

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –2797 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Muhammad Rashid Bhatti

Versus

Federation of Pakistan and 02 others

Date of hearing & order : 03.11.2020

Malik Naeem Iqbal advocate for the petitioner.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner is serving as Inspector [BPS-16] in Federal Investigation Agency (FIA) and seeks promotion to the post of Assistant Director (Investigation-BS-17), which has been deferred vide office certificate dated 06.04.2020 on account of pendency of de-novo inquiry, as per Judgment dated 30.5.2017 passed by learned Federal Service Tribunal (FST) in Service Appeal No.50 (K)CS/2014. The said judgment was upheld by the Honorable Supreme Court vide order dated 13.4.2018 passed in Civil Petition No.2897 of 2017.

2. At the outset, we queried from the learned counsel for the Petitioner whether de-novo inquiry was conducted by the respondent-department. Petitioner admits that the same has not been done yet.

3. Malik Naeem Iqbal, learned Counsel for the petitioner, attempted to give a brief history of the case and contended that the petitioner was served with a charge-sheet and statement of certain allegations which were culminated into his exoneration vide order dated 25.2.2019 passed by the competent authority. He emphasized that there was / is nothing adverse against the petitioner and the Departmental Promotion Committee had no mandate under the law to order for deferment of his promotion; that the said action of the respondents was arbitrary and capricious thus untenable in law; that Section 24-A of the General Clauses Act, 1897, obliges every person exercising powers conferred by a statute, to act "reasonably, fairly, justly and for the advancement of the purpose of the enactment". Therefore, unreasoned order of his deferment of promotion to the post of Assistant Director (Investigation BS-17), without providing the opportunity of hearing is violative of various provisions of the Constitution and law; that there is no other efficacious and adequate remedy available with the Petitioner but to invoke the Constitutional Jurisdiction of this Court for the

relief(s) as prayed in the Memo of Petition. In support of his contentions, he relied upon the cases of Zarai Taraqiati Bank Ltd v. Aftab Ahmed Kolachi and another (2009 SCMR 129), Sabir Iqbal v. Cantonment Board, Peshawar and others (PLD 2019 SC 189), and Athar Rahim v. Government of Khyber Pakhtunkhwa and 3 others (2020 PLC (C.S) 918).

4. We have noticed that the petitioner's earlier petition bearing No.513/2019 was dismissed by this Court vide order dated 26.04.2019 on the ground that his case for consideration of promotion in next rank was declined twice by the respondent-department due to his supersession. Learned counsel for the petitioner attempted to justify that his basic supersession was / is illegal and the respondent-department has taken the subsequent steps. Per learned counsel, the said supersession is no more in the field. Be that as it may, admittedly, the petitioner has impugned the aforesaid order before the Hon'ble Supreme Court which is pending adjudication, therefore, no findings can be given on the aforesaid issue.

5. We are not satisfied with the arguments advances on behalf of the petitioner as the judgments of learned Federal Service Tribunal and Hon'ble Supreme Court for holding denovo inquiry against the petitioner have admittedly not yet been complied with, and also as the deferment impugned now through the present petition has been made for want of denovo inquiry against him. In view of the above, the impugned decision of the respondents does not require any interference by this Court. The case law relied upon by learned counsel for the petitioner is distinguishable from the facts of the cast at hand.

6. Besides that, his case falls within the ambit of the Civil Servants Act, and Rules framed thereunder and this Court has no jurisdiction under Article 212 of the Constitution. We are of the firm view that the expression "terms and conditions" as defined in Civil Servants Act, 1973 and Rules framed thereunder include disciplinary matters and the same comes within the ambit of section 4 of the Federal Service Tribunal Act, 1973. Reference in this behalf is made to the case of Ali Azhar Khan Balouch v. Province of Sindh and others (2015 SCMR 456).

7. The Petition, being misconceived, is therefore dismissed along with listed applications.

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