

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-7995 of 2017

(Razia Sultana Tahir versus Federation of Pakistan and others)

Before:

Justice Muhammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

Date of hearing & Order: 02.10.2025

Mr. Malik Naeem Iqbal, advocate for the petitioner.

Mr. Raja Sami-ul-Haq Satti, advocate / legal advisor, Establishment Division/respondent 2, along with Abdul Qayum S.O Est Division, Islamabad.

Ms.Wajiha Mehi, Assistant Attorney General.

ORDER

Muhammad Karim Khan Agha, J. The present application for initiating contempt proceedings against the alleged contemnors arises out of the judgment passed by this Court on 02.11.2018 in the aforesaid matter, whereby a clear-cut direction was issued to the competent authority for afresh decision, without discrimination, on the issue of proforma promotion of the Petitioner in BS-22 along with allied benefits in accordance with law, more particularly in the terms of the aforesaid orders, passed by the Honorable Supreme Court of Pakistan, within a period of two [2] months' from the date of receipt of this Judgment. The previously mentioned judgment was assailed before the Supreme Court of Pakistan, and the same was dismissed vide order dated 16.09.2024 with the following observation: -

“ Through this appeal, the appellants have challenged the judgment of the High Court of Sindh, Karachi, dated 02.11.2018, whereby C.P. No. D-7995 of 2017, filed by the respondent, was remanded to the Competent Authority for a fresh decision, within a period of two months from the date of receipt of the judgment

2. We have gone through the impugned order and note that the same is well reasoned and has aptly discussed all the factual and legal issues and, thus, warrants no interference by this Court. We are sanguine that the appellants will proceed with the matter expeditiously and decide the same in terms of the impugned order. Disposed of accordingly. ”

2. The petitioner applied to Sections 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No.8226 of 2025) for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional, and deliberate act of disobeying the above-mentioned judgment and order dated 02.11.2018 passed by this Court, merged into the order dated 16.9.2024 of the Supreme Court in Civil Appeal No.1294 of 2019.

3. Malik Naeem Iqbal, learned counsel for the applicant, has submitted that since the alleged contemnors had failed to comply with the judgment/orders passed by this Court in the aforesaid matter, as such contempt proceedings may be

initiated against them, in terms of order dated 16.9.2024 passed by the Supreme Court.

4. Learned counsel for the alleged contemnors, has refuted the claim of the applicant/ petitioner and referred to the documents filed by the alleged contemnors and argued that repeated compliance with the judgments of this Court dated November 2, 2018, and the Supreme Court of Pakistan dated September 16, 2024, has been made. He submitted that the petitioner's case for proforma promotion to BS-22 was meticulously considered by the High-Powered Selection Board (HPSB) on May 20, 2019, and again on March 5 and 10, 2025, pursuant to the respective court directions. As the competent authority has twice reviewed the record and not recommended the petitioner for promotion under FR-17(1), the directives of the superior courts have been fully complied with, and argued that the respondents have rightly opined that such a petitioner is not entitled to be given proforma promotion. He lastly prayed for dismissal of the contempt application.

5. We have heard learned counsel for the applicant and learned counsel appearing on behalf of the alleged contemnors on the listed application.

6. We have been informed that the High-Powered Selection Board considered the petitioner's case for proforma promotion to BS-22 twice, on December 26, 2012, May 20, 2019, and March 5, 2025. The Board reviewed the record, reiterated its original decision dated December 26, 2012, and concluded the same findings that the petitioner was not fit for promotion or referral to the FR-17(1) Committee.

7. We are surprised to note that this Court has already discarded the point of view of the HPSB vide judgment dated 02.11.2018 in the following terms:-

“14. Perusal of the recommendation of HPSB, prima facie, shows the following factual position:-

“The Board noted that the officer had very good PERs and earned 69.01% in Pakistan Administrative Staff College’s report. The Board observed that a cursory look at her postings in BS-20 and BS-21 shows that she has never been posted outside Karachi and has been confined to Pakistan Customs only. She has not got the exposure to policy-making at the Federal Secretariat. It was observed that she would not be suitable for the job of a Federal Secretary as she lacks the diversity and versatility required for the slot. The Board did not recommend her for elevation in the Secretariat Group. Not recommended for promotion to the post of Federal Secretary (BS-22) in the Secretariat Group. However this would not prevent the consideration of the officer in her own Service/Group, if and when a vacancy arises.”

18. Apparently, the Petitioner has been given highly discriminatory treatment for no plausible reason whatsoever by not giving the benefit of the order dated 27.4.2015 passed by the Hon’ble Supreme Court of Pakistan in Civil Petition No.472/2014 to the Petitioner.”

19. *We, therefore, under the circumstances of the case are of the considered view that the matter of the Petitioner went up to the level of the Hon'ble Supreme Court of Pakistan and the Hon'ble Apex Court directed that the case of the Petitioner be referred to FR-17(1) Committee for reconsideration, such report of the committee was placed on record before the Hon'ble Supreme Court in CRP No-Nil of 2017 and the Hon'ble Supreme Court observed that if the Petitioner has any grievance against minutes of the meeting, she may seek her remedy before an appropriate forum available to her under the law.*

20. *Looking through the above perspective and keeping in view the factual position of the case, we hereby infer that the Petitioner's case ought to have been placed before the HPSB for appropriate orders in the light of the orders dated 18.12.2015 and order dated 25.10.2017 passed by the Honorable Supreme Court.*

21. *In view of the facts and circumstances of the case and for the reasons alluded to above, we are of the considered view that the issue in hand is fully covered by the decision dated 27.4.2015 rendered by the Hon'ble Supreme Court in Civil Petition 10 No.472/2014. Prima facie, the claim of the Petitioner for her proforma promotion in BS-22 is tenable under the law."*

8. We are not impressed by the submissions of learned counsel for the alleged contemnors that the petitioner is not entitled to be given proforma promotion, as the respondents took the same stance when this petition was disposed of, and their stance was not considered by this Court in terms of paragraph 21. They narrated that the petitioner was not recommended for Federal Secretary (BS-22) in the Secretariat Group. The Board denied the promotion based on the petitioner's limited diversity and policy-making exposure. While acknowledging good performance and training, the Board noted her postings were confined to Karachi Customs. This was deemed insufficient for the versatility required for the BS-22 role. However, this decision allows for future consideration within her own service group, but the petitioner submits that the competent authorities' mindset remains unchanged, which has already been discarded by this Court, and as such, no further indulgence is required to deliberate on the subject issue. Prima facie, such an opinion is not appreciated at all, which is hereby discarded.

9. The Supreme Court in the case of Bashir Ahmed Anjum (2025 SCMR 206) has held that an employee may be considered for a proforma or notional promotion if an administrative error or delay caused him to retire before being considered for a promotion he was otherwise entitled to. This compassionate principle, embedded in Fundamental Rule 17 of the FR&SR, can be invoked when a civil servant, through no fault of his own, missed a promotion despite meeting all eligibility, fitness, and seniority requirements. In such cases, the employee has a legitimate expectation to be granted the promotion and its benefits. The Supreme Court in the case of Federation of Pakistan v. Jahanzeb (2023 PLC(CS) 336) has repeatedly affirmed that proforma promotion is applicable when an employee is not considered for a deserved promotion due to

administrative delays or errors, leading to their retirement without the promotion. This ruling emphasizes that such delays cause "significant hardship" for civil servants and lead to "unnecessary litigation." In the case of Homoeo Dr. Asma Noreen Syed v. Government of the Punjab (2022 SCMR 1546), the Supreme Court established that a retired civil servant may be granted a proforma promotion if his/her right to that promotion matured before his/her retirement but was not realized due to administrative errors. The case was remanded to the Service Tribunal for a fresh decision, confirming the validity of such claims.

10. The Supreme Court's judgments in Ghulam Qadir Thebo v Islamic Republic of Pakistan & others (unreported judgment dated June 4, 2025) and Ahmed Owais Peerzada v Principal Secretary to the Prime Minister & others (2025 SCMR 819) is most relevant on the subject issue, the respondents shall comply with the decision of the supreme court and apply the same analogy in the instant case.

11. In light of the facts and circumstances, this court is left with two options: either to initiate proceedings against the alleged contemnors under the Contempt of Courts Ordinance, 2003, or Article 204 of the Constitution. Or direct the Competent Authority to implement the judgment (now merged with the Supreme Court's decision) in letter and spirit. We choose the latter, directing that the petitioner's case for proforma promotion to BS-22 be processed by circulation. Since the petitioner is already retired, this proforma promotion will not affect the seniority of serving officers, only entitling her to consequential emoluments and pensionary benefits.

12. We are of the considered view that the interest of justice would be best met if the alleged contemnors/competent authority is granted last opportunity to comply with the direction of this Court as well as the Supreme Court in the instant matter without fail within one month (01) and to submit compliance report to this Court on the next date of hearing, failing which show cause notice shall be issued to alleged contemnors on the next date of hearing.

13. To come just after one month, when alleged contemnors must be present in Court along with their compliance report.

HEAD OF CONST. BENCHES

JUDGE

SHAFI