

IN THE HIGH COURT OF SINDH, AT KARACHI

Present: Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6640 of 2014

Rehan Hussain Ghouri and others.....Petitioners

Versus

SBCA and another Respondents

Date of hearing: 06.12.2017

Mr. Shamshad Ali Qureshi Advocate for the Petitioners.
Mr. Muhammad Rafiq Rajorvi AAG.

ORDER

ADNAN-UL-KARIM MEMON,J:The instant petition was disposed
of vide order dated 19.11.2015 with the following observations:-

“The petitioners in this petition have prayed for the direction against the respondent No.1 to hold DPC for consideration of their cases so that they may be awarded promotions in BS-17. Though the respondents have not filed any comments in this case but today the Deputy Director (Admn) and Law officer of respondent No.1 are present who state that the Government of Sindh has also issued some instructions regarding holding of DPC on regular basis and further submit that if three months’ time is granted the DPC will be held by the respondent No.1 in which the names of the petitioners will also be included for consideration of their promotion. Counsel for the petitioners is satisfied. The petition is disposed of accordingly along with pending applications.”

2. On 21.04.2016 Petitioners filed an application under Article 204 of Constitution of Islamic Republic of Pakistan 1973 bearing (CMA No. 10222/2016) for initiating Contempt proceedings

against the alleged contemnors for violating the Order dated 19.11.2015 passed by this Court.

3. Mr. Shamshad Ali Qureshi, learned counsel for Petitioners has contended that this Court vide Order dated 19.11.2015 disposed of the instant Petition by directing the Respondents to hold DPC for consideration of the cases of the Petitioners so that they may be awarded promotion in BPS-17; that the Respondents failed and neglected to hold DPC for promotion of the Petitioners in BPS-17 as per direction of this Court; that the Respondents have appointed so many personnel against the post of Petitioners in BPS-17 without considering the petitioners for promotion. He lastly prayed for taking strict action against the alleged contemnors for disobeying the directives passed by this Court in the instant matter.

4. Mr. Muhammad Arshad Khan Tanoli Advocate files vakalatnama on behalf of alleged contemnor No.2, which is taken on record and also files Statement, copy of which has been provided to the learned counsel for Petitioner and learned AAG. Learned counsel has placed reliance on the Notification dated 11.01.2017 issued by Government of Sindh, Local Government Town Planning Department and argued that the post sanctioned in basic scale 16 and above, the appointing authority is Chief Executive of Sindh Building Control Authority with the approval of the Government; that the post of Assistant Director Buildings BS-17 (Technical) can be filled by 50% by promotion from amongst the Senior Building Inspectors BS-16 on the basis of seniority cum

fitness and 12.5% from the officials having B-Tech Degree in Civil Engineering or Architecture or Town Planning from recognized University; that the post of Controller Building Inspector BS-16- and BS-17 (Technical) can also be filled by promotion and 10% is reserved for the officials having B-Tech Degree. Learned counsel added that in compliance with the order dated 19.11.2015, DPC was convened on 14.04.2016 and as per minutes of the meeting Petitioners were promoted vide office orders dated 02.05.2016, 12.05.2017; that final seniority list of Senior Building Inspectors BS-16 (B-Tech) was also issued in the line of Rules and Policy; that the Petitioners are holder of B-Tech Degree thus not qualified engineers as per Provisions of Pakistan Engineering Council Act 1975. He lastly prays for dismissing the contempt application on the premise that the Order passed by this Court has been fully complied with.

5. Mr. Shahmshad Ali Qureshi, learned counsel for Petitioners has rebutted the argument of the alleged contemnors and has placed reliance upon the office orders dated 06.05.2011, 27.06.2011 and produced the list of officers / officials promoted in the year 2011 as Assistant Director BPS-17 without following the ratio as claimed by the learned counsel for the alleged contemnors thus the petitioners have been discriminated by the alleged contemnors. He further added that the order passed by this Court has not been complied with in letter and spirit.

6. We have heard learned counsel for the Petitioners as well as learned counsel for alleged contemnors and perused the material available on record.

7. Petitioners have raised their voice through the Contempt Application being CMA No. 10222/2016 that the Respondents have not considered them in the DPC for promotion in BS-17 as per Order dated 19.11.2015 passed by this court. Learned counsel for the parties attempted to re-argue the matter on merit, we cannot enlarge the scope of lis already disposed of vide order dated 19.11.2015 passed by this Court.

8. The Respondents have submitted counter affidavit and denied the allegations leveled in the listed application. The Respondents have stated the facts in chronological order, supported with Note-sheet, various orders of promotion of the Petitioners, in order to show that the order dated 19.11.2015 passed by this Court has been complied with in its letter and spirit. Mr. Muhammad Arshad Khan Tanoli, learned counsel for alleged contemnor No.2 has attempted to convince this court and justify the action on the part of alleged contemnors and stated at the bar that the case of the Petitioners for promotion in BPS-16 was considered by the Competent Authority and they were given their due promotion in accordance with law and policy, however he added that nothing is left to be adjudicated more by this Court in a disposed of matter.

9. Perusal of record explicitly shows that the Petitioners were promoted, but the learned counsel for the Petitioners emphasized that the Petitioners have not been considered for promotion in BS-17 for which learned counsel for the alleged contemnors refuted the claim of the Petitioners on the ground that under the law there is ratio provided for the promotion in BS-17 of officials who have Degree of diploma or B-Tech, therefore they cannot be treated at

par with graduate engineers; that the Petitioners are not Professional Engineers to be considered for promotion in BS-17 except as per ratio provided under the law and the same has been followed by the Respondents accordingly.

10. Perusal of the Notification dated 11.01.2017 issued by Government of Sindh, Local Government Town Planning Department depict the policy of the Provincial Government whereby certain quota is assured to Diploma and B. Tech (Hons) Degree Holders for promotion in (BPS-17). This does not amount to recognizing the Diploma and B. Tech (Hons) Holders as having a Degree equivalent to the Bachelors of Engineering as stipulated in Pakistan Engineering Council Act, 1976.

11. We are of the view that the matter pertains to promotion policy. Recruitment Rules have been amended to confer right of promotion to Diploma and B-Tech Degree Holders in BS-17 and as per averments of the parties the same has been followed in the case of petitioners in accordance with the previous recruitment rules framed by the Competent Authority . Therefore, it cannot be said that any right of the Petitioners is infringed, which could be enforced through contempt proceedings. It is well settled law that the Government is empowered to change the promotion policy and prescribe the qualification for a particular post through amendment in the relevant Rules. Secondly, the responsibility deciding suitability of an appointment by way of promotion fell primarily on the Executive branch of the State which is a policy matter.

12. In view of the above facts and circumstances of the case, the explanation offered by the respondents vide statement dated 06.12.2017, prima facie, is tenable under the law as the petitioners were considered for the promotion in compliance of order passed by this Court dated 19.11.2015. At this juncture, we are satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 19.11.2015 passed by this Court has been made in its letter and spirit, therefore, no case for initiating contempt proceedings is made out against the alleged contemnors. It is well settled principle of law that Contempt Proceedings is always between the Court and the alleged contemnors. Thus, we are not inclined to proceed with any further on the listed application bearing CMA No.10222/2016, having no merits, is accordingly dismissed along with pending application CMA No. 19566/17.

JUDGE

JUDGE

Karachi
Dated 06.12.2017