

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 114 of 2018
CP No. D- 1236 of 2014

BEFORE :

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

Date of hearing
& decision:

24.11.2021

Petitioner:

Ghulam Muhammad present in person
Mr. Ghazi Salahuddin, Advocate for intervener
Mr. Allah Bachayo Soomro, Addl.A.G.

ORDER

ADNAN-UL-KARIM MEMON, J: - The petitioner through the instant petition has prayed as under:-

- i. That this Honourable Court may be pleased to declare that the order passed by the respondent No.2 dated 1.1.2018 is illegal, malafide, void *ab initio* against principles of natural justice and without lawful authority and is no legal effect.
- ii. That the Honourable Court may be pleased to restrain the respondents from giving effect to the impugned order of demoting the petitioner directly or indirectly till the decision of the above matter or without holding the Departmental Promotion Committee afresh as directed by this Honourable Court by himself or through any subordinate officer or employee in any manner whatsoever till the decision of the above petition.

2. Learned counsel argued that respondent No.2 is not competent to withdraw the promotion made through DPC; that the order of respondent No.2 directing re-fixation of salary of the petitioner as Senior Clerk is against the law as at present the petitioner is receiving salary being Assistant on which post he is working since 2010; that the order of respondent No.2 withdrawing the promotion order of petitioner is the misinterpretation of order of this court passed in CP No. D- 1236 of 2014 as in the said petition the issue was resolved directing the DPC to consider the case of petitioner and others and the order was not passed for cancellation of promotion who were promoted by DPC; that the petitioner is near to retirement

and served the department since 1984 and withdrawal of promotion at this stage will seriously prejudice him and his family. He lastly prayed for allowing the instant petition.

3. We have heard the parties at length and considered the grounds raised by them.

4. On the issue of recalling of promotion of petitioner, we have noticed that though the competent authority making an order has jurisdiction to rescind the illegal or irregular order and that an illegal or irregular action can be corrected at any time, but this jurisdiction cannot be exercised arbitrarily and without recourse to legal proceedings. The recession must be under the procedure provided by law and after show-cause notice to the person to be affected, more particularly in a case when the action of recession is based upon the conduct of the person to be affected and in such state of affairs a notice is necessary under the principle of natural justice.

5. In the present case, it appears from the record that the petitioner was appointed as Junior Clerk in the office of District Health Office, Badin on 29.3.1984 and transferred to Mirpurkhas in 1986; during his service tenure he earned his further promotion in the rank of Senior Clerk in the year 1996 through Departmental Promotion Committee (DPC). However in the intervening period the colleague of the petitioner namely Nazar Hussain Arain preferred departmental appeal before Secretary Health Government of Sindh, who ordered for recalling of the minutes of meeting of DPC just to consider the case of appellant Nazar Hussain Arain for promotion. Finally the promotion of the petitioner was recalled by Additional Secretary (Admn) Health, Government of Sindh vide office order dated 3.3.2014; petitioner preferred CP No. D- 1236 of 2014 before this court and the same was disposed of vide order dated 12.10.2017 with direction to the competent authority to convene DPC within 15 days and the cases of deserving candidates be considered for promotion based on seniority, fitness and suitability; however no DPC was held and on the contrary in the year 2018, the promotion of the petitioner and others granted to them in the year 2010 were recalled. Petitioner has heavily relied upon the Judgment passed by the Hon'ble Supreme Court in the case of Shamsur Rehman v. Military Accountant General, Rawalpindi and another (2020 SCMR 188) and submitted that he performed work on higher post for considerable

period thus the principles of locus poenitentiae, the benefits paid to him could not be called in question. He further relied upon the case of Government of Sindh v. Abdul Sattar Shaikh and others (2003 SCMR 819) and submitted that the promotion granted by the DPC could not be annulled by the Executive District Officer (Health) (defunct) Mirpurkhas vide letter dated 31.5.2010 and subsequent order passed by the Additional Secretary (Admin) vide order dated 3.3.2014.

6. Prima facie, the petitioner has requisite length of service to claim promotion as he was initially appointed in the year 1984 and Junior Clerk and promoted to the post of Senior Clerk in year 1996, thus his promotion to the post of Assistant in the year 2010 could to be annulled on the purported plea that someone was senior to him as the promotion depends upon seniority cum fitness and availability of vacancy. Besides that recruitment rules explicitly provide that the post of Senior Clerk (BPS-14) is a promotion post to be filled amongst the Junior Clerk-cum-typist (BPS-11) on seniority-cum-fitness basis.

7. Prima facie, the impugned order does not disclose the justifiable reasons for recalling the promotion of petitioner, however, the respondents have reservations against such promotion of the petitioner which primarily needs to be looked into by the competent authority under the relevant law and this Court, at this juncture, is not in a position to thresh out such allegations and counter-allegations so raised by the parties hereinabove under writ jurisdiction.

8. In the light of above facts and circumstances of the case, this matter is remitted to Secretary, Health Department, Government of Sindh, to look into the matter and examine the case of petitioner for promotion in the higher rank and if at all he meets the promotion criteria, he shall be given his due promotion to the next rank under the law with his batch mates along with ancillary benefits as provided under the Sindh Civil Servant (Appointment, Promotion and Transfer) Rule 1974 and under Section 13 of the Sindh Civil Servants (Probation, Confirmation and Seniority) Rules. The aforesaid exercise shall be undertaken within one month from the date of receipt of this order.

9. This petition stands disposed of in the above terms along with the pending application(s).

10. The contempt application moved in CP No. D- 1236 of 2014 is hereby disposed of in the above terms.

JUDGE

JUDGE

Karar_hussain/PS*