

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

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

C.P No. D-3816 of 2011

Niaz Hussain Abro and others versus Province of Sindh and 02 others

1. For order on CMA No.26616/2019. (Granted)
2. For order on CMA No.26617/2019.

Date of hearing: 26.09.2019

Date of Order: 26.09.2019

Mr. Ali Asadullah Bullo, advocate for the petitioners/applicants.

ORDER

ADNAN-UL-KARIM MEMON, J:- The captioned Petition was disposed of vide common judgment dated 06.09.2019 with the following observations:-

“34. We, for the aforesaid reasons direct the Respondent No. 1/Chief Secretary, Sindh to scrutinize the service record of the serving private Respondents, who have not qualified earlier the Departmental Examination of Assistant Collector Part-I and II and determine whether or not they have been legally promoted, and whether or not in their promotion, the directions of the Hon’ble Supreme Court in its judgment rendered in the cases of Criminal Original Petition No.89/2011 and Ali Azhar Khan Baloch (supra) and principle settled with regard to exemption in qualifying departmental examination vide order dated 26.5.2016 in Civil Petition No.76-K and 77-K of 2015, at paragraph No.6 (supra) have been adhered to or not and submit compliance report through MIT-II of this Court within a period of two months, which shall commence from the date of communication of this judgment to the Respondent No. 1/Chief Secretary/Sindh, who is further directed to implement the aforesaid judgments and order passed by the Hon’ble Supreme Court on the subject issue in letter and spirit.

35. Before parting with this judgment, we may observe that if the serving private respondents, who have not qualified the Departmental Examination of Collector Part-I and II, they are required to undergo the said examination process, if the said exercise is not undertaken earlier, as required under the law, within a period of six months from the date of receipt of the Judgment of this court and after announcement of their respective results, the same be placed before the competent authority for appropriate order, however if they fail to appear in the said examination or if earlier failed, the competent authority shall take prompt action in accordance with law.

36. The petitions stand disposed of in the above terms.”

Mr. Ali Asadullah Bullo, learned Counsel for the Applicants has filed the Review Application (CMA No.26617/2019) and referred the paragraph No.21 of the judgment under review and argued that the post of BPS-17 can only be filled through Sindh Public Service Commission after advertisement, whereas in the present case the private Respondents were inducted in BPS-17 without resorting to the Public Notice and in transparent manner, thus the findings of this Court in paragraph No.21 is erroneous and needs to be recalled and the matter may be posted for hearing. We are not satisfied with the assertion of the learned Counsel for the Petitioners for the simple reason that Rule 5 of the Sindh Public Service Commission (Functions) Rules, 1990 was already in existence when the private Respondents were inducted, however

subsequently omitted vide Notification No. SOR-I (S&GAD) 5/1-97 dated 18-2-1997.

The said Rule 5 of the Sindh Public Service Commission (Functions) Rules, 1990 empowered the Chief Minister, Sindh to take the post out of the purview of the Commission and the aforesaid powers had been exercised. At this juncture, learned Counsel in support of his contention referred to para No.198 of the judgment passed in Criminal Petition No.193/2013 by the Hon'ble Supreme Court of Pakistan and argued that the aforesaid finding is not in consonance with law. We are not in agreement with the aforesaid analogy put forwarded by the learned Counsel for the Petitioners to invoke the review jurisdiction of this Court.

In our view, the review of the order can only be made by the party, if there is mistake or error apparent on the face of the record as provided under Order XLVII (Section 114 CPC). The Applicants through the review application has attempted to call in question the validity of the judgment dated 06.09.2019 passed by this Court without assailing the same before the Appellate Forum. The grounds taken by the Applicants in the review application were considered at the time of hearing of main petitions and the request was declined, therefore, reviewing the judgment does not merit consideration. For the aforesaid reasons, we are not persuaded by the contention of the learned Counsel for the Petitioner that any case of review is made out. Therefore, the review application merits dismissal, which is accordingly dismissed as, in our view, the judgment dated 06.09.2019 passed by this court was based on correct factual as well as legal position of the case and we do not find any inherent flaw floating on the surface of the record requiring our interference.

Consequently, the application bearing CMA No.26617/2019 is dismissed.

JUDGE

JUDGE