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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
C. P. No.D-538 of 2014.

DATE OF
HEARING
13.5.2014.

ORDER WITH SIGNATURE OF HON'BLE JUDGE.

1. For orders on office objection.
2. For orders on M. A. No.2006/2014.
3. For orders on M. A. No.2007/2014.
4. For Katcha Peshi.

Mr. Inayatullah G. Morio, advocate for the petitioner.

Through the instant Constitutional Petition, petitioner Saleemullah Abbasi has prayed for the following reliefs :-

- a) *To declare that the impugned Notification dated 02.7.2013 issued by the respondents with regard to the withdrawal of the earlier and old Notification dated 11.07.1995 to the extent of the petitioner, is without lawful authority, discriminatory, illegal, ultra vires thus is void, inoperative and of no legal effect and be further pleased to direct the respondents to allow the Petitioner to continue to serve in same position as Assistant Engineer in Works & Services Department, Government of Sindh.*
- b) *Any other relief, which this Hon'ble Court deems fit and proper under the circumstances of the case, may also be granted to the petitioner.*

2. Mr. Inayatullah G. Morio, learned advocate for the petitioner, contended that the impugned notification dated 2.7.2013 is without lawful authority and discriminatory. It is argued that petitioner is entitled to serve in the same position as Assistant Engineer in Works and Services Department, Govt. of Sindh, Karachi.

3. Petitioner's Counsel was confronted regarding maintainability of the petition in view of judgment passed by the Hon'ble Supreme Court in Criminal Original Petition No.89/2011, referred in the impugned Notification dated 2.7.2013; whereof Counsel contended that instant judgment is misapplied by the authorities, while issuing such notification.

4. We have carefully perused the judgment passed by the Hon'ble Supreme Court in the case of *Contempt Proceedings against Chief Secretary, Sindh and others: In the matter of*, reported in 2013 S C M R 1752. Para No.126 of the judgment is reproduced as under :-

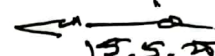
"From the above discussion, the aforesaid legislative instruments on the issue of absorption are liable to be struck down being violative of Constitutional provisions referred to hereinabove, therefore, we hold as under:-

- (i) *That the Sindh Government can only appoint a person by absorption by resorting to Rule 9A of the Rules of 1974.*
- (ii) *Sindh Government cannot order absorption of an employee who is a non-civil servant, however, an employee of an autonomous body can be absorbed in Sindh Government subject to conditions laid down under Rule 9-A of the Rules of 1974.*
- (iii) *Sindh Government cannot absorb a civil servant of non-cadre post to any cadre which is meant for the officers who are recruited through competitive process.*
- (iv) *Any backdated seniority cannot be granted to any absorbee and his inter-se seniority, on absorption in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority.*
- (v) *No civil servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process. A civil servant can be transferred out of cadre to any other department of the government subject to the restrictions contained under Rule 9(1) of the Rules of 1974.*
- (vi) *The legislature cannot enlarge the definition of "civil servant" by appointing a non-civil servant through transfer on the basis of absorption conferring him status of civil servant pursuant to the impugned legislation which is violative of the scheme of civil service law as provided under Articles 240 and 242 of the Constitution."*

5. It is manifest that the impugned notification dated 2.7.2013, issued by the Govt. of Sindh, Services, General Administration and Coordination Department, it is specifically mentioned that ***in pursuance of the judgment dated 12.06.2013 passed by the Honourable Supreme Court of Pakistan in Criminal Original Petition No.89/2011 and other cases and with the approval of the Competent Authority the absorptions / appointments by transfer of***

the following officers / officials in Works & Services Department are hereby withdrawn ab-initio and they stand relieved to report to their parent Departments / Organizations.

6. In view of above, it is patent that name of the petitioner transpires in the notification at serial No.12 and thus prima facie, petitioner cannot invoke jurisdiction of this Court under Article 199 of the Constitution seeking suspension of notification, which is issued in pursuance of dictum passed by the Hon'ble Supreme Court, wherein Hon'ble Apex Court has resolved issue involved in this petition. Consequently, instant petition is not maintainable before this Court. The same is hereby dismissed alongwith listed applications.


15.5.2014.
JUDGE


15/5/2014
JUDGE

Qazi Tahir/*