

ORDER SHEET
**HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No.D-1894 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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02.12.2021

1. For hearing of M.A No.3707/2019
2. For hearing of M.A No.5096/2019

Petitioner is present in person

Mr. Zohaib Mustafa advocate files power on behalf of alleged contemnor No.1

Alleged contemnors are also present in person

Mr. Fazal Qadir Memon, Assistant Attorney General

Through the captioned petition, the petitioner had sought direction to the respondent-company for grant of Special Engineering Allowance, from the date he acquired engineering/graduation degree; and promotion to the subject post in BS-17. He also sought promotion in BS-18 as Senior Engineer.

2. The above petition came up for hearing and was finally disposed of vide judgment dated 10.10.2017 in the following terms:

“3. The question involved in these petitions is also identical, however, Mr. Muhammad Arshad S. Pathan, learned counsel for the respondents submits that these petitions have virtually become infructuous as the petitioners have been allowed up-gradation and from now onward they are to be considered at par with Graduate Engineers for their promotion and all such rules shall be made applicable as that to Graduate Engineers.

4. In view of above, these petitions are allowed on the terms as incorporated in C.P No.D-1579 of 2010. C.P No.D-204 of 2006 and C.P No.D-1658 of 2012. In case, the petitioners were already working in Grade-17 in 2009, they are entitled for this allowance since 2009 and are also considered eligible for promotion in accordance with law as other Engineers B.E and B.Sc are entitled.

The petitions are allowed in the above terms.”

3. Thereafter, respondents preferred application under Section 151 CPC, listed at Sr. No.1 above, for modification /correction in

the aforesaid judgment to the extent of promotion in BS-18 on the ground that implementation of the above judgment would nullify the effect of the judgment passed by the Hon'ble Supreme Court of Pakistan reported in PLD 1995 SC 701 on the analogy that petitioner's degree was/is not equivalent to B.E degree thus he could not be treated as Professional Engineer as per latest judgment of Honorable Supreme Court rendered in the case of Moula Bux Shaikh v. Province of Sindh and others vide Judgment dated 24.4.2018 passed in CP No. 78-K of 2015. However, the petitioner filed the application, listed at Sr. No.2 above, for initiating contempt proceedings against the alleged contemnors / respondents for their alleged failure to comply with the aforesaid judgment passed by this court.

4. Finally, this Court on 11.11.2021 passed the following order:

6. The decision of this court was based on conceding statement therefore, we have no option but direct the respondents to implement the Judgment dated 10.10.2017 passed by this court merged into the order dated 03.9.2018 passed by the Honorable Supreme Court in CP No. 717-K & 718-K of 2017.

7. Let contempt proceedings be initiated against the alleged contemnors. Office is directed to issue contempt notice to the alleged contemnors who are directed to be present in court on the next date of hearing with the compliance report. In case of failure, appropriate order shall be passed."

5. Today, learned counsel for the alleged contemnors has placed on record para-wise comments to the contempt application and submitted that this contempt application is not maintainable on the premise that the respondents have complied with the orders passed by this Court in its letter and spirit, as the petitioner has been allowed Special Allowance @ Rs.10, 000/- per month as well as granted him time scale up-gradation in BPS-18, as admissible under the rules. So far as considering the case of petitioner for promotion in next rank, with retrospective effect is concerned, the same, if allowed to follow, will violate the dicta laid down by the Hon'ble Supreme Court, vide judgment dated 03.10.2018 passed in C.P No. 278-K of 2018. He further submitted that the petitioner

stood retired long ago as such proforma promotion could not be granted to the retired civil / public servant with retrospective effect. In support of his contention, he relied upon the case of Abdul Hameed v. Ministry of Housing & Works, Government of Pakistan, Islamabad through Secretary and Others (PLD 2008 SC 395). He further submitted that the petitioner being a retired employee cannot avail the benefit of proforma promotion being a non-graduate Engineer on the premise that B-Tech degree holders cannot be placed at par with professional Engineers i.e. Graduate Engineers; and, any such promotion negates the various clauses of Pakistan Engineering Council Act. He prayed for dismissal of the instant contempt application.

6. We have heard learned counsel for the parties and perused the compliance report.

7. Prima facie, substantial compliance of the orders passed by this Court has been made, as confirmed by the petitioner, who is present in person; however, he raised his voice of concern to the effect that he has not been given his due promotion in next rank as directed by this Court.

8. In our considered view, the decision of Hon'ble Supreme Court in the case of Moula Bux Sheikh, as discussed supra, is still holding the field, as such we cannot substitute our view, in presence of the judgment of Hon'ble Supreme Court, therefore, we are not inclined to dilate this issue in the contempt proceedings, as we feel that the substantial compliance has already been made; therefore, we cannot stretch the proceedings further on the aforesaid analogy.

9. In view of the above both, listed applications stand disposed of accordingly.

JUDGE

JUDGE