

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

## Constitutional Petition No.D-419 of 2021

Basheer Ahmed Shaikh  
Petitioner: Through Mr. Abdul Samad Memon, advocate

Respondents No.1&2: Through Mr. Ali Safdar Depar, AAG

Respondents No.3 to 5: Through Mr. Umar Sikandar, advocate

Date of hearing  
& Decision: 19.01.2023.

## ORDER

**ADNAN-UL-KARIM MEMON, J.** – Through the captioned petition, the petitioner is seeking direction to the respondent Sindh Industrial Training Estates Limited (‘SITE’) Karachi, apropos to releasing retirement benefits of Rs.64,67841/- and allow his proforma promotion as Chief Engineer (BS-20) in compliance of order dated 30.08.2017 passed by the Hon’ble Supreme Court of Pakistan in Crl. O.P. No.15-K of 2016.

2. The relevant facts, from a bird’s eye view, are that the petitioner was appointed as Assistant Engineer BPS-17 in the year 1993 in respondent SITE Limited Karachi and promoted as Deputy Chief Engineer (BPS-19) on 03.11.2016 and on reaching the age of superannuation retired from Government service on 26.03.2020. Per the petitioner, the competent authority of respondent SITE while issuing the order dated 06.12.2019, allowed look after the charge of Chief Engineer (BPS-20) SITE to his junior, thus the petitioner was discriminated.

3. Abdul Samad Memon, learned counsel for the petitioner, argued that since the junior of the petitioner has also been promoted to BPS-19. He submitted that the petitioner has a guaranteed right of being treated under the law and the spirit of Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973

protect the right of equality in so far as the petitioner is concerned and non-consideration of the case of the petitioner for promotion in next rank in time is illegal, thus he is entitled to proforma promotion after his retirement. He emphasized that if service, benefits have accrued to an employee but for one reason or the other such benefits could not be awarded to such an employee, then, irrespective of the fact of his/her having retired from service, the department concerned shall still have to further consider her/his case for such a promotion and to allow him/her benefits and promotion, even after retirement from service. He prayed for allowing the instant petition.

4. Mr. Umar Sikandar, advocate for respondent SITE Limited has contended that this petition is not maintainable for the reason that SITE Limited has no statutory rules. Learned counsel admitted that the petitioner's retirement benefits have been partially paid, out of the remaining benefits Rs.4, 199,332/- had already been paid to the petitioner and the outstanding sum shall be paid to him as per his entitlement in due course of time. Learned counsel alleged that the petitioner was convicted in Accountability Reference No.32 of 2003 (*the State v. Khamiso Khan and others*) and recently the petitioner has been acquitted of the said charge vide judgment dated 20.06.2019 passed by the Hon'ble Supreme Court of Pakistan in Criminal Appels No.153, 154, 155, 156,157 and 158 of 2008, and the same could be attributable to the negligence and misconduct on the part of petitioner for which he did not have any remarkable performance, therefore, he was not considered for the post of Chief Engineer. Learned counsel also submitted that the demand for promotion after retirement cannot be considered because of the judgment rendered by the Hon'ble Supreme Court of Pakistan reported as 2009 SCMR 405.

5. We have heard the learned counsel for the parties, and pursued the record with their assistance as well as case law cited at the bar.

6. The Honorable Supreme Court has held in the recent judgment that if a person is not considered due to any administrative slip-up, error, or delay when the right to be considered for promotion is matured and without such consideration, he reaches the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into the field for his rescue. If he lost his promotion on account of any administrative oversight or

delay in the meeting of the DPC or Selection Board despite having fitness, eligibility, and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits.

7. It is well established now that the provision for proforma promotion is not alien or unfamiliar to the civil servant service structure but it is already embedded in Fundamental Rule 17, wherein it is lucidly enumerated that the appointing authority may if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or upgradation arising from the antedated fixation of his seniority.

8. We often noted that unjustified delay in proforma promotion cases trigger severe hardship and difficulty for civil servants and also creates a multiplicity of litigation. It would be in the fitness of things that the competent authority should fix a timeline with strict observance for the designated committees of proforma promotions to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention.

9. In the present case, it appears from the record the petitioner was appointed as Assistant Engineer in BPS-17 and was promoted in BPS-18 as Estate Engineer in the year 2003 and again he earned a promotion as Deputy Chief Engineer (BPS-19) in 2016 and stood retired from service in 2020 and after his retirement, he claims proforma promotion as Chief Engineer in BPS-20 against the vacant seat left by Mr. Badaruddin Hisbani who passed away in 2019. In terms of the ratio of the order dated 30.08.2017 passed by the Hon'ble Supreme Court of Pakistan in CA No.30-K of 2014. Petitioner has admitted that out of Rs.64 lac on account of retirement and other benefits as claimed by him an amount of Rs.40 lack has already been paid to him, hence, his grievance is now

remained to the extent of Rs.24 lacs only, which factum was recorded vide order dated 03.11.2021 and now only the question of proforma promotion is pending for our determination. The record reflects that petitioner was booked in NAB Reference No.32/2003 by the NAB authorities and finally, he earned acquittal from the Hon'ble Supreme Court of Pakistan vide judgment dated 20.06.2019 in Crl. Appeals No.153,154,155,156,157 and 158 of 2018, thus his status during the intervening period remained convictee in terms of the judgment dated 17.08.2005 rendered by the learned Accountability Court No.II Sindh at Karachi.

10. In view of the above facts and circumstances of the case, no case for proforma promotion is made out for the reason that the petitioner was disqualified to hold public office during the period with effect from 17.08.2005 to 20.06.2019 when the Hon'ble Supreme Court of Pakistan finally acquitted him from the charge by extending the benefit of the doubt to the petitioner. Since the conviction of the petitioners has been set aside by the Honorable Supreme Court in the NAB case, the respondent shall clear his service dues if any and if he is at all entitled under the law, within two weeks. This petition stands dismissed.

**JUDGE**

**JUDGE**

Nadir\*