

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Constitutional Petition No. D –4932 of 2019

Abdul Haleem Memon
Versus
Province of Sindh and 02 others

Constitutional Petition No. D –4542 of 2019

Abdul Rasheed
Versus
Province of Sindh and 08 others

Date of hearing
& order : 21.10.2020

M/s Malik Naeem Iqbal and Mr. Faizan H. Memon, advocates for the petitioner in C.P No. D-4932 of 2019
Mr. Usman W. Shaikh, advocate for the petitioner in C.P No. D-4542/2019.
Mr. Hakim Ali Shaikh, Addl. A.G along with Ghulam Ali Birhmani, Additional Secretary (Services), SGA&CD, Government of Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. – - Through these writ petitions, the petitioners seek direction to the respondents to consider them for promotion to the next rank. Petitioner have asserted that the respondents have failed and neglected to consider their candidature for promotion due to pendency of criminal case/disciplinary proceedings against them.

2. Learned counsel for the petitioner in C.P No.4932 of 2019 submitted that mere pendency of NAB reference against the petitioner could not pose a valid ground for not considering him for promotion. He further submitted that every person is presumed to be innocent until proven guilty; and that the National Accountability Bureau had issued a circular to the effect that a civil servant cannot be denied promotion simply because he was under investigation. He urged that if there is an inordinate delay in finalizing the criminal proceedings then temporary promotion has to be given to the petitioner. Learned counsel for the petitioner placed reliance on the law laid down in the cases of Salah Uddin Mughal v.

Province of Sindh and 2 others (2012 PLC CS1018), Muhammad Ayaz Khan v. Government of Sindh and others (2007 PLC CS 716), Nazeer-ud-Din v. Government of Pakistan and others (2017 PLC CS 578).

3. Mr. Usman W. Shaikh learned counsel for the petitioner in C.P No. D-4542/2019 argued that no one could be punished by denying him promotion or consideration for promotion before the charge is established against him; that mere pendency of a criminal case/disciplinary proceedings is no ground for denying consideration for promotion; he next argued that though Promotion is not the petitioner's vested right, consideration for promotion under the law, indeed is his right; that there cannot be an absolute bar on promotion and findings of the Provincial Selection Board-II in its previous Meeting does not cover the case of prolonged pendency of criminal case; he prayed for a direction to the competent authority of respondents to consider the petitioner's case for promotion purely on merits.

4. Initially learned AAG opposed the request of the petitioners on the premise that the petitioners are facing criminal/disciplinary charges, therefore, they are not entitled to further promotion. He urged that the case of the petitioners was considered by the Provincial Selection Board-II in its previous meeting. He stressed upon the word consideration, which clearly means that the authority should deliberate with care on the matter and as a result of such careful deliberation pass an order. Per learned AAG such deliberation took place, however it was deferred due to the reason assigned by the Competent Authority as discussed supra. Learned AAG states that the cases of the petitioners for consideration for promotion shall be placed before the Provincial Selection Board-II in its next meeting. However, he states that the petitioner's case for promotion shall be considered purely on merits without any regard to the pendency of any criminal case/disciplinary proceedings against them.

5. At the outset, Additional Secretary (Services), SGA&CD, Government of Sindh has filed a statement dated 20.10.2020 and submitted that the case of the petitioner in C.P No.4932 of 2019 for consideration of his promotion in next rank shall be placed before the Provincial Selection Board-II in its next meeting on the premise that he is at the verge of superannuation on 01.12.2020. Learned AAG pointed out that petitioner in C.P No.D-4542/2019 was facing the departmental proceedings, however, the same have been dropped vide order dated 28.04.2020.

6. We have heard the learned counsel for the parties and perused the material available on record as well as case-law cited at the bar.

7. We have noticed that petitioner in C.P No. D-4932/2019 is facing NAB Reference No.05/2019 before the Accountability Court Islamabad based on corruption and corrupt practices. At this juncture, learned AAG pointed out that the aforesaid matter was referred by the Hon'ble Supreme Court of Pakistan vide order dated 17.01.2019 in HRC No. 39216-G of 2018, wherein NAB was directed to inquire, investigate and file the references and the petitioner is one of the accused in the said Reference, which is pending adjudication. However, it is for the competent authority to take into consideration all the attending facts and circumstances of the case.

8. In the attending facts and circumstances of the case, and in view of the statement dated 20.10.2020 filed on behalf of respondents No.1 and 2, and submission of learned AAG, this Court is left with no option but to direct the Respondents to place Petitioners' promotion case before the Provincial Selection Board-II in its next Meeting within one month positively from the receipt of a copy of this order. The Provincial Selection Board-II shall consider the Petitioner's case fairly and justly under law, rules and regulations and the result thereof be conveyed to the MIT-II of this Court.

9. The Petitions are disposed of in the above terms.

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Shahzad*