

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –630 of 2019

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Dr. Mushtaq Ahmed Nizamani

Versus

Province of Sindh and 03 others

Date of hearing & order : 19.11.2020

M/s. Ahmed Ali Ghumro and Waheed Ali Ghumro, advocates for the petitioner.
Mr. Ali Safdar Depar, Asstt. A.G. a/w Dr. Sikandar Memon, Chief Technical Officer, Health Department.

ORDER

ADNAN-UL-KARIM MEMON, J. The main grievance of the petitioner is that the respondent-Health Department, Government of Sindh, is not considering his case for proforma promotion in BPS-20 with effect from 2014.

2. Brief facts of the case are that petitioner was appointed as Medical officer BPS-17 in Health Department Government of Sindh and was subsequently promoted in BPS-18 and lastly promoted in BPS-19 in the year 2009. Per petitioner, his promotion was due in BPS-20 in the year 2014, however, due to the lethargic attitude of respondents the same could not be materialized. Finally, he stood retired from the government service on attaining the age of superannuation on 13.3.2017.

3. We asked learned counsel to satisfy this Court about maintainability of this petition on the ground that he stood retired from the government service in year 2017, on attaining the age of superannuation, as Senior Medical officer (BS-19) and now respondent-department allowed him a proforma promotion in BS-20 with effect from 12.3.2017 just one day before his retirement date i.e. 13.3.2017 in compliance of the order dated 30.8.2017 passed by the Hon'ble Supreme Court.

4. Mr. Ahmed Ali Ghumro, learned counsel for the petitioner, invited our attention towards the order dated 30.8.2017 passed by the Honorable Supreme Court in Cr. Orig. P No.15-k of 2016 in C.A. 30-K of 2014 and CrI. M.A 37-K of 2017 in Cr. Orig. P No.15-k of 2016 and argued that petitioner stood retired on 13.3.2017, thus the ratio of the aforesaid order passed by the Honorable Supreme Court is fully applicable in the case of the petitioner. Learned counsel

further argued that the petitioner has been cleared for proforma promotion in BPS-20 with effect from 12.3.2017 rather than with effect from 2014 when he became entitled to promotion in BPS-20. He prayed for a direction to the respondents to rectify the date of his proforma promotion accordingly just for pensionary benefits.

5. Mr. Ali Safdar Depar, learned Asstt. A.G, has refuted the claim of the petitioner and argued that our action was / is in accord with the decision of the Honorable Supreme Court as discussed supra.

6. We have heard learned counsel for the parties on the subject issue and perused the material available on record.

7. We have noticed that the respondents have complied with the direction of the Honorable Supreme Court passed in Crl. Orig. P No.15-k of 2016 in C.A. 30-K of 2014 and Crl. M.A 37-K of 2017 in Crl. Orig. P No.15-k of 2016 and petitioner has been given a proforma promotion in BPS-20 with effect from 12.3.2017 one day before his retirement from service on 13.3.2017; thus no further indulgence of this court is required in the matter. It is well-settled that proforma promotion cannot be awarded to a retired government servant with retrospective effect as per dicta laid down by the Hon'ble Supreme Court in the case of Government of Pakistan and others vs. Hameed Akhtar Niazi and others, **PLD 2003 SC 110**.

8. We, for the aforesaid reasons, and in the given circumstances hold that this petition is not maintainable, which is accordingly dismissed along with pending applications with no order as to costs.

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