

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-5550 of 2022

(Imtiaz Ahmed Mangi v. Province of Sindh and 27 others)

Mr. M.M. Aqil Awan, advocate for the petitioner

Mr. Zakir Laghari, advocate for respondents No.11, 12, 14, 21 and 24

Mr. Abdul Jalil Zubedi, AAG

Date of hearing
& decision : 15.03.2023.

ORDER

Petitioner is an Ex-PCS officer (BPS-17) seeking promotion from BS-17 to BS-18, which has been denied by the Provincial Selection Board No.II (PSB) vide Minutes of Meeting dated 16.5.2022 by deferring his candidature for want of his Annual Confidential Report (ACR) for the years 2015, 2016, 2017, 2018, 2019, and 2020, besides, his ACR for the period from 03.5.2012 to 31.12.2012 is not countersigned.

2. At the outset, learned AAG has submitted that recommendations of the Provincial Selection Board-II for promotion of the ex-PCS (BPS-17) officers are pending till the outcome of the Service Appeal No.32/2022 pending before the Sindh Service Tribunal Karachi as directed by this court vide order dated 20.02.2023 passed in CP No.D-579 of 2023.

3. Mr. M.M. Aqil Awan learned counsel for the petitioner submitted that as per the Seniority List issued on 09.8.2022, the name of the petitioner appears at Sr. No.9, whereas the private respondents are junior to the petitioner and as such without superseding the petitioner, his junior ought not to have been considered for promotion, therefore, notification dated 18.5.2022 recommending the promotion of the private respondents to the post of Deputy Secretary / equivalent to BS-18 on regular basis is violative of Article 189 of the Constitution as well as ration of the order passed by this Court in its various pronouncement on the issue of non-availability of ACRs. Learned counsel for the petitioner further submitted that deferment of the petitioner and consequential notification for promotion to the extent of respondent 4 to 26 is liable to be set aside for the reason that the case of the petitioner could not be deferred on account of non-availability of his

ACRs for the aforesaid period in terms of the order dated 20.4.2021 passed by this Court in C.P. No. D-4287 of 2020. Learned counsel further submitted that this Court has already directed the Government of Sindh to ensure that in the future before convening the meeting of PSB and/or DPC for considering the cases for the promotion of civil servants the departments concerned shall provide the complete ACRs / PERs of the concerned officer to PSB / DPC well in advance so that the case for the promotion of any civil servant should be decided without any delay. He further pointed out that the aforesaid direction has been deliberately defied by the Government of Sindh and deferred the promotion of the petitioner to the next rank for want of ACRs, therefore, contempt proceedings are liable to be initiated against the delinquent officials who deferred the case of the petitioner for further promotion. Learned counsel submitted that the deferment of the petitioner was on account of the non-availability of ACRs from the year 2015 to 2020. Learned counsel referred to the documents attached with the memo of the petition and submitted that ACRs of the petitioner are available on the record, thus the respondent PSB-II ought not to have deferred his case for promotion. He further submitted that there is no other impediment in the case of the petitioner for consideration of his case for promotion. He prayed for allowing the petition.

4. We have heard learned counsel for the parties and perused the material available on record.

5. Petitioner, who is serving at present as Assistant Commissioner in BPS-17 agreed by the purported decision of the PSB-II dated 16.5.2022 whereby his promotion to the post of Deputy Secretary (Equivalent BPS-18) was deferred on the ground that his ACRs for the year 2015 to 2020 were not available and juniors to the petitioner were promoted in BPS-18 on regular basis vide notification dated 18.5.2022.

6. The issue of deferment of promotion of civil servant for want of ACRs has already been dealt with vide order dated 20.4.2021 passed by this Court in C.P. No. D-4287 of 2020 whereby direction was given to the Government of Sindh to ensure that in the future before convening the meeting of PSB and/or DPC for considering the cases for promotion of civil / government servants, the department concerned shall provide the complete set of ACRs / PERs of the concerned officer to PSB / DPC well in advance so that the cases for promotion should be decided without any delay. This Court made it very clear that if the promotion of any civil / government servant is deferred or delayed after passing

of the aforesaid order for want of ACR / PET, the Secretary of the department concerned, competent authority, and all officials responsible for deferring or delaying the promotion shall be held personally responsible for defiance of the direction of this Court as discussed supra.

7. In the present case, the case of promotion of the petitioner was placed before the PSB-II wherein the Board discussed and decided some parameters under the Sindh Civil Servants Promotion (BS-18 to BS-21) Rules, 2022 and decided that the officers whose ACRs for three years were not available, could be considered subject to provision of ACRs whereas the officer not having ACRs for more than three years could be considered for deferment. Since the case of the petitioner was deferred for the reason of incompleteness of ACRs record under Rule 7(c) of the Sindh Civil Servants Promotion (BS-18 to BS-21) Rules, 2022. In our view the respondent department before convening the meeting of PSB-II ought to have completed the homework to provide the complete set of ACRs / PERs of the petitioner to PSB-II well in advance, however, this exercise was not done well in time, therefore, invoking the Rule 7(c) of the Sindh Civil Servants Promotion (BS-18 to BS-21) Rules, 2022 was not called for the reason that it was incumbent upon the respondent-Secretary of the Department to have submitted the complete service record of the petitioner to PSB-II in advance.

8. Prima facie, the petitioner's name appears in the seniority list of officers of Ex-PCS (Executive Branch) vide notification dated 19.8.2022 and there is no other reasonable ground for non-consideration of the case of the petitioner for promotion in BPS-18 as nothing has been brought on record to infer otherwise.

9. So far as the order passed by this Court in C.P. No. D-579/2023 is concerned, this Court simply nullified the proceedings of PSB-II in the meeting held on 17.1.2023 to the extent of officers who were purportedly considered for promotion and their promotion was subject to the outcome of the service appeals filed by the parties before the learned Sindh Service Tribunal whereas in the present case, the petitioner has sought to quash of the observation made by the PSB-II for deferment of the petitioner and promoting his immediate juniors vide notification dated 18.5.2022, therefore, the aforesaid order has no bearing in the case of the petitioner.

10. In view of the above facts and circumstances of the case, the official respondents are free to reconsider the case of the petitioner for promotion to the post of Deputy Secretary (equivalent to BPS-18) as his deferment on the

aforesaid analogy is ceased to exist. The aforesaid exercise shall be completed within two weeks.

11. This petition stands disposed of in terms of the ratio of the order dated 20.4.2021 passed by this Court in C.P. No. D-4287 of 2020.

12. The hearing of application bearing CMA No.23720/2022 is adjourned to be taken up after two weeks after due notice to the alleged contemnors to explain the position about non-compliance of the ratio of the order dated 20.4.2021 passed by this Court in C.P. No. D-4287 of 2020.

JUDGE

JUDGE

Nadir*