

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-5197 of 2017

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

Petitioner Mrs. Sadia Ali Akram through Mr. Muhammad Zahid Khan Advocate.

Respondents No.1&2 Through Mr. Muhammad Aslam Butt, DAG alongwith Mr. Shahid Dayo, Deputy Secretary, Government of Pakistan, Establishment Division, Islamabad.

Date of hearing 22.08.2017

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- The Petitioner through this Constitutional Petition seeks the following reliefs:-

- (i) To declare that the Petitioner is listed at Serial No.1, of the seniority list, Inter-SE Seniority 35th, Common Training Program, and is entitled to be nominated for 24th Mid-Career Management Course (M.C.M.C) at NIMS, Karachi along with her husband, namely Syed Ali Asif (PSP) commencing from 21.08.2017, at NIMS, Karachi
- (ii) To declare that the decision of the Respondents not to include the name of the Petitioner for training in 24th Mid-Career Management Course (M.C.M.C.) at National Institute of Management (NIMS), Karachi, commencing from 21.08.2017, is unlawful, illegal, in violation of the natural justice and violation of the Service Rules, and is bad in law and of no legal consequences.
- (iii) Directing the Respondents to nominate and include the name of the Petitioner in the list, issued dated 04.08.2017, bearing No. F.MO.F 8/3/2017-T-VI (M.C.M.C) commencing from 21.08.2017, at National Institute of Management (NIMS) Karachi

- (iv) Any other consequential relief may deem fit in the circumstances of the case.

2. Brief facts of the case are that the Petitioner passed the Central Superior Services (Central Services Selection Exam) in 2006, was allocated into Income Tax Service, later named Inland Revenue Services; that the Petitioner started training on 07.01.2008 in the 35th Common Training Program. Petitioner in the Departmental Exams secured first position (Academic) in Intra-Departmental Exam at the end of Specialized Training Program. Petitioner was listed at Sr. No. 1, of Interse seniority with her batch mat issued by Federal Board of Revenue; Petitioner is serving as an Officer in Grade 18, holding the post of Deputy Commissioner Inland Revenue Services; As per seniority list, issued by the Federal Board of Revenue Islamabad, the name of the Petitioner has been listed at Sr. No.1, showing her marks obtained, in CSS Examination, Academic.; that Respondent Nos 1 & 2 have violated Interse Seniority List by nominating four candidates to undergo the Midcareer Management Course (hereinafter referred to as an MCMC); that those officers, who were placed in the Seniority List were juniors to the Petitioner namely Mst. Aamra Sarwar at Sr. No.4, Mst. Neelum Afzal at Sr. No.9, Mr. Akhtar Abbas at Sr. No. 17, Mr. Laiq Zaman at Sr. No.21; that the Junior Officers had been nominated in 21st MCMC and deprived the Petitioner from the said training course; that the above officers had completed their training and Petitioner is still awaiting for her nomination; that the Petitioner has been put on the waiting list and even dropped for

the forthcoming MCMC, which is scheduled to be commenced on 21.08.2017.

3. Para-wise comments on behalf of the Respondents No.1 and 2 have been filed, however, Mr. Muhammad Aslam Butt, learned DAG upon instructions has candidly conceded that the Petitioner is entitled to be nominated for attending the MCMC.

4. Mr. Muhammad Zahid Khan learned counsel for the Petitioner has contended that the Petitioner belongs to Management Inland Revenue-1, Federal Board of Revenue; that the Respondents have failed to consider the Seniority List prepared by the Federal Board of Revenue, wherein the Petitioner has been placed at Sr. No.1; that the Respondents have no legal justification to pick and choose any of the officer from Approved Seniority List prepared by the Federal Board of Revenue; that the Petitioner could not be deprived for the training of 24th MCMC, commencing from 21.08.2017; that the representation made by the Petitioner vide letter dated 01.07.2017, she was recommended for the training of MCMC but the same has been overlooked with malafide intention; that the case of the Petitioner is protected by the wedlock policy dated 13.05.1998; that the case of the Petitioner is of hardship and discriminatory, therefore, she is entitled for nomination for the training of 24th MCMC. Learned counsel for the Petitioner lastly prayed that Petitioner may be allowed to be considered for training in 24th MCMC at National Institute of Management (NIMS), Karachi commencing from 21.08.2017.

5. We have heard the learned counsel for the parties and have perused the entire material available on record.

6. The case of the Petitioner is that Respondent No.1, under the directions of the Competent Authority nominated 15 Officers of Inland Revenue Service (IRS) ((BS-18) Cadre for attending the 24th Mid-Career Management Course (MCMC). Such Nominations were sent to the Rector, National School of Public Policy, Lahore for the above purpose. The Grievance of the Petitioner is that she was not considered for attending the said MCMC, which is scheduled to take place between 21.08.2017 to 24.11.2017 at National Institutes of Management (NIM), Karachi, Lahore, Peshawar, Quetta and Islamabad respectively, while she was promoted for the post of Deputy Commissioner Inland Revenue Service, Large Taxpayer Unit Karachi (BS-18) on regular basis like other participants.

7. We have perused the Interse Seniority List of 35th CTP placed on the record, (issued by the Secretary Management –IR-I), which clearly shows that the Petitioner has been placed at Sr. No.1. We have also perused the Notification dated 04.08.2017 issued by the Respondent No.1 nominating 15 Officers of Inland Revenue Service (IRS) for attending the said MCMC. The learned DAG, under the instructions, has candidly conceded to the stance taken by the learned counsel for the Petitioner that she is senior most officer Inland Revenue Service (IRS) and juniors to her had been allowed to proceed for the 21st MCMC and they completed the same training but now again the Petitioner seems to have been not

considered due to the reasons mentioned in the Paragraph-5 of the comments. Learned DAG representing Respondents No.1 and 2 has given no objection if the Petitioner is allowed to attend the training of Mid-Career Management Course commencing from 21.08.2017 as mentioned in the foregoing.

8. Worth mentioning is that as per promotion policy, the Mid Career Management Course (MCMC) is mandatory for the purposes of promotion to the higher rank i.e. BS-19. Per learned DAG, the Petitioner as per seniority meets the criteria as laid down in the Office Memorandum dated 04.08.2017.

9. From the perusal of the Office Memorandum dated 21.01.2016, it transpires that the juniors of the Petitioner were nominated for 21st Mid-Career Management Course. In Paragraph-5 of the Parawise comments it is stated that juniors to the Petitioner i.e. namely Mst. Aamra Sarwar at Sr. No.4, Mst. Neelum Afzal at Sr. No.9, Mr. Akhtar Abbas at Sr. No. 17, Mr. Laiq Zaman at Sr. No.21 of the seniority list, were recommended for such course, as per orders of the Competent Authority, as during nomination of the said course complete record of Performance Evaluation Reports (PERs) upto 2014 was required and as per information provided by FBR the Petitioner's PER record upto 2014 was incomplete, therefore, she was not nominated for that course. Since on the fault of the Respondents, complete record of the Petitioner's PER upto 2014 was not completed and her juniors were nominated and selected for 21st MCMC. Notwithstanding that the case of the Petitioner does fall within the ambit of Promotion

Zone as well as Seniority (rather topping the Seniority List), whereas the nominations of juniors of the Petitioners have been made as per Seniority List of Inland Revenue Services Officer from 31st CTP to 37th CTP Officer (BS-18) Cadre. It is obvious that one can safely conclude that the Respondents have discriminated with the Petitioner by sending juniors to the Petitioners for the course of MCMC and depriving her of such training. In our view the case of Petitioner squarely falls within the ambit of Article 25 of the Constitution of Islamic Republic of Pakistan 1973.

10. We have noted that there is cut of date given in the said Notification dated 21.08.2017 for such nominations. Admittedly, on 4th August 2017 the Respondent No.1 forwarded the nominations of six (15) Officers Inland Revenue Service (BS-18) Cadre, whereas, the name of the Petitioner has not been recommended. Petitioner has prayed that directions may be issued for her nomination in the said course. This assertion of the Petitioner, coupled with no objection of learned Deputy Attorney General, in our view, is reasonable. The Petitioner, at this juncture, being a Senior Officer in the Seniority List, does fall within the ambit of promotion zone for higher rank (BS-19). Whilst the nominations of juniors were made irrespective of the seniority list, there is no reason as to why the Petitioner stands at Sr. No.01 not to be considered for MCMC nomination.

11. Besides, on the forgoing and with the consent of the learned counsel for the Parties, the instant Petition is disposed of with the directions to the Respondents to include the name of the Petitioner

in the list of candidates mentioned in the Office Memorandum dated 04.08.2017, for attending 24th Mid-Career Management Course (MCMC) commencing from 21.08.2017 at National Institute of Management (NIMS). Copy of this order may be sent to the Respondents in ordinary course as well as through facsimile to Director General, National Institute of Management (NIMS), Karachi during the course of the day.

12. This Petition is disposed of in the above terms.

JUDGE

JUDGE

Shafi/P.A