitted yet another representation to the Managing Director, H.B.F.C. seeking for him to be treated as promoted as Manager (Grade-II) with effect from 04.08.1998 and for his seniority to be modified accordingly. One year and four months

after submitting the said representation, the petitioner filed the instant writ petition.

16. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that vested rights were created in the petitioner's favour when office order No.716, dated 22.06.1998 was issued by H.B.F.C., whereby the competent authority allowed the petitioner's change of cadre from general cadre to technical cadre; that at that time, the petitioner was serving as Assistant Manager (Grade-III); that thereafter, vide office order No.781, dated 04.08.1998, six officers in the technical cadre including the petitioner were promoted as Managers (Grade-II); that the order approving the change of cadre for the petitioner as well as the order whereby the petitioner was promoted as Manager (Grade-II) could not have been arbitrarily withdrawn by H.B.F.C. vide office order No.83, dated 27.01.1999; that the orders approving the change in cadre for the petitioner and the said promotion order had taken effect when the impugned office order No.83, dated 27.01.1999 was issued; that under the principle of *locus poententiae*, the said orders could not have been withdrawn; that in the said order No.83, dated 27.01.1999, it was explicitly mentioned that induction into the technical cadre shall be considered to have taken place with effect from the date of the induction orders; that H.B.F.C.'s office order No.716, dated 22.06.1998, shows that the petitioner's change of cadre to technical cadre had been approved prior to his promotion as Manager (Grade-II) on 04.08.1998; that the petitioner's seniority as Manager (Grade-II) should be reckoned from 04.08.1998 when his promotion orders were issued, and not from 17.01.2002 when he was again promoted as Manager (Grade-II) after the withdrawal of his earlier promotion order dated 04.08.1998; that this Court had disposed of writ petition No.3384/2006, vide order dated 21.10.2008, with the direction to H.B.F.C. to decide the petitioner's representation within two months; and that as regards writ petition No.189/2009, the petitioner was arm-twisted to withdraw the said petition so that his promotion orders as Chief Manager (Grade-I) could be issued. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

17. On the other hand, learned counsel for respondents No.2 and 3/H.B.F.C. drew the attention of the Court to the certificate of the learned counsel for the petitioner, wherein it is admitted that the instant writ petition is the third writ petition on the same subject, and submitted that the petitioner had embroiled H.B.F.C. in unnecessary litigation; that writ petitions No.3384/2006 and No.189/2009 had been dismissed as withdrawn; that the petitioner has already retired from service and since there is no provision in *pari materia* to F.R.17 in H.B.F.C.'s Service Regulations, this Court cannot direct H.B.F.C. to treat the petitioner as having been promoted as Manager (Grade-II) with effect from 04.08.1998; and that since the petitioner had withdrawn writ petition No.189/2009, he cannot re-agitate his grievance which was the subject matter of the said writ petition. Learned counsel for respondents No.2 and 3/H.B.F.C. prayed for the writ petition to be dismissed.

18. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 15 above, and need not be recapitulated.

19. The vital questions that need to be determined are whether this Court can set-aside H.B.F.C.'s office order No.83, dated 27.01.1999, whereby the petitioner's promotion as Manager (Grade-II) on 04.08.1998, was withdrawn, and whether this Court can direct H.B.F.C. to treat the petitioner as having been promoted as Manager (Grade-II) with effect from 04.08.1998.

20. The reason given in the impugned office order No.83, dated 27.01.1999 for withdrawing the petitioner's promotion order dated 04.08.1998 as Manager (Grade-II), was that the competent authority had ordered that the officers and officials "*of General Cadre desirous to be inducted in the Technical Cadre shall be considered and inducted in the Technical Cadre from the date of the issuance of such induction orders*".

21. Now, vide H.B.F.C.'s office order No.716, dated 22.06.1998, the change from the general cadre to the technical cadre for the petitioner had already been allowed by the competent authority. The

petitioner's promotion from Assistant Manager (Grade-III) to Manager (Grade-II) had been made vide office order No.781, dated 04.08.1998 on the recommendations of the D.P.C. after the petitioner's change in cadre had been approved by the competent authority. Through the impugned office order No.83, dated 27.01.1999, H.B.F.C. did not just withdraw the petitioner's said promotion order, but also reviewed his induction order dated 22.06.1998. None of the H.B.F.C.'s letters whereby the petitioner's departmental appeals and representations were decided give any rational for withdrawing his induction order dated 22.06.1998. It is not H.B.F.C.'s case that the said induction order dated 22.06.1998 had not been issued with the approval of the competent authority or that the petitioner did not fulfill the criteria or conditions for promotion as Manager (Grade-II), when D.P.C. recommended him for promotion and when he was promoted vide H.B.F.C.'s office order No.781, dated 04.08.1998. In para 4 of the written comments filed on behalf of H.B.F.C. on 17.05.2016, it has been pleaded *inter alia* that since in the year 1998, there were I.T. experts in the general cadre who had not been invited to apply for induction in the technical cadre, they had been discriminated against by not considering them for promotion when the petitioner was promoted as Manager (Grade-II) on 04.08.1998. This reason appears to be an afterthought since it does not find mention in any of H.B.F.C.'s letters whereby the petitioner's representations / departmental appeals had been decided. In some of these letters, the rational given for the withdrawal of the petitioner's promotion orders was that a uniform policy for induction for all officers in the general cadre into the technical cadre had to be adopted.

22. Be that as it may, it also needs to be determined whether the instant petition is maintainable in view of the fact that the petitioner had agitated his grievance which is the subject matter of the instant petition in two earlier petitions (i.e. W.P.No.3384/2006 and W.P. No.189/2009). As mentioned above, writ petition No.3384/2006 had been disposed of by this Court vide order dated 21.10.2008 with the direction to H.B.F.C. to decide the petitioner's representation within a period of two months. Learned counsel for H.B.F.C. was not

correct in his submission that the said writ petition has been dismissed as withdrawn. As regards writ petition No.189/2009, in the said petition the petitioner had also challenged H.B.F.C.'s office order No.83, dated 27.01.1999 as well as H.B.F.C.'s order dated 12.01.2009, whereby his representation submitted pursuant to the order dated 21.10.2008 passed in writ petition No.3384/2006, was dismissed. Writ petition No.189/2009 was dismissed as withdrawn vide order dated 27.10.2011 passed by this Court. For the purposes of clarity, the said order is reproduced herein below:-

“C.M.No.2588/2011

Through the instant application the applicant seeks withdrawal of the main writ petition. The same is allowed. Resultantly, the main writ petition is dismissed as withdrawn. C.M. stands disposed of.”

23. Order XXIII, Rule 1(3) C.P.C. provides *inter alia* that where a plaintiff withdraws from a suit, or abandons part of a claim, without the permission of the Court to file a fresh suit, he shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim. In the cases reported as 2004 CLC 1100, 2004 CLC 1860, 2000 CLC 1524, and PLD 2004 AJK S.C. 1, it was held that when a suit is withdrawn unconditionally, the plaintiff is precluded from bringing a fresh suit on the same cause of action. Writ petition No.189/2009 had been withdrawn unconditionally and not with permission to file afresh. It is well settled that the provisions of the Code of Civil Procedure, 1908 (“C.P.C.”) are applicable to writ petitions. Reference in this regard may be made to the law laid down in the cases of PLD 1970 S.C. 1, PLD 1992 S.C. 723, 1993 SCMR 1171, PLD 1994 S.C. 598 and PLD 2004 S.C. 70. Therefore, the provisions of Order XXIII, Rule 1(3) C.P.C. would be applicable to the case at hand. In the case reported as PLD 2000 Lahore 90, the Hon'ble Lahore High Court dismissed the second writ petition on the ground that the first writ petition on the same subject matter had been withdrawn unconditionally.

24. In substance, the relief sought by the petitioner in writ petition No.189/2009 is the same as the relief sought by him in the instant petition. Although, in the earlier and the subsequent writ petition, the petitioner had challenged office order No.83, dated 27.01.1999, and two different decisions of H.B.F.C. rejecting his representations but

it ought to be borne in mind that in the said representations, the petitioner had sought the same relief. A petitioner having withdrawn an earlier writ petition without permission of the Court to file a fresh one is considered to have relinquished his claim and was precluded from filing a second writ petition on the same subject matter. The petitioner never applied for the recall of the order dated 27.10.2011 whereby writ petition No.189/2009 had been withdrawn unconditionally. In the instant proceedings, this Court cannot hold that the petitioner was coerced by H.B.F.C. into withdrawing the said writ petition.

25. In view of the above, the instant petition is dismissed as not maintainable under the provisions of the Order XXIII, Rule 1(3) C.P.C. No costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

*Qamar Khan**

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