

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-2790/2019

Order with signature of Judge(s)

1. For order on CMA No.9458/2021 (U/A)
2. For order on CMA No.9459/2021 (Contempt)

31.03.2021

Mr. Ali Asadullah Bullo, advocate for the petitioner/applicant.

1. Urgency granted.
2. This petition was disposed of vide order dated 10.03.2020, the relevant paragraph whereof is as under:

“It is stated on behalf of the respondents that there were other material grounds due to which the petitioner's case was deferred. We have noticed that except for the ground that the PER of the petitioner was incomplete, no other ground was mentioned in the impugned letter for deferment his promotion. In this view of the matter, learned counsel for the parties and learned DAG have agreed that the case of promotion of the petitioner may be placed before the Central Selection Board for decision afresh through a speaking order by considering all the aspects/grounds strictly in accordance with law and the prevailing rules, regulations, and policy.”

On 25.03.2021, the applicant filed an application being [CMA No. 9459/2021] under sections 3 and 4 of Contempt of Court Ordinance 2003 read with Article 204 of the Constitution of Islamic Republic of Pakistan 1973, for initiating contempt proceedings against the alleged contemnors for deliberately flouting order dated 10.03.2020 passed by this Court.

Mr. Ali Asadullah Bullo, learned counsel for the petitioner/applicant, has argued that after passing of the aforesaid order, the alleged contemnors were/are under the obligation to place the case of the petitioner before Central Selection Board (`CSB`), but they failed and neglected to place the same before CSB. Per learned counsel, in January 2021 the meeting of the Departmental Selection Board (DSB) was conveyed and the cases of colleagues of the petitioner were considered, however, he was ignored. Learned counsel

emphasized that at the time of passing of the order dated 10.03.2020, he was in service, and meanwhile, he stood retired from service on 23.07.2020. Learned counsel relied upon proviso 1 of Fundamental Rule 17, and argued that he is legally entitled to proforma promotion after his retirement. He prayed for the direction to the alleged Contemnors to comply with the order passed by this Court.

We have noticed that on the issue of proforma promotion, the Hon'ble Supreme Court in an unreported order dated 07.01.2021 passed in Civil Appeal No.506 of 2020, has held as under:

"6. We also note that the respondent has been granted seniority and his encadrement in PSP was refixed on the recommendation of the Departmental Selection Committee in BPS-18 and BPS-19 above his junior, Ghulam Asghar Sheikh, retrospectively with effect from 12.01.1991 and 08.01.2004 respectively by the Notification dated 29.07.2009. The respondent did not challenge this Notification, rather, he seems to have accepted the same. Having retired on 17.08.2008 on superannuation with the service benefits of Notification dated 29.07.2009, the respondent cannot claim i.e. encadrement be again fixed from back date and further promotion be given to him.

7. In any case, the encadrement as PSP Officer once fixed cannot be altered and in this regard this Court has given judgment in the case reported as Muhammad Zafar Ali and others (supra). Nothing illegal was pointed out in the minutes of the meeting of the FR-17 Committee dated 10.11.2010. We note that the High Court did not take into consideration the relevant factors as noted above so also the law laid down by this Court in coming to the conclusion in the impugned judgment.

8. Such being contrary to the law laid down by this Court, is, therefore, not sustainable and is accordingly set aside. The appeal is allowed."

In view of the above, let at the first instance, comments be called from the alleged contemnors. Relist after two weeks.

JUDGE

JUDGE