

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-178 of 2017

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Petitioner Muhammad Khan Soomro in person.

Respondents No.1&2 Through Mr. Abdul Jalil Zubedi, AAG.

Date of hearing 20.02.2017

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:-

The Petitioner through this

Constitutional Petition seeks the following reliefs:-

- A. Direct the Respondents No.1, 2 and 3 to nominate the Petitioner for attending the 23rd Mid Career Management Course (MCMC) in the prime interest of justice.
- B. Declare that the act of Respondents for not nominating the name of Petitioner for attending the 23rd Mid Career Management Course (MCMC) is in contrary to the service rules and against the Fundamental Rights.
- C. Award the cost of this Petition to the Petitioner.
- D. Grant other relief(s) as deem fit and proper in circumstances of the above.”

2. The Petitioner was appointed in Ex-PCS Cadre (BS-17). He was promoted to the post of Deputy Secretary/equivalent (BS-18) on regular basis vide Notification dated 08.11.2013 issued by the Services, General

Administration & Coordination Department, Government of Sindh (Respondent No.2).

3. The case of the Petitioner is that Respondent No.2 under the directions of the Competent Authority nominated 11 Officers of Ex-PCS/PSS (BS-18) Cadre for attending the 23rd Mid Career Management Course (MCMC) (hereinafter referred to as MCMC). Such Nominations were sent to the Respondent No.3 for the above purpose. The claim of the Petitioner is that he was not considered, for attending the MCMC, which is scheduled to be commenced in the month of February, 2017 at National Institute of Management (NIM), Karachi, Lahore, Peshawar and Quetta respectively.

4. The parawise comments on behalf of the Respondents No.1 and 2 were filed.

5. The Petitioner, who is present in person, contends that he belongs to Ex-PCS Cadre and was promoted to the post of Deputy Secretary/equivalent (BS-18) on regular basis vide Notification dated 08.11.2013 and was eligible to be nominated for attending the MCMC, but the Respondents No.1 and 2 with malafide intention ignored him and recommended the name of the Respondent No.4 with ulterior motives. He next argued that the Respondent No.4 was promoted to the post of Deputy Secretary /equivalent (BS-18) on regular basis vide Notification dated 08.11.2013, subject to final outcome of the decision in case of exemptions from passing Assistant Collector Department Examination Part-I & II. Petitioner further says that the respondent No.4 was not

eligible to be recommended for such nominations. The Petitioner next argued that he has been placed at Sr. No.54 in Provisional Seniority List of the Officers of Ex-PCS Cadre (Bs-18) dated 10.04.2015 and is entitled for nomination in the course. He further argued that the Nomination of Respondent No.4 for the MCMC is violation of order dated 24.02.2015 passed by the Honourable Apex Court in Civil Appeal No.28-K of 2013. The Petitioner lastly argued that he has been discriminated due to issuance of the impugned letter dated 21.12.2016 issued by the Respondent No.2.

6. On the other hand, Mr. Abdul Jalil Zubedi, learned AAG while agitating the issue of maintainability of the instant Petition, has argued that the Respondent No.3 issued Office Memorandum via letter dated 22.11.2016 and obtained the names of six (6) senior most Officers of Ex-PCS (BS-18) and PSS Cadre. He next contended that the Respondent No.2 via letter dated 21.12.2016 addressed to the Respondent No.3 nominated 11 Officers of Ex-PCS and PSS Cadre (BS-18) for attending MCMC. He further argued that at present no post in BS-19 is available for consideration of promotion of the Ex-PCS Cadre Officer. However, he stated that in the coming next two years, 11 posts are expected to be available, whereas 09 Officers are already available, who have done/completed Mid Career Management Course (MCMC) and six Officers will also be available, who have now been recommended for MCMC, as such, against 11 vacancies for promotion, 15 Officers will be available. He further argued that the request of the Petitioner is not justified as no Junior Officer to him has been recommended for such

nomination as the Petitioner stands at Sr. No.54, of the Seniority List dated 10.04.2015, whereas recommendations have been made upto Sr. No.52. Lastly he argued that the nomination of the Petitioner will be considered by the Department if he is found to be eligible for Mid Career Management Course (MCMC).

7. We have heard the Petitioner in person and learned AAG and have perused the entire material available on record.

8. It appears from the record that the Petitioner was promoted for the post of Deputy Secretary (BS-18) on regular basis vide notification dated 08.11.2013. We have also seen the Provisional Seniority List of Officers of Ex.PCS (Executive Branch) Service (BS-18) dated 10.04.2015, placed on record, issued by the Respondent No.2, which clearly shows that the Petitioner has been placed at Sr. No.54, whereas the Respondent No.4 has been shown at Sr. No.46. We have also perused the Notification dated 21.12.2016 issued by the Respondent No.2 nominating six (6) Officers of Ex-PCS Cadre for attending the MCMC and it has categorically been clarified in the Notification that no Junior Officer has been nominated for the said Mid Career Management Course (MCMC).

9. As per the policy, the Mid Career Management Course (MCMC) is mandatory for the purposes of promotion to the higher rank i.e. BS-19. As per promotion policy, the Petitioner has to meet the criteria as laid down in the Office Memorandum dated 22.11.2016.

10. Perusal of the Office Memorandum dated 22.11.2016, it transpires that besides other the case of the Petitioner does not fall within the ambit

of Promotion Zone as well as Seniority, as the name of the Petitioner is at Sr. No.54 whereas the nominations have been made upto the Sr. No.52 of the Seniority List of Officer of Ex-PCS (BS-18) Cadre.

11. In the light of the above facts and circumstances of the present case, this is the matter of Policy to obtain the nominations of BS-18 or equivalent Officers for the MCMC to be taken place at National Institute of Management (NIM).

12. We have noted that there is cut of date given in the said Notification dated 20.12.2016 for such nominations. Admittedly, on 21.12.2016 the Respondent No.2 forwarded the nominations of six (6) Officers of Ex.PCS (BS-18) Cadre and five (5) Officers of Provincial Secretariat Services Cadre (PSS), whereas, the Petitioner has not sought any relief against the Respondent No.4 in his Prayer rather he prayed that directions may be issued for his nomination in the said course. This assertion of the Petitioner, in our view, is not tenable in the eyes of law. We have also noted that the Petitioner being a Junior Officer of the Ex-PCS Cadre could not claim nomination for 23rd Mid Career Management Course (MCMC) as a matter of right, as this is not his vested and fundamental right. In our view, the Petitioner, at this juncture, being a junior officer in the Seniority List, does not fall within the ambit of promotion zone for higher rank (BS-19). The nominations were made upto Sr. No.52 of the seniority list, whereas Petitioner stands at Sr. No.54 and may be considered for nomination on his turn, if found eligible. Reverting to the plea raised by the Petitioner in respect of order dated 24.02.2015 passed in Civil Appeal No.28-K of 2013, the Hon'ble

Apex Court has passed the final judgment in the Civil Appeal No.28-K of 2013 dated 27.04.2016, and the same is reported as Chief Secretary Sindh Versus Riaz Ahmed Massan (2016 SCMR 1784) with the observation that the issue to examine the vires of West Pakistan Civil Service (Executive Branch) Rules 1964 will be taken up separately, least it may not prejudice the case of those serving officers who may be the beneficiary of such exemption. However, the Hon'ble Apex Court has not restricted for sending the Ex-PCS / PSS Officers for Mid Career Management Course (MCMC).

13. In view of the above, we do not find any irregularity or illegally in the Notification dated 21.12.2016 and violation of Service Rules, regarding nominations of the Officers of Ex-PCS / PSS Cadre for attending 23rd Mid Career Management Course (MCMC). The Petition merits no consideration and is accordingly dismissed.

JUDGE

JUDGE