

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No.D-4330 of 2018

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Syed Muhamamd Ali RazaPetitioner

Versus

Federation of Pakistan and another.....Respondents

Date of hearing: 01.06.2018

Mr. Adnan Memon, Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, the Petitioner has prayed for the following relief(s).

- i) ***Declare that the impugned Notification dated 06.11.2013 is illegal void ab initio, arbitrary in the eyes of law.***
- ii) ***To direct the Respondent No.1 to issue notification of the Petitioner by placing his seniority with his batch mates as the law settled by the Hon'ble Supreme Court of Pakistan and refrain from discriminating the Petitioner from any manner what so ever.***

2. Brief facts of the case in nutshell are that the Petitioner was appointed as Deputy Superintendent of Police BS-17 on 15.10.1995 in Sindh Police. Petitioner has submitted that as per seniority list dated 07.04.2011 issued by the Respondent No. 2 to 4, the Petitioner's encadernent in Police Service of Pakistan was

allowed vide Notification dated 17.12.2012 issued by the Respondent No.1. Petitioner has averred that subsequently the Respondent No.1 issued a Notification dated 06.11.2013, wherein the encadrement of the Petitioner was withdrawn in pursuance of the Judgment dated 12.06.2013 passed by the Hon'ble Supreme Court of Pakistan in Cr. Org. Petition No. 89 of 2011 and had declared out of turn promotions of various officers/ officials of the Sindh Government as null and void, including the Petitioner. Petitioner has submitted that on 07.01.2014 Respondent No.2 intimated the Respondent No.1 with respect to the seniority of Provincial Police Officers vide letter dated 04.12.2013 to take further action relating to encadrement of the Petitioner in police service of Pakistan as per rules. Petitioner has added that after lapse of more than 19 months Respondent No.2 issued Notification dated 31.08.2015 for encadrement of the Petitioner in Police Service of Pakistan (PSP) without determination of inter-se seniority and till date no inter-se seniority has been fixed by the Respondent No.1. Petitioner has submitted his representation on the issue of fixation of inter-se seniority in PSP cadre was regretted vide letter dated 04.04.2018 by the Respondent No.1 by relying upon the Judgment dated 15.12.2014 passed by the Hon'ble Supreme Court of Pakistan in Civil Appeals No. 1122 and 1123 of 2011, 431 of 2013, 1343 of 2014 and Cr, Appeal No. 436 of 2011. Petitioner being aggrieved by and dissatisfied with the impugned letter dated 04.04.2018 and Notification dated 06.11.2013 has filed the instant petition on 31.05.2018.

3. Mr. Adnan Memon, learned counsel for the Petitioner has contended that, basically the Petitioner has impugned the Notification dated 06.11.2013 issued by the Respondent No.1 on the ground that in pursuance of the Judgment dated 12.06.2013 passed by the Hon'ble Supreme Court of Pakistan in Cr. Org. Petition No. 89 of 2011, wherein out of turn promotion of various police officers of Sindh Government were declared as null and void; that the Respondent No.1 has failed and neglected to consider the Judgment dated 05.01.2015 passed by the Hon'ble Supreme Court in Review Petitions No. 193 of 2013 etc, wherein it was categorically clarified that the seniority of a person shall be fixed with his batch mates in the same order as if he was never given out of turn promotion, and intervening period they shall also be promoted with their Batch mates, maintaining their inter-se seniority while deciding the representation of the Petitioner, which has caused grave prejudice to the Petitioner; that the impugned Notification dated 06.11.2013 is against the basic principles of law and the Judgment passed by the Hon'ble Supreme Court of Pakistan as discussed supra. Learned counsel for the Petitioner in support of his contention has relied upon the judgment dated 15.12.2014 and 05.01.2015 passed by the Hon'ble Supreme Court of Pakistan and argued that necessary directions may be issued to the Respondent No.1 to issue Notification of the Petitioner by placing his seniority along with his batch mates as per the decisions rendered by the Hon'ble Supreme Court of Pakistan as discussed supra. He lastly prayed for allowing the instant petition.

4. We have heard the learned counsel for the Petitioner and perused the material available on record.

5. Upon query by this Court as to how this Petition is maintainable in respect of the inter-se seniority claimed by the Petitioner in PSP cadre. Learned counsel for the Petitioner reiterated that the inter-se seniority of the Petitioner is to be made in accordance with law and the dicta laid down by the Hon'ble Supreme Court in the cases referred to hereinabove. He has further argued that the Respondent No.1 has already allowed the inter-se seniority to Mr. Meer Hussain Lehri and other police officers of Baluchistan with his Batch mates on the orders of the learned High Court of Baluchistan and denying the same to the Petitioner would be in violation of Article 25 of the Constitution, as such the Petitioner seeks similar treatment as meted out with his colleagues as per law, therefore the instant petition is maintainable.

6. We have heard the learned counsel the issue before us is whether the Petitioner is entitled to maintain his inter-se seniority in PSP cadre as per Rules 7 & 11 of the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985 or his seniority in Provincial Police Service can be counted in PSP cadre?

7. We have noticed that this Court vide Judgment dated 30.10.2014 in C.P No.D-1085/2013 and other connected Petitions reported in (2014 PLC (C.S) 1363) has already resolved the

aforesaid issue in paragraph No. 16 of the Judgment which reads as under:-

“16. In the wake of above discussion, the aforementioned constitutional petitions are admitted to regular hearing and are disposed of in the following terms along with pending applications:-

- (a) In the present scenario, predominantly due to inordinate delay or inaction on the part of Province of Sindh in making the recommendations for the appointment under Rule 7 of the PSP Rules, 1985 on time, the petitioners are not entitled to claim antedated seniority. Consequently, their claim of antedated seniority is rejected and their seniority will be reckoned in the present situation from the date, of their Notification of encadrement in PSP and not from the date of arising of vacancy.**
- (b) In future, the Province of Sindh shall send their recommendations immediately for appointment of members of police cadre of province of Sindh in accordance with Rule 7 of PSP rules, 1985 upon arising of vacancies against their share in PSP and they are also directed to send recommendations for remaining and or unfilled vacancies in PSP as specified in the Schedule.**
- (c) The benefit of Rule 11(2) © of PSP Rules, 1985 shall be given in future to all those members of Police Cadre who are recommended for appointment in PSP by the province immediately and promptly upon occurrence of vacancy in PSP.**
- (d) In order to avoid complications and combative repercussions in future, the Secretary Establishment division, Government of Pakistan, is also directed to issue Notification of encadrement immediately upon receiving the recommendations from the Province for appointment under Rule 7 of PSP Rules, 1985 so that retroactive or ex post facto seniority issue/dispute should not crop up or come into sight amongst the members of PSP, if the notification of encadrement shall be issued immediately by the Secretary, Establishment Division Government of Pakistan, Islamabad**
- (e) All pending applications are disposed of in the above terms. The interim orders are also vacated.**

8. The aforesaid Judgment of this Court was assailed in Civil Appeal No. 1343 of 2014 before the Hon’ble Supreme Court of

Pakistan, which was maintained vide Judgment dated 15.12.2014 with the following observations:-

“In view of the above the notification dated 11.12.2007 appointing the police officers from the Province of K.P.K. w.e.f 21.10.1997 retrospectively was in violation of Rule 7 of the Rules, 1985. Similarly, the High Court of Sindh had erred in directing retrospective encadrement of Provincial Police officers in PSP. These are the reasons for our short order of the same date which reads:-

“For reasons to be recorded separately, civil Appeals Nos. 1122 and 1123 of 2011 and civil Appeal No. 1343 of 2014 are dismissed, whereas Criminal Appeal No. 436 of 2011 and civil Appeal No. 431 of 2013 are allowed. The impugned judgments/orders are set aside.”

9. Admittedly, the Petitioner was encadred in Police Service of Pakistan on 3.07.2015 vide Notification dated 24.3.2016 and his seniority could be reckoned from the date of his encadrement in PSP cadre hence his seniority cannot be counted from the date of service in Provincial Police Cadre. We are clear in our mind that the appointment of the encadred police officers from the provinces is to be made with prospective effect and not with retrospective effect. The assertion of the Petitioner, prima facie is not tenable if it is allowed it would amount to appointing police officers from provinces retrospectively, which is in violation of Rule 7 of the (Composition, Cadre and Seniority) Rules, 1985.

10. The contention of the Petitioner with respect to his seniority in PSP cadre is to be maintained with his batch mates who were in Provincial Police Cadre now encadred in PSP Cadre if any is also devoid of substance and merits no consideration for the simple reason that this principle has also been settled by the

Honorable Supreme Court in the case of Asim Gulzar. (2015 SCMR 365).

11. In the light of above discussion, we are sanguine that the Petitioner is in Police Service of Pakistan cadre and his service is governed by the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985 and not under the Civil Servants (Seniority) Rules 1993 as held by the Hon'ble Supreme Court in the case of Asim Gulzar (Supra) at Paragraph 12.

12. Reverting to the plea taken by the learned counsel for the Petitioner that the Notification dated 6th November 2013 needs to be recalled is concerned, we are of the considered view that the Respondent No.1 issued the aforesaid Notification strictly in compliance of the Judgment dated 12.06.2013 passed by the Hon'ble Supreme Court of Pakistan in Cr. Org. Petition No. 89 of 2011 (2013 SCMR 1752), therefore at this juncture we are not inclined to set aside the Notification dated 06.11.2013 issued by the Respondent No.1.

13. The next assertion of the Petitioner is that his seniority shall be maintained along with his Batch mates who have been encadared in Police Service of Pakistan and relied upon the case of Ali Azhar Khan Baloch Vs. Province of Sindh and others (2015 SCMR 456) and case of Asim Gulzar supra.

14. Upon perusal of the Judgment rendered by the Hon'ble Supreme Court of Pakistan in case of Ali Azhar Khan Baloch supra, we are of the considered view that the aforesaid Judgment of the Hon'ble Supreme Court is very much clear in its terms and

do not support the case of the Petitioner as asserted by the him. As per learned counsel for the Petitioner that out of turn promotion of the Petitioner was withdrawn and thereafter his inter-se seniority was maintained along with his Batch mates by the Sindh Government in the year 2012, therefore the Petitioner should be considered in PSP cadre from that date with seniority. Since the Petitioner had already been allowed to maintain his inter-se seniority with his Batch mates before his encadrement, therefore, we are of the considered view that in PSP Cadre the Petitioner's assertion cannot be accepted for the simple reason that the seniority in PSP cadre can be reckoned from the date of encadrement in PSP cadre i.e. 03.07.2015 and not from the year 2012 when his seniority was maintained by the Provincial Government. In this regard we refer to Rule 7 and 11 of the Rule (Composition, Cadre and Seniority) Rules, 1985, which clarifies the position of the matter in hand.

15. In view of the above discussion, we are of the considered view that seniority of the Petitioner in PSP service/cadre is to be reckoned from the date of encadrement as clearly held by the Hon'ble Supreme Court in its Judgment discussed supra. The Petitioner's claim is untenable and the Petition is devoid of merit.

16. The Petition is accordingly dismissed in limini along with all the listed application(s).

JUDGE

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