

2. Brief facts of the case are that on 23.12.1992 Petitioner was recommended by Sindh Public Service Commission and appointed as Mukhtiarkar in BPS-16. Petitioner further added that he was promoted to the post of Assistant Commissioner Ex-PCS Cadre (BS-17) in the month of April, 1999 and was further promoted in (BS-18) in the month of March, 2007. It is further averred by the Petitioner that he was promoted to the post of Additional Secretary (equivalent to BS-19) on regular basis vide Notification dated 08.11.2016 issued by the Services, General Administration & Coordination Department, Government of Sindh (Respondent No.2). Petitioner added that the Respondent No.2 issued seniority to him vide Notification dated 16.02.2017 with effect from 19.05.2014.

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-19) Cadre for attending the 22nd Senior Management Course (SMC) at National Institute of Management, Islamabad, Lahore and Karachi (hereinafter referred to as SMC). Such Nominations were forwarded to Respondent No.1 for the above purpose. The claim of the Petitioner is that he was not considered for attending the respective SMC which was scheduled to commence with effect from 11th September, 2017 at National Institute of Management (NIM), Karachi and Lahore.

4. The parawise comments on behalf of the Respondents No.2 and 3 are filed.

5. The Petitioner present in person has argued that he belongs to Ex-PCS Cadre and was promoted to the post of Additional Secretary (equivalent to BS-19) on regular basis vide Notification dated 08.11.2016 along with seniority w.e.f. 19.05.2014 vide Notification dated 16.02.2017. He further contended that he was eligible to be nominated for attending the SMC, but the Respondents No.2 and 3 with malafide intention ignored him and recommended the names of his juniors with ulterior motives. He next argued that amongst the nine officials nominated for the SMC, five are illegally appointed and have been retained in service in violation of the order of the Hon'ble Supreme Court reported in the case Contempt Proceedings Against Chief Secretary Government of Sindh, Cr. Org. Petition No. 89 of 2011 (2013 SCMR 1752); that Respondents No. 2 and 3 rather than terminating the services of those illegally appointed officials have resorted to unethical, unprofessional and illegal behavior and nominated them for SMC in contempt of the Orders of the Hon'ble Supreme Court. Per Petitioner he has recently come to know that two of the nominees have withdrawn from their candidature from SMC, thus two seats have fallen vacant and Petitioner can be nominated for the vacant seat; that discriminatory treatment has been meted out to the Petitioner by ignoring him and considering the junior officers; that such act of the Respondents is in derogation of Article 25 of the Constitution; that Petitioner being aggrieved by and dissatisfied with the impugned nominations made by Respondent No.2 has filed the instant Petition.

06. 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.1 has issued Office Memorandum via Letter dated 13.06.2017 and obtained the nomination of officers of Ex-PCS (BS-19) and Provincial Secretariat Service Cadre by directing the Provincial Governments to strictly observe the criteria set forth in the Office Memorandum dated 13.06.2017 in the process of nomination. He next contended that the Respondent No.2 via Letter dated 08.08.2017 addressed to the Respondent No.1 nominated 11 Officers of Ex-PCS Cadre (BS-19) for attending SMC vide different letters dated 08.08.2017, 21.08.2017, 05.09.2017, 11.09.2017 and 15.09.2017. Per learned AAG no officer junior to the Petitioner has been recommended for the above specified nomination. He further added that out of the above 11 officers, only nomination of three officers, who are seniors to the Petitioner have been approved by the Respondent No.1. He further added that no discrimination is meted out to the Petitioner and prayed for dismissal of the instant Petition. Mr. Muhammad Aslam Butt learned DAG adopted arguments of learned AAG.

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

08. It appears from the record that the Petitioner was promoted for the post of Additional Secretary (equivalent to BS-19) on regular basis vide Notification dated 08.11.2016 with seniority w.e.f. 19.05.2014. We have also perused the Provisional Seniority List of Officers of Ex PCS (BS-19) dated 30.07.2017 issued by the Respondent No.2 which shows Petitioner's name placed at serial No. 44.

09. As per comments filed by the Respondents No. 2 and 3 that Respondent No. 1 has approved the nominations of only 3 officers of Ex-PCS Cadre out of 11, namely Mr. Riaz Ali Abbasi, Mr. Muhammad Yasir Jan Baloch and Syed Mehdi Ali Shah placed at serial No.12, 21 and 27 in the Provisional Seniority List. Whereas, the Petitioner's name is at serial No. 44.

10. Mr. Muhammad Raziuddin, Secretary (Services) present in Court made categorical statement that as per criteria set forth in the Office Memorandum dated 13.07.2017 no Junior Officer to the Petitioner has been nominated for SMC. He further apprised this Court that Petitioner applied for Ex-Pakistan Leave vide Application dated 06.09.2017 to visit United States of America on medical ground w.e.f. 01.10.2017 to 15.11.2017, which has been granted by the competent authority vide Notification dated 25.09.2017.

11. We have gone through the Office Memorandum dated 13.07.2017 wherein in Clause V explicitly states as follows: "The officer(s) on long leave/EoL and are undergoing disciplinary proceedings may also not be nominated."

12. As per the promotion policy, the Senior Management Course (SMC) is mandatory for the purposes of promotion to the higher rank that is, BS-20.

13. Perusal of the Office Memorandum dated 13.07.2017, transpires that besides other grounds the case of the Petitioner does not fall within

the ambit of Promotion Zone as well as Seniority because the name of Petitioner is at serial No.44 of the Seniority List whereas, the names of the nominated Officers appear at serial No. 12, 21, and 27. This fact is prima facie establishing that the contention of the Petitioner is baseless and does not merit consideration by this Court.

14. In view of the above discussion, Petition merits no consideration and is accordingly dismissed.

JUDGE

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