

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**

Before:

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

**Constitutional Petition No. D -3373 of 2016**

Abrar Hussain

*Versus*

The Province of Sindh and another

Date of hearing &  
Decision : 12.02.2021

Mr. Asghar Bangush, advocate for the petitioner.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Through the captioned petition, the petitioner is seeking the declaration to the effect that he is/was entitled to proforma promotion against the post in BS-20 with effect from 25.3.2014.

2. We asked learned counsel to satisfy this Court about the maintainability of this petition on the ground that he stood retired from the government service in the year 2014, on attaining the age of superannuation, as Senior Medical Officer (BS-19).

3. Mr. Asghar Bangush learned counsel for the petitioner, on the question of maintainability, argued that since petitioner stood retired from Civil Service; and, he is no more a civil servant, this constitutional petition is maintainable. On merits, he 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 the petitioner stood retired on 11.4.2014, 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 colleagues of the petitioner have been cleared for proforma promotion in BPS-20 with effect from the meeting of Provincial Selection Board-I, which was scheduled on 25.3.2014 but could not be held on such date due to pre-occupation of the competent authority, in the meanwhile petitioner reached the age of superannuation as such he could not be held responsible, therefore, the petitioner ought to have been given the proforma promotion

from the date of the meeting of Provincial Selection Board-I; that act of the respondents is also discriminatory as in similar situation, the promotion was granted to other Doctors after retirement. He asserted that the denial of the aforesaid financial benefits by the respondents was unjust, malafide, discriminatory, unfair, and unlawful, and liable to be discarded. In support of his contention, he relied upon the case of Ch. Azhar Hussain V. Secretary to Government of the Punjab LG&CD Department, Lahore and two others, 2016 PLC (CS) 693, and Askari Hasnain V/S Secretary Establishment and others, 2016 SCMR 871, and argued that proforma promotion after retirement is permissible under the law.

4. Mr. Ali Safdar Depar learned Assistant Advocate General has supported his stance based on the letter dated 29.10.2014 attached with the comments filed on behalf of Secretary Health Department, Government of Sindh.

5. We have heard learned counsel for the parties on the subject issue and perused the material available on record and case-law cited at the bar.

6. We find that it has not been disputed before this Court that much before the retirement of the petitioner, a working paper was prepared by the respondent-Health Department about his promotion in BPS-20 (his name appeared at Sr. No.18) but the matter was delayed without any justifiable reason and in the meanwhile, Petitioner attained the age of superannuation. Prima-facie he cannot be made to suffer on account of the departmental lapse. On the aforesaid proposition, our view is supported by the decision of the Honorable Supreme Court of Pakistan in the case of Secretary School of Education and others v. Rana Arshad Khan and others, 2012 SCMR 126. Besides the above, the respondents have also produced minutes of the meeting held on 03.06.2014 duly approved by the competent authority, under which proforma promotion was allowed to other retired Doctors in BPS-20, therefore, the petitioner also successfully makes out a case of discrimination against him in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

7. Further, we have noticed that the respondents have not 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 in letter and spirit and denied him a proforma promotion in BPS-20 one day before he retired from service on 11.4.2014; thus we are

inclined to entertain the request of the petitioner in the matter. On the aforesaid proposition, we are fortified by the decisions of the Hon'ble Supreme Court rendered in the cases of Dr. Syed Sabir Ali v. Government of Punjab through Secretary Health Punjab and others, 2008 SCMR 1535, Federation of Pakistan and others v. Amir Zaman Shinwari, Superintending Engineer, 2008 SCMR 1138 and Dr. Muhammad Amjad v. Dr. Israr Ahmed, 2010 SCMR 1466.

8. We, for the aforesaid reasons, and in the given circumstances hold that the petitioner is entitled to the benefit of rule 7A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, thus the respondents are required to grant him a proforma promotion in the light of the direction of 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.

9. The upshot of the above discussion is that this petition is allowed and the competent authority/respondents are directed to consider the case of the petitioner for proforma promotion in BS-20 by way of circulation. As the petitioner has already stood retired, therefore, his proforma promotion will not affect the seniority of any person already in the service and he would be entitled to his emoluments and pensionary benefits.

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