

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-3555 of 2016

Muhammad Tariq Khan & others..... Petitioners

Versus

Federation of Pakistan & others Respondents

Disposed of matter

01. For order on CMA No. 19213/2018.

02. For order on CMA No. 19212/2018

Date of hearing: 31.05.2018

Mr. Ahmed Ali Ghumro Advocate for the Petitioner

Mr. Shaikh Liaquat Hussain, Assistant Attorney General along with Mr. Sohail Shahzad, Deputy Director of Plant Protection Department.

ORDER

The instant petition was disposed of vide Judgment dated 28.03.2018 with the following observation:-

“We, therefore, dispose of this petition by observing that let the respondent no.3 complete the process of selecting best suitable candidate for the post of PPA on all over Pakistan basis keeping in view Rule 14 as well as the proviso added vide SRO and while doing so they are directed to consider the case of Respondent NO.5 also as one of the prospect candidate, if he applies for the above post without objecting to his age, which aspect has already been discussed above. We expect that the said exercise/process would be completed within two months in

accordance with law from the date of receipt of this judgment.

21. With the above directions the instant petition along with the listed applications stand disposed of.”

The Respondents impugned the aforesaid judgment passed by this Court before the Hon’ble Supreme Court of Pakistan in Civil Petition No. 1247 of 2018 and the Hon’ble Supreme court vide order dated 09.05.2018 has held as under:-

“11. We may however, observe that the process of fresh recruitment shall be conducted strictly in accordance with the letter and spirit of the impugned judgment of the High Court dated 28.03.2018 and the law.

12. This petition is accordingly dismissed and leave to appeal is refused.”

On 25.05.2018 Respondent No.3 has filed an application bearing CMA No. 19212/2018 prying therein for extension of time as directed by this Court vide Judgment dated 28.03.2018 on the premise that in pursuance of the judgment passed by this Court the Respondent No.3 resumed the process of requirement of Plant Protection Advisor / Director General, Department of Plant Protection, thereafter Respondent received 15 applications against the aforesaid post, which were in the process of scrutiny / short listing; that in the meanwhile the Election Commission of Pakistan vide Notification dated 11th April 2018 imposed complete ban on all kinds of recruitment in the Ministries / Divisions / Departments / Organizations.

Mr. Shaikh Liaquat Hussain, learned Assistant Attorney General representing the Respondent No.3 has contended that due to imposing of ban by ECP the recruitment process against the post of Plant Protection Advisor / Director General, Department of Plant Protection was put on hold by the Respondent No.3; that in pursuance of rule 14 (1) (a) of Rules of Business 1973, the advice of law and justice division was sought by the Respondent No.3 vide letter dated 30.04.2018 and the Law Division opined that situation emanating from the Notification of the ECP may be submitted to this Court for seeking extension of time limit; that the process of the selection i.e scrutiny of 15 applications, interview of short listed candidates by high power of selection committee under the chairmanship of summary to the Prime Minister in terms of Rule 6 of Civil Servant (Appointment, Promotion and Transfer) Rules 1973 would take 2/3 months more. He lastly prayed for extension of time to comply the judgment passed by this Court as well Hon'ble Supreme Court of Pakistan vide order dated 09.05.2018 in civil Petition No. 1247 of 2018.

Mr. Ahmed Ali Ghumro, learned counsel for the Petitioners has waived the notice of the listed application and argued that the judgment passed by this Court in the aforesaid case has been upheld by the Hon'ble Supreme Court vide order dated 09.05/.2018 in Civil Petition No. 1247 of 2018; that the Hon'ble Supreme Court has directed the Respondents to process the recruitment against the post of Plant Protection Advisor / Director General, Department of Plant Protection Karachi strictly in

accordance with the judgment dated 28.03.2018 passed by this Court. He lastly prayed that the listed application has been filed with malafide intention. He lastly prayed for dismissal of the listed application with cost.

We have heard the learned counsel for the Petitioner and learned AAG on the listed application.

Learned counsel for the Petitioner has informed this Court that the judgment passed by this Court in the aforesaid case has been maintained by the Hon'ble Supreme Court of Pakistan passed in Civil Petition No. 1247 of 2018 vide order dated 09.05.2018 and has held as under:-

“9. We have heard the learned counsel for the petitioner. the main thrust of his argument against the impugned judgment is that a right had come to vest in the petitioner by reason of a recommendation for his appointment made by the Federal Public Service Commission (FPSC) to the Secretary, Minister of National Food Security and Research, Government of Pakistan. Such vested right could not have been taken away pursuant to the notification. Relies on Farzana Qadir v. Province of Sindh (2000 PLC (CS) 225). He has further argued that the notification could not have been given retrospective effect.

10. We have carefully gone through the record. It is clear and obvious to us that the recommendation of the petitioner was issued vide letter dated 12.05.2017, while the first notification which was impugned before the learned High court was dated 28.03.2017. therefore, we are afraid, the argument of the leaned counsel is ex facie misconceived and unsupported by the record. On the contrary, the record shows that the letter of recommendation, relied upon by the petitioner, was issued on 12.05.2017 while the notification challenged before the High Court was dated 28.03.2017, even otherwise, we are in agreement with the finding of

the High Court that the impugned notification was in nature of a clarification and could be given retrospective effect. The learned High Court was therefore quite justified in holding that the impugned advertisement for the post of Plant Protection Advisor and Director General being violative of the relevant SRO was liable to be struck down. The learned High Court has assigned valid and legally sustainable reasons for its conclusions which do not suffer from perversity. These are duly supported by the record. We have not found any illegality, irregularity or flaw in the exercise of its jurisdiction by the High Court. The judgment (Farzana Qadir's case (ibid) relied upon by the learned counsel for the petitioner is not attracted to the facts and circumstance of the instant case. It is clearly distinguishable on facts as well as the principles of law. No other ground was urged by the learned counsel for the petitioner. We are therefore not inclined to interfere in the impugned judgment of the High Court.

11. We may however, observe that the process of fresh recruitment shall be conducted strictly in accordance with the letter and spirit of the impugned judgment of the High Court dated 28.03.2018 and the law.

12. This petition is accordingly dismissed and leave to appeal is refused."

In the light of order dated 09.05.2018 passed by the Hon'ble Supreme Court of Pakistan in the aforesaid case, we are of the considered view that the Respondent No.3 is required to implement the order dated 09.05.2018 passed by the Hon'ble Supreme Court of Pakistan in its letter and spirit.

In view of the foregoing, we are of the considered view that the judgment passed by this Court in the case of Muhammad Tariq Khan supra has already directed the Respondent Secretary Ministry of NFS&R to make regular appointment to the post of Director General, Plant Protection Advisor BPS-20 in accordance

with Rule 14 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 as amended vide Notification dated 28.3.2017 issued by the Respondent No.1. The Hon'ble Supreme Court has also observed that the process of fresh recruitment for the post of Department of Plant Protection Advisor and Director General (BS-20) shall be conducted strictly in accordance with letter and spirit of the Judgment dated 28.03.2018 passed by this Court.

In the light of above facts and circumstances of the case, we are not convinced with the reasons assigned by the Respondent No.3 in his application, resultantly, Respondents No.3 has failed to make out a case for extension of time in view of the directions given by the Hon'ble Supreme Court of Pakistan vide order dated 09.05.2018 in the case of Dr. Waqas Wakil Vs. Muhammad Tariq Khan & others in Civil Petition No. 1247 of 2018, the same shall be complied with in letter and spirit.

With the above observation, the listed application bearing CMA No. 19212/2018 is dismissed accordingly.

These are the reasons of our short order dated 31.05.2018 whereby we have dismissed the listed application.

Karachi
Dated: 31.5.2018

JUDGE

JUDGE