

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. D – 2250 of 2020

Date	Order with signature of Judge
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Priority :

1. For orders as to non-prosecution on CMA Nos.10979/2020 & 10980/2020 :
2. For hearing of CMA No.10504/2020 (Stay) :
3. For hearing of Main Case :

**07.05.2020 :**

Mr. Rafiq Ahmed Kalwar, advocate for the petitioner.  
Mr. Adnan Memon, advocate for respondents 3 and 4.  
Mr. Barkat Ali Metlo, advocate for respondent No.5.  
Mr. Ali Asadullah Bullo, advocate for respondent No.7.  
Mr. Hakim Ali Shaikh, Addl. AG Sindh a/w Shahnawaz,  
Deputy Secretary, Food Department, Government of Sindh.

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Through this petition, the petitioner has impugned various notifications whereby respondents 3 to 8, who were serving as Assistant Food Controllers in BS-15 at the relevant time, were “*allowed to look after the work of District Food Controller as stop gap arrangement till the posting of a regular District Food Controller*”. Vide order dated 29.04.2020, operation of the impugned notifications was suspended till the next date of hearing. Learned AAG has filed comments of respondent No.2 / Secretary Food Department, and Mr. Adnan Memon has filed comments and counter affidavit on behalf of respondents 3 and 4. Mr. Ali Asadullah Bullo has filed minutes of the meeting of DPC held on 12.01.2018 to consider the promotion of Assistant Food Controllers (BS-15) to the post of Additional District Food Controllers (BS-16). Learned counsel for the petitioner has filed statement dated 05.05.2020 along with copies of several notifications. All the above are taken on record.

Learned AAG states that a notification dated 30.04.2020 has been issued by respondent No.2, whereby the notifications impugned in the present petition have been suspended and it has been notified that respondents 3 to 6 and 8 have ceased to hold the charge of District Food Controllers forthwith, and the officers mentioned in paragraph 2 of the said notification have been assigned additional charge for the posts held by respondents 3 to 6 and 8. He submits that in view of the above, this petition has served its purpose to the extent of respondents 3 to 6 and 8.

Learned counsel for the petitioner concedes to the above position, but he still insists that the appointment of the said respondents as well as respondent No.7 was illegal and malafide. He submits that as soon as interim order was passed in this case and the above notification dated 30.04.2020 regarding respondents 3 to 6 and 8 was issued, another notification of the same date was issued by respondent No.2 copy whereof has been attached as annexure A-6 to the statement filed by him today. According to the second notification dated 30.04.2020 issued by respondent No.2, respondent No.7, who has been shown therein as holding acting charge of Additional District Food Controller BS-16, has been posted as Storage and Enforcement Officer, Sukkur Food Region, with immediate effect and until further orders. He submits that this second notification is also illegal and malafide as respondent No.7 is not eligible for the post of Storage and Enforcement Officer in BS-16.

Learned counsel for all the said respondents have strongly refuted the submissions made by learned counsel for the petitioner. Regarding respondent No.7, his learned counsel submits that he was promoted to BS-16, therefore, he was eligible for the post of District Food Controller and his said appointment has been wrongly challenged herein. After making their respective submissions at considerable length, learned counsel for the parties as well as learned AAG Sindh agree that this petition may be disposed of on the following terms :

- A. In view of notification dated 30.04.2020 issued by respondent No.2, respondents 3 to 6 and 8, have ceased to hold the charge of District Food Controller.
- B. Respondents 1 and 2 are directed to appoint District Food Controllers within thirty (30) days from today strictly in accordance with the law laid down by the Hon'ble Supreme Court in Province of Sindh and others V/S Ghulam Fareed and others, **2015 PLC (C.S) 151 = 2014 SCMR 118** ; and, only till such time the six officers named in paragraph 2 of notification dated 30.04.2020 will continue to hold the additional charge of District Food Controllers, which was held by respondents 3 to 6 and 8.
- C. As per the minutes of the meeting of the Departmental Promotion Committee (DPC) held on 12.01.2018, submitted by learned counsel for respondent No.7, the case of respondent No.7 was cleared for promotion to the post of Additional District Food Controller (BS-16) on acting charge basis subject to reversal to his original / lower post after receiving the

recommendation from the Sindh Public Service Commission. Respondents 1 and 2 are directed to place / refer the case of respondent No.7 to the DPC for consideration of his promotion to the above post strictly in accordance with law within a period of thirty (30) days from today.

- D. Till the final decision of the DPC regarding promotion of respondent No.7 to BS-16 in terms of this order, the notification dated 30.04.2020 issued by respondent No.2 regarding posting of respondent No.7 as Storage and Enforcement Officer, Sukkur Food Region, BS-16, shall remain in abeyance / suspended.

Before parting with this case, we are constrained to observe that the conduct of respondent No.2 does not appear to be proper and reasonable as notifications of postings have been issued by him one after the other in an indiscriminate manner by giving acting and or additional charge as stop gap arrangement to junior officers in utter disregard and violation of the law laid down by the Hon'ble Supreme Court and this Court. We were about to call respondent No.2 before this Court in person in order to explain his conduct, but in view of the assurance given on his behalf by learned AAG that he shall not repeat the above mistakes in future, we have decided to not call respondent No.2 for the time being. However, he is warned to be careful in future. Chief Secretary Sindh is directed to ensure that all the transfers, postings, etc. in his department are done by respondent No.2 strictly in accordance with the law laid down by the Hon'ble Supreme Court and this Court.

With the consent of learned counsel for the parties and learned AAG Sindh, the petition and listed applications stand disposed of in the above terms and with the above directions with no order as to costs. Office is directed to issue notice to respondents 1 and 2 for compliance of this order in letter and spirit.

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