

IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-859 / 2022

Date _____ Order with signature of Judge _____

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Petitioner: Dr. Nadeem-ur-Rehman Siddiqui,
Through M/s. Riaz Ahmed Phulphoto &
Ms. Nusrat Sultan Advocates.

Respondent: Government of Sindh & Others,
Through Mr. Abdul Jalil Zubedi,
Additional Advocate General Sindh.

Date of hearing: 05.12.2022.

Date of Order: 05.12.2022.

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Petition, the Petitioner has impugned Notification dated 17.11.2021 whereby, the Petitioner under order of posting as Chief Superintendent Medical Officer (BS-20) at Sindh Government Children Hospital North Nazimabad, Karachi has been adjusted against the post of Chief Medical Officer (BS-19) with effect from 23.09.2021 for the purpose of pensionary benefits in (BS-19).

2. Learned Counsel for the Petitioner submits that after recommendation of the Provincial Selection Board-I and with the approval of the competent authority, through Notification dated 17.11.2020, the Petitioner was promoted to the post of Senior Medical Officer (BS-20) in Health Department on regular basis along with various other persons and thereafter, on 12.03.2021 posting orders were also issued, whereas, the Petitioner despite such posting order was not assigned the posting in (BS-20). He further submits that the Petitioner was supposed to retire on 26.09.2021, whereas, through impugned Notification he has been demoted to (BS-19) with effect from 23.09.2021 prior to only 3 days of his retirement and it was also done subsequently with retrospective effect. He has also referred to Rule 25(6) of the Esta Code and submits that the impugned Notification has been issued without lawful

authority and even without confronting the Petitioner with any prior notice; hence, the same is liable to be set aside.

3. On the other hand, learned AAG has referred to the comments including Rule 31 of Sindh C.S.R read with Rule 21(b) of The Sindh Government Rules of Business, 1986 and submits that since the Petitioner had never joined the assigned duties in (BS-19), therefore, he was ineligible for promotion in (BS-20); hence, the impugned order is in accordance with law. In support he has also placed reliance on an unreported judgment of the Hon'ble Supreme Court dated 27.01.2022 in Civil Appeal No.202 of 2021 (*now reported as Muhammad Amjad v The Director General, Quetta Development Authority-2022 SCMR 797*)

4. We have heard the Petitioner's Counsel as well as learned AAG and perused the record. Before proceeding further, it would be advantageous to refer to the relevant Notification dated 17.11.2020 whereby, the Petitioner was promoted to (BS-20); Posting Notification dated 12.03.2021 and the impugned Notification dated 17.11.2021. The same reads as under: -

"NO.SOIII(S&GAD)13-110/2020
GOVERNMENT OF SINDH
SERVICES, GENERAL, ADMINISTRATION
AND COORDINATION DEPARTMENT.

Karachi, dated 17 November, 2020

NOTIFICATION

"On the commendations of the Provincial Selection Board No.I, with the approval of the Competent Authority / Chief Minister Sind and In continuation of this Department's Notification of even number dated 12.08.2020, 26.08.2020, 07.09.2020, 11.09.2020, 23.09.2020, 25.09.2020, 30.09.2020, 14.10.2020, 27.10.2020 & 05.11.2020, the following Senior Medical Officers (BS-19) are hereby promoted to the post of Senior Medical Officers (BS-20), are hereby promoted to the post of Senior Medical officer (BS-20), Health Department, on regular basis, with immediate effect:

1. Dr. Junaid Ali Memon S/o Sahid Dino Memon.
2. Dr. Jawaid Ali S/o S. Janan Shah
3. Dr. Syed Amir Dabir S/o Dabir-ul-Mulk
4. Dr. Nadeem-ur-Rehman s/o Atta-ur-Rehman.

Sd/-
MUMTAZ ALI SHAH
CHIEF SECRETARY SINDH"

"No.SOI(SGA&CD)-2/04/2016 (H-55)
GOVERNMENT OF SINDH
SERVICES, GENERAL, ADMINISTRATION
AND COORDINATION DEPARTMENT.

Karachi, dated the 12th March, 2021

NOTIFICATION

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VII

In continuation of this Department's Notification No. SOIII(S&GAD)13- 110/2020 dated 17.11.2020, on promotion to BS-20 on regular basis, Dr. Nadeem-Ur-Rehman, Senior Medical Officer, presently posted as Chief Medical Officer, Dr. Ruth K.M. PFAU, Civil Hospital, Karachi is transferred and posted with immediate effect and until further orders as Chief Superintendent Medical Officer (BS-20), Sindh Government Children Hospital, North Nazimabad Town, Karachi."

"No.SOI(SGA&CD)-2/04/2014 (H-30)

**GOVERNMENT OF SINDH
SERVICES, GENERAL, ADMINISTRATION
AND COORDINATION DEPARTMENT.**

Karachi, dated the 17th November, 2021

NOTIFICATION

In modification of Sr. No. VII of this department's Notification No. SOI(SGA&CD)-2/04/2016(H-55) dated 12.03.2021, Dr. Nadeem-ur-Rehman, Senior Medical Officer, under orders of posting as Chief Superintendent Medical Officer (BS-20) at Sindh Government Children Hospital, North Nazimabad, Karachi is adjusted against the post of Chief Medical Officer (BS-19), Dr. Ruth KM Pfau, Civil Hospital, Karachi with effect from 23.09.2021, prior to his date of retirement i.e. 26.09.2021 for the purpose of drawal of pensionary benefits in BS-19."

Sd/-

**MUMTAZ ALI SHAH
CHIEF SECRETARY SINDH"**

5. From perusal of the first Notification dated 17.11.2020, it appears that the Petitioner's case was taken up for promotion before the Provincial Selection Board No.I and on its recommendations the competent authority

promoted the Petitioner to the post of Senior Medical Officer (BS-20) Health Department along with various other persons. To that effect, there appears to be no dispute that the Petitioner was duly recommended and the competent authority agreed with such recommendation for the Petitioner’s promotion from (BS-19) to (BS-20). Similarly, vide Notification dated 12.03.2021, the petitioner was assigned post as Chief Superintendent Medical Officer (BS-20). It further appears that on 17.11.2021, the impugned Notification was issued wherein, it is stated that the Petitioner under orders of posting as Chief Superintendent Medical Officer (BS-20) has been adjusted against the post of Chief Medical Officer (BS-19) with effect from 23.09.2021 prior to his date of retirement i.e. 26.09.2021 for the purpose of drawl of pensionary benefits in (BS-19). Apparently, the impugned Notification is silent as to how and in what manner such a notification can be sustained, whereas, apparently, the Petitioner at the time of issuance of the impugned Notification had already retired in (BS-20). Moreover, the impugned Notification has only referred to Para-VII of Notification dated 12.03.2021 regarding the Petitioner’s posting as Chief Medical Officer and has not dealt with the very promotion Notification dated 17.11.2020. While confronted, learned AAG has referred to his comments and Annexure X which is a Notification dated 24.11.2021 which states that the Department’s Notification dated 17.11.2020 in respect of promotion of the Petitioner is hereby cancelled / withdrawn. We have again confronted the learned AAG as to whether any notice was issued to the Petitioner or any other exercise was carried out so as to proceed further to recall the promotion of the Petitioner and whether the competent authority had taken any decision to that effect and to this, learned AAG has not been able to satisfactorily respond except referring to Rule 31 of Sindh C.S.R and Rule 21(b) of The Sindh Government Rules of Business, 1986. Both reads as under:-

“31. The promotion of a Government servant from a lower to a higher grade, his duties remaining the same takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But when the promotion involves the assumption of a new post with enlarged responsibilities the higher pay is admissible only from the date on which the duties of the new post are taken up.”

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“21. Functions and Powers of the Chief Secretary. - In addition to the duties and functions assigned to him under any other provisions of these rules, the Chief Secretary shall -

- (a)
- (b) exercise, on behalf of the Chief Minister, powers of appointing authority except the power of appointment (other than addition or current charge); transfer, promotion, disciplinary action and matter mentioned at serial

numbers 4, 6, 7 and 20 of Sixth Schedule in respect of officers in B-19 and above;”

6. From perusal of the aforesaid Rule 31 *ibid*, it appears that the same is not relevant for the present purposes as it relates to a situation where promotion involves the assumption of a new post with enlarged responsibilities, then the higher pay is admissible only from the date on which the duties of the new post are taken up. This in our opinion is only confined to a claim of higher pay and does not confer any powers to the Chief Secretary to demote a Civil Servant without notice and or any disciplinary proceedings. Hence, his for the present purposes is not at all relevant and applicable. Similarly, Rule 21(b) of the Sindh Government Rules of Business, 1986 is also not relevant inasmuch as admittedly no action or proceedings had preceded before issuance of the impugned Notification. Admittedly, the Petitioner was promoted pursuant to decision of the Provincial Selection Board and such promotion was duly notified by competent authority. In that case, we are of the considered view that if at all the promotion of the Petitioner was to be recalled, he while in service, at least deserved a prior Show Cause Notice before passing of any adverse order. This has not been done; nor we have been assisted in any manner that any such rule or procedure was available to give sanction to the impugned exercise carried out by the Respondents. Insofar as the argument of learned AAG regarding non-assumption of duties by the Petitioner on his promotion to BS-19 is concerned, that perhaps is not relevant to the present purposes as despite this and without prejudice to the contention of the Petitioner in that regard, the concerned department had placed the case of the Petitioner before the Provincial Selection Board for promotion of the Petitioner from BS-19 to BS-20. If that was the case as contended by learned AAG, then perhaps, the case of the Petitioner ought not to have been placed before the Selection Board and not only this, thereafter, the competent authority has also approved his promotion Notification. It is a matter of fact that while the promotion Notification of the Petitioner to BS-20 was in subsistence, he stood retired on 26.09.2021. The impugned Notification as well as the Notification, whereby, the promotion of the Petitioner was recalled are subsequent in date and therefore, the same cannot be permitted to hold the field, notwithstanding that no notice was ever issued to the Petitioner before taking such a harsh and one sided action against him.

7. As to reliance on the judgment of the Hon'ble Supreme Court as above we may observe that the facts in that judgment were materially

different inasmuch the post on which promotion was made was *non-est* and was not done by the competent authority, and therefore, the Hon'ble Supreme Court while upholding the demotion of the Appellant had concurred with such demotion order. These facts are not available in the present case.

8. Per settled law any authority before taking adverse action of demotion of a civil servant was bound to call an explanation and the circumstances in which the promotion was to being recalled¹. Promotion of a Civil servant to Grade-20 could not be reverted to Grade-19 once he has retired². Order of promotion having been acted upon, same could not be recalled even if same were suffering from any legal infirmity, without providing the Civil Servant an opportunity of hearing as a demotion by itself is one of the major penalties³.

9. In view of hereinabove facts and circumstances of this case, it appears that the Notification dated 17.11.2021 as well as the subsequent Notification dated 24.11.2021 placed on record by the learned AAG cannot hold field and are accordingly hereby set aside. It is directed that the Petitioner must be treated as having retired in BS-20 and is entitled for his retirement and pensionary benefits accordingly which shall be paid to the petitioner preferably within a period of 60 days from the date of this judgment.

10. The Petition is allowed in the above terms.

J U D G E

J U D G E

Arshad/

¹ Nazeer Ahmed Chakrani v Government of Pakistan (2004 SCMR 623)

² Federation of Pakistan v C.M.Sharif (1990 SCMR 250)

³ IG Police AJ&K v Zaheer-ud-din Qureshi (2002 PLC (CS) 1246)