

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P. No.D-2920 of 2022
[Ali Abbas v. The Honourable Chief Minister Sindh & others]

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Riazat Ali Sahar.

For hearing of MA No.6459/2024.

Petitioner Ali Abbas is present in person.

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Ghulam Ali Birhamani, Secretary Services, SGA&CD along
with Naeem Hussain Gadehi, Assistant Director Low and Jabir
Jabbar Assistant to Additional Director Law, SGA&CD
Government of Sindh.

Date of Order : 27.11.2025

ORDER

ADNAN-UL-KARIM MEMON, J. - The petitioner has filed the instant Civil Miscellaneous Application alleging non-compliance of judgment dated 3.5.2023 passed by this court in the subject Constitutional Petition, through which this Court directed the competent authority/respondents to consider his case for proforma promotion to BS-20. The operative portion of the judgment reads as follows:

“The competent authority/respondents shall consider the case of the petitioner for proforma promotion in BS-20 by way of circulation within two weeks, subject to the availability of a vacancy in BPS-20 under the relevant Recruitment Rules. As the petitioner has already retired, his proforma promotion will not affect the seniority of any serving employee, and he shall be entitled to his emoluments and pensionary benefits.”

2. We have been informed that the Health Department had earlier filed Civil Petition for Leave to Appeal No. 912-K of 2023 before the Supreme Court against the said judgment, which was dismissed vide order dated 03-10-2024. However, after this Court issued a contempt notice dated 19-09-2024, the respondent prepared the petitioner’s working paper for proforma promotion and forwarded to the Services, General Administration & Coordination Department (SGA&CD) via letter dated 07-09-2024. In response, SGA&CD sought clarification from the Health Department regarding (i) whether any post of BS-20 existed under the relevant cadre

and whether its recruitment rules were framed, and (ii) whether any junior officer to the petitioner had been promoted to BS-20 prior to the petitioner's retirement on 08.06.2021. Accordingly, the Health Department furnished the required information via letter dated 11-10-2024, stating that at the time of the petitioner's retirement in 2021, only one post of BS-20 existed. In the seniority list dated 13-04-2017, the petitioner stood at Serial No.3, whereas the said BS-20 post had already been filled by Mrs. Shaista Mubarik on 13-02-2018. She retired only on 23-02-2023, well after the petitioner's retirement; therefore, no right to promotion had accrued to the petitioner in 2021. In light of the above factual and legal position, the respondents submit that the directions of this Court have been complied with in letter and spirit; hence, the pending CMA merits dismissal.

3. It is, however, the petitioner's consistent stance that his junior colleague, Abdul Sattar Jatoi, was always junior to him first in the Sindh Public Service Commission merit list, and subsequently in BPS-17, BPS-18, and BPS-19. The petitioner asserts that Mr. Jatoi was promoted out of turn from BPS-19 to BPS-20. His promotion was set aside by the Sindh Service Tribunal, and he was restored to his original seniority with his batchmates. The Honorable Supreme Court upheld these findings. Consequently, his out-of-turn promotion was withdrawn, and he was re-assigned seniority with his batch. He was promoted again to BPS-20 on merit only after the petitioner's retirement. He submitted that during the hearing conducted on 12-08-2025, the earlier report submitted by the respondents and the submissions of the learned A.A.G. were inconsistent with the judgment of this Court. The petitioner reiterates that he was appointed in 1992 as Planning Officer (BPS-17) on the recommendation of SPSC at Serial No.5 of the merit list, whereas Mr. Jatoi was at Serial No.9. They were promoted together to BPS-18 vide notification dated 11-10-2004 petitioner at Serial No.3; junior at Serial No.5, and again to BPS-19 vide notification dated 27-10-2010 petitioner at Serial No.2; junior at Serial No.5. Both remained in BPS-19 until 01-06-2018, when the petitioner's junior was promoted alone to BPS-20 through person-specific amendments to Recruitment Rules creating a post of Director (Administration, Accounts & Development) (BPS-20). However, litigation ensued up to the Supreme Court, which eventually resulted in the recall of junior's premature promotion. He added that this Court, vide judgment dated 03.05.2023, directed that he be considered for proforma promotion in BS-20 within two weeks, subject to availability of vacancy, without affecting the seniority of any serving employee, and with entitlement to emoluments and pensionary benefits. He submitted that this Court accepted his prayer for grant of proforma promotion with effect from 01-06-2018, i.e., when his batchmates were promoted or when a vacancy in BS-20 became available. He emphasized that the Supreme Court of Pakistan dismissed the respondents' petition vide order dated 03-10-2024 in CPLA No. 912-K/2023, holding that no illegality existed in this Court's order. The petitioner

contends that respondents have already granted proforma promotions to 74 doctors; however, despite sufficient years having passed, the respondents remain in willful non-compliance with this Court's judgment dated 03-05-2023 as well as the Supreme Court's order dated 03-10-2024.

4. Ultimately, after correspondence between departments, the Health Department again reported via letter dated 11-10-2024 that no BS-20 post was vacant at the time of petitioner's retirement, as the only sanctioned post had been filled by a senior officer, Mrs. Shaista Mubarik in 2018, and remained occupied until 2023. Therefore, the case was processed for circulation and was not recommended for proforma promotion on the grounds that no vacancy existed and no junior officer was holding BS-20 at the time of petitioner's retirement. The petitioner was informed accordingly via a letter dated 21-10-2024.

5. The respondents base their defense on the factual assertion that no vacancy in BS-20 was available at the time of petitioner's retirement, as the only sanctioned post had already been occupied by his senior, Mrs. Shaista Mubarik. Accordingly, they contend that there is no violation of this Court's order, which required consideration of the petitioner's case only "subject to availability of vacancy." The controversy raised by the petitioner primarily concerns factual and administrative matters such as seniority positions, the existence and timing of vacancies, and the dates on which specific posts were filled. Such issues fall outside the scope of contempt proceedings, which are intended to address willful and deliberate disobedience of judicial directives. Courts have consistently held that contempt jurisdiction cannot be invoked to resolve disputed questions of fact or to adjudicate substantive service claims, and they refrain from treating mere disagreements over interpretation or factual assessment as contempt.

6. In view of the foregoing, this Court, while exercising its discretion under the Contempt of Court Ordinance 2003, is not persuaded to hold the respondents guilty of civil contempt. The material on record reflects that the respondents undertook the process required by this Court's judgment, they initiated circulation, engaged with SGA&CD, prepared and submitted the working paper, and ultimately issued speaking order or at minimum, a reasoned determination that no vacancy in BS-20 was available at the relevant time as directed by this Court which order confined subject to availability of vacancy at the time of retirement of the petitioner, which prima facie show that one officer was already holding the subject post and retired much after the retirement of the petitioner as discussed supra.

7. Contempt jurisdiction demands a high threshold of deliberate, unequivocal, and unjustified disobedience, which is not evident in the present case.

8. Upon careful examination of the record, this Court is satisfied that the respondents did take steps to “consider” the petitioner’s case, as directed in the judgment dated 3.5.2023. The issues raised relating to vacancy position, seniority, and competing claims are inherently factual and administrative in nature, and do not amount to willful or contumacious defiance of the Court’s order.

Accordingly, the present civil contempt application via MA No.6459/2024 is dismissed.

JUDGE

JUDGE

Karar_Hussain/PS*