

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

C.P. No.D-4252 of 2016

Date	Order with signature of Judge
------	-------------------------------

Direction:

1. For hearing of Misc. No.10316/18 (U/A)
2. For order as to maintainability of petition.

05.04.2018.

Mr. Wasim Shaikh, Advocate for the petitioner.
Mr. Shehryar Mehar, AAG.

1. Urgency granted.
2. The instant petition has been filed with the following prayers:
 - i. *To set-aside the impugned Notification dated 16.01.2015.*
 - ii. *To direct the Respondent No.1, to decide the appeal of the Petitioner, expeditiously and pass the speaking orders thereof.*
 - iii. *Respondents be directed to restore the Petitioner in BPS-17 with all back benefits.*
 - iv. *Respondents be directed to refrain from taking any adverse, coercive and supra-legal action against the Petitioner, without due process of law in future as well.*
 - v. *The Respondents be permanently restraint from adopting such process in future and particularly the case in hand.*
 - vi. *Any other relief this Honorable Court deems fit and proper under the circumstances.*

Briefly stated, the facts of the case are that the petitioner was appointed as Assistant Accounts Officer in Small Dams Organization Sindh, which is stated to be working under the administrative control of the respondent No.2 i.e. Secretary Irrigation Department. The petitioner was working as Office Superintendent (BPS-16) in Lower Sindh Drainage Circle, Hyderabad since 2009 on regular basis. According to the petitioner, on 02.05.2011, in addition to the post of Office Superintendent, he was posted as Assistant Accounts Officer (BPS-16) on regular basis in the Project, namely, Small Dams Organization Sindh, which project was

subsequently regularized by the Government of Sindh w.e.f. 01.07.2011 by sanctioning the post of Assistant Accounts Officer in BPS-17. The petitioner then approached the respondent No.2 for his promotion from BPS-16 to BPS-17 on the said post and thereafter on 11.06.2012 considering his case the Departmental Promotion Committee, headed by the respondent No.2, promoted him from Office Superintendent to Assistant Accounts Officer by retaining him in BPS-16 however without granting BPS-17 as per the sanctioned post. The petitioner then once again approached the respondent No.2 for up-gradation of the post from BPS-16 to BPS-17 whereupon, vide Notification No.SO(A-IV)/14-4/2012, dated 24.10.2014, the post of Assistant Accounts Officer was up-graded to BPS-17 in favour of the petitioner, however, subsequently, on the instructions of the respondent No.4, the respondent No.2 issued the Notification dated 16.01.2015, whereby the earlier Notification dated 24.10.2014 with regard to up-gradation of the petitioner's post from BPS-16 to BPS-17 was withdrawn. Against the said Notification (dated 16.01.2015), the petitioner filed an appeal before the Respondent No.1 on 08.12.2015, which admittedly is pending, however, the petitioner without waiting for the order from the Respondent No.1, has filed the instant petition.

At the very outset, the learned counsel for the petitioner was asked to satisfy with regard to the maintainability of this petition, as when admittedly the appeal filed by the petitioner is pending before the Respondent No.1 how he, without waiting for the decision, can approach this Court for redressal of his grievance? In response to this question, the learned counsel for the petitioner stated that since substantial time has passed and no order has been passed by the Respondent No.1, thereafter the instant petition has been filed.

AAG, on the other hand, opposed the instant petition by stating that the same is not maintainable since when admittedly the appeal against the Notification dated 16.01.2015 is pending before the Respondent No.1, the instant petition being premature is not maintainable and the petitioner should pursue his matter before the Respondent No.1 in accordance with law.

We have heard both the learned counsel at some length and have also perused the record.

There is no denial to the situation that the appeal filed by the petitioner is pending before the Respondent No.1 and the petitioner, without waiting for the decision of the Respondent No.1, has filed the instant petition which, on the very face of it, appears to be premature and not maintainable. In our view, the petitioner should pursue his matter before the Respondent No.1 in accordance with law and the simultaneous action of the petitioner when the appeal filed by him is pending before the Respondent No.1 and yet filing the instant petition before this Court appears to be not in accordance with law. We, therefore, under the circumstances, do not find the instant petition to be maintainable and dismiss the same accordingly. However, the petitioner would be at liberty to pursue his matter before the Respondent No.1 and it is expected that the Respondent No.1 will consider the case of the petitioner and decide the same in accordance with law after providing opportunity of hearing to the petitioner.

JUDGE

JUDGE