

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

**Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon**

C.P No. D- 5495 of 2019

Muhammad Ismail DaudpotaPetitioner

Versus

Province of Sindh
& 03 othersRespondents

Date of hearing: 28.08.2019

Date of Order : 28.08.2019

Mr. Ali Asadullah Bullo, advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner has filed the instant petition, for implementation of order dated 18.7.2019 passed by the Chief Secretary, whereby his Service Appeal under the Sindh Civil Servants Appeal Rules,1980 was decided in his favour, and Notification dated 25.7.2019 of his promotion to the post of Superintendent Engineer (BS-19).

2. We reminded the learned Counsel for the petitioner that we are not executing Court of Chief Secretary, Government of Sindh to implement his orders, thus the Petition under Article 199 of the Constitution is misconceived on the premise that Chief Secretary, Sindh is competent enough to implement his orders under the Sindh Government Rules of Business,1986.

3. Mr. Ali Asadullah Bullo, learned Counsel for the Petitioner has submitted that Respondent-department has failed to discharge his official duty by not only conceding the fact that the Petitioner has been recommended for promotion in BS-19 by the Provincial Selection Board-II; that this Court is competent to issue a writ of

mandamus, ordering the Government officials to properly fulfill their official duties or correct an abuse of discretion; that the Petitioner is not only eligible for the promotion to the next higher grade but he is also quite fit and suitable candidate for the post of Superintendent Engineer (BS-19); that the silence of the Respondents is offensive in its nature and against the civil service law. Learned Counsel states that he will be satisfied if an appropriate direction may be issued to the Respondents to actualize the promotion of the petitioner as Superintendent Engineer (BS-19) in accordance with law.

4. Mr. Shahryar Mahar learned AAG present in Court in some other cases waives notice of the instant Petition and seeks disposal of the case in the manner that direction may be given to Chief Secretary to pass an appropriate order in the matter of the petitioner in accordance with law.

5. We have heard learned Counsel for the petitioner on the aforesaid proposition and perused the record minutely.

6. We have noticed that the post of Chief Secretary is the senior-most position held in the civil services. The Chief Secretary is authorized to facilitate co-ordination amongst the Departments, provide a venue for the consideration of matters of common interest and tender advice on any case that may be referred to it by the Chief Minister or the Cabinet and any doubt or dispute as to the Department to which a case primarily pertains shall be referred to the Chief Secretary, whose decision, subject to the general or special directions of the Chief Minister in this behalf, shall be final. Under Rule 21 of Sindh Rules of Business, 1986 provide the powers of Chief Secretary, as under:

In addition to the duties and functions assigned to him under any other provisions of these rules, the Chief Secretary shall----

(a) be the Chief Advisor to the Governor and Chief Minister in administrative matters;

(b) exercise, on behalf of the Chief Minister, powers of appointing authority except the power of appointment (other than additional or current charge), transfer, promotion, disciplinary action and matters mentioned at serial numbers

4,6,7 and 19 of Sixth Schedule in respect of officers in B-19 and above;
 Functions and Powers of the Chief Secretary 9 field;
 (c) be the official head of the Secretariat;
 (d) Co-ordinate the activities of all Departments in the administrative
 (e) be the Chairman of the Selection Board No II constituted by Government for making appointments to tenure posts and other senior posts under Government in B-18 (which special pay) and B19;
 (f) have the power to call for any case or information from any Department, Attached Department, Regional Office, or any other office; and (g) be the Secretary of the Cabinet.

7. It appears from the record that the order was approved by the Chief Secretary for promotion of petitioner in BS-19 vide notification dated 25.7.2019, therefore, the petitioner is entitled to all the benefits arising therefrom.

8. We are of the opinion that since no order of the Government is being called in question and only an obligation to perform its duties to pass orders within a reasonable time is being invoked, this Court has jurisdiction to grant redress. On the aforesaid proposition we are fortified with the decision rendered by the Honorable Supreme Court in the case of PROVINCE OF SINDH through Chief Secretary Sindh, Karachi and 4 others Versus GUL MUHAMMAD HAJANO (2003 P L C (C. S.) 64).

9. In the light of the above facts and circumstances of the case and without touching the merits of the case, by consent this Petition is disposed of with direction to the Chief Secretary to look into the matter of the petitioner and if the case of petitioner squarely falls with the parameters of law pass appropriate directions accordingly within a reasonable time.

10. This Petition is disposed of along with listed applications. Let a copy of this order be transmitted to the Chief Secretary, Sindh for his information and compliance.

JUDGE

JUDGE