

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-947 of 2022

(Muhammad Pannah Mahar Vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
-----------------	-------------------------------

Before;

Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing and order: 16-05-2024.

Mr. Ghulam Murtaza Korai, advocate for the petitioner.
 Mr. Danish Ali Bhatti holds brief on behalf of Mr. Muhammad Ali Napar advocate for the respondent No.4.
 Mr. Liaquat Ali Shar, Additional Advocate General, Sindh.

ORDER.

Adnan-ul-Karim Memon J:- Petitioner Muhammad Pannah seeks a declaration to the effect that awarding posting to the private respondent in two Districts viz. Sukkur and Shikarpur at the same time on Own Pay Scale (OPS) is illegal and in violation of dicta laid down by the Supreme Court in its various pronouncements. He also seeks direction for withdrawal of the Notifications dated 20.12.2018 and 20.12.2021 issued by the Government of Sindh, whereby the private respondent was posted as Deputy Director (Engg) (BS-18) Agricultural Engineering Field Shikarpur of Sukkur Division.

2. It is *inter-alia* contended by the learned counsel for the petitioner that respondent No. 4 belong to Water Management Wing in BPS-18 and he has erroneously been given charge of Agricultural Engineering Wing of Shikarpur and Sukkur, which is of BPS-20; that respondent No. 4 is holding two posts, at the same time, with powers of drawing and disbursing officer vide office letter dated 23-12-2021, in violation of service law; that the private respondent is

indulged in corrupt practices as such he is not liable to be posted on administrative cadre. Learned counsel referred to the judgment of Supreme Court in the case Ali Azhar Khan Baloch Vs. Province of Sindh & others (2015 SCMR 456) and submitted that OPS, deputation and out of turn promotion has been declared nullity in the eyes of law, as such the private respondent shall be reverted to his original position and department. He prayed for direction to the Government of Sindh to implement the judgment of the Supreme Court. He lastly prayed for allowing the petition.

3. The learned counsel representing the private respondent has failed to put his appearance, before this Court though specific date was given to him to appear and assist vide orders dated 07-05-2024 and 15-05-2024; however, on his behalf a brief has been held that latter is busy in his professional engagements. Be that as it may, the issue involved in the present proceedings is about the Posting of Civil/Public Servant on OPS for that learned AAG has briefed this Court on the subject issue and submitted that respondent No.04 is a senior officer of BPS-18, and due to a shortage of BPS-18 Officers in the Agricultural Engineering Wing, the work of Agricultural Engineering offices was suffering badly, as such he has been posted as Deputy Director at Agricultural Engineering Wing, District Shikarpur to carry out the pending matters i.e., retirement, pension, as well other field activities in due course of time.

4. At this stage, we confronted the learned AAG with the recent judgment rendered by the Supreme Court in the case of The Province of Sindh through Chief Secretary & others Vs Ghulam Shabbir and others 2023 SCMR 686 wherein it is held that to stretch or continue acting charge or ad-hoc arrangement on OPS for an extensive period is highly destructive and deteriorative to the civil service structure. Besides making the appointments on acting charge basis includes the consideration by the appointing authority in the public interest to fill a post reserved under the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974 for departmental promotion

and if the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service, the authority may appoint him to that post on acting charge basis, but in the present case, he has to assist as to what prompted the respondent-department to appoint him on OPS basis.

5. On the aforesaid point learned AAG has submitted that some minor irregularities, if any, in the appointment of respondent No.4 on the subject post were not sufficient for the issuance of a Writ of Quo Warranto against respondent No.4. He prayed for the dismissal of this petition.

6. It appears that respondent No.4 was earlier posted as Deputy Director Engineering (BPS-18) Agricultural Engineering, Field Shikarpur of Sukkur Division against vacant post vide Notification dated 20.12.2018. However, the said Notification of respondent No.4 was withdrawn by the Secretary, Agriculture Supply and Prices Department vide Notification dated 04.11.2021 and he was directed to report to the Administrative Department for further posting. Subsequently, the said respondent was posted vide Notification dated 20.12.2021 as Deputy Director Agriculture Engineering Wing, District Shikarpur against an existing vacancy.

7. The question is whether the posting of the private respondent is based on OPS or otherwise, it is for the respondent-department to see at the first instance as on the issue of OPS, the Supreme Court in the case of the Province of Sindh and others Vs. Ghulam Fareed and others (2014 SCMR 1189) while dealing with OPS posting not only discouraged such practice but also noted that only in exigencies does the Government make such appointments as a stop-gap arrangement.

8. In the present case, the Chief Secretary Sindh has to see whether the private respondent was/is fit to be posted on the subject post and his case does not attract the law and dicta laid

down by the Supreme Court in the case of "*Khan Muhammad Vs. Chief Secretary, Government of Balochistan Quetta and Others*" (2018 SCMR 1411).

9. Primarily the respondent department shall strictly follow Rule 8-A of the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules 1974, while making the appointment of the senior most officer of the same cadre, as stop-gape arrangement. The Chief Secretary Sindh shall ensure the proper posting of Civil/Public Servant as per his/her entitlement and he shall also ensure implementation of the judgment of the Supreme Court as discussed *supra* in its letter and spirit and no Civil/Public Servant shall be posted on OPS and out of cadre posting shall be avoided to attract the penal consequences in terms of Article 204 of the Constitution of Islamic Republic of Pakistan, 1973.

10. This petition is disposed of in the above terms.

11. The aforesaid exercise shall be undertaken within two weeks.

Judge

Judge