

**IN THE HIGH COURT OF SINDH  
AT KARACHI**

**C.P No. D-2600 of 2019**

Present: Muhammad Ali Mazhar  
and Yousuf Ali Sayeed, JJ

Petitioner : Abdul Nadeem Qureshi & others,  
through Mr. Malik Naeem Iqbal,  
Advocate

Respondent No.1 : Province of Sindh, through Mr.  
Jawad Dero, AAG.

Respondents  
Nos. 2 to 4 : The Chairman Sindh Small  
Industries Corporation & others,  
through Mr. Khawaja Shams-Ul-  
Islam, Advocate, accompanied by  
Dr. Rashda Hafeez, Director  
Administration.

Date of hearing : 17.01.2020, 10.03.2020 and  
18.03.2020.

**JUDGMENT**

**YOUSUF ALI SAYEED, J -** The four Petitioners are all employees of the Respondent No.3 respective (i.e. the Sindh Small Industries Corporation), which, whilst operating under the aegis of the Government of Sindh, is stated to be an autonomous body created under a special law, having its own statutory rules of service, hence the Petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution so as to impugn Order No. SSIC/HO/ADFI/1224/2019/6072, Karachi dated 11.04.2019 (the “**Impugned Notification**”) issued by that Respondent, whereby they were removed from the posts in which they were serving at the time and were reverted/demoted to the respective posts in the particular grades where they had originally been appointed.

2. For purpose of due reference, the operative part of the Impugned Notification is reproduced hereunder:

“No. SSIC/HO/ADFI/1224/2019/6072  
Karachi, dated April 11, 2019

ORDER:

In compliance of the orders of Honorable Supreme Court of Pakistan in Original Criminal Petition No. 89 of 2011, order dated 03.10.2018 in C.P. No. 78-K of 2015 read with subsequent order dated 05.03.2019 in review application of Original Criminal Petition No. 11 of 2019 and Pakistan Engineering Council Act and order No. SOI(IND)3-219/2018 dated 10.04.2019 of Industries & Commerce Department, Government of Sindh, the following officers/officials of Sindh Small Industries Corporation are hereby demoted to the post / placed at their original place of appointment, with immediate effect as mentioned against each:

Sr. No	Name of Officer/Official	Present position	Demoted as	Demoted	
				From BPS	To BPS
1.	Mr. Abdul Nadeem Qureshi	Chief Engineer	Sub-Engineer	19	16
2.	Mr. Abdul Rafique	Joint Director (Civil)	Sub-Engineer	18	16
3.	Mr. Mairaj Ali	Joint Director (Civil)	Accounts Clerk	18	05
4.	Mr. Shafi Muhammad Soomro	Joint Director (Civil)	Accounts Clerk	18	05
5.	Mr. Abdul Rauf Mahar	Sub-Engineer	Junior Clerk	11	05
6.	Mr. Shahzad Ahmed	Sub-Engineer	Junior Clerk	11	05

The matters for verification of degrees of M/s. Faraz Iftikhar and Ehsan Dilpazir, Assistant Engineers are under way therefore they have been treated as under the enquiry.

The further seniority & promotions of the above named officers/officials shall be reckoned in new placement in accordance with the rules, as directed by the Administrative Department.

Further, they are directed to report for duty as per their new place of posting as under:

Sr. No.	Name of Officer/Official	Designation	Place of posting
1.	Mr. Atif Ghias	Assistant Engineer	He will look after the affairs of Eng. Cell, SSIC, Head Office Karachi.
2.	Mr. Faraz Iftikhar	Assistant Engineer (B-17)	To report for duty in Admn. Wing, SSIC, Head Office Karachi
3.	Mr. Ehsan Dilpazir	-do-	-do-
4.	Mr. Abdul Nadeem Qureshi	Sub-Engineer (BPS-16)	Eng. Cell, SSIC, Head Office, Karachi
5.	Mr. Muhammad Rafique	-do-	Eng. Cell, SSIC, Sub-Division, Hyderabad.
6.	Mr. Mairaj Ali	Accounts Clerk (B-5)	Eng. Cell, SSIC, Sub-Division, Hyderabad.
7.	Mr. Shafi Muhammad Soomro	Accounts Clerk (B-5)	Eng. Cell, SSIC, Sub-Division, Larkana.
8.	Mr. Abdul Rauf Mahar	Junior Clerk (B-5)	Eng. Cell, SSIC, Sub-Division, Sukkur.
9.	Mr. Shahzad Ahmed	Junior Clerk (B-5)	To report for duty in Admn. Wing, SSIC, HO Karachi.

This is with the approval of competent authority.

**Director (Administration)”**

- Learned counsel for the Petitioner submitted that they had been appointed in the service on different dates with the approval of competent authority, in accordance with the recruitment rules prevailing at the time, and were then promoted from time to time on the recommendations of the respective Departmental Promotion Committees in accordance with the recruitment rules then in force. He went on to elaborate that the educational qualification held by the Petitioners is either B.Tech (Civil) or M.Tech (Civil)/Diploma (Civil), with the Petitioners Nos.1 and 2 having been initially recruited on that basis as Sub-Engineers on 28.11.1988 and 01.06.1983 respectively, whereas the Petitioners No. 3 and 4 were both initially appointed to the post of Accounts Clerk in BS-05 on 26.09.1989 and 16.06.1990 respectively, subsequently

acquiring a Diploma of Associate Engineer in Civil Technology so also M. Tech, following which their cadre was changed to that of Sub-Engineer vide Office Order dated 16.12.2002.

4. Referring to the Impugned Notification, learned counsel drew attention to the fact that whilst the stated rationale for its issuance was ostensibly that of compliance with the Orders of the Honorable Supreme Court of Pakistan in Criminal Original Petition No. 89 of 2011 and the Order dated 03.10.2018 in C.P. No. 78-K of 2015 read with subsequent order dated 05.03.2019 in Review Application of Original Criminal Petition No. 11 of 2019, the comments that had been forthcoming from the side of the Respondents Nos. 2 to 4 referred solely to the Judgment in C.P. No. 78-K of 2015 with the framed response gravitating around the assertion that the Apex Court had thereby precluded the Government of Sindh from allowing any person who did not possess an “accredited engineering qualification” for purposes of the Pakistan Engineering Council Act, 1976 (the “**PEC Act**”) from performing “professional engineering work”, as defined thereunder, and it being submitted that as the credentials of the Petitioners did not meet the qualificatory standard, they could not be allowed to remain on their posts. On that note, learned counsel submitted that whilst the Judgment did indeed impose such an embargo vis-à-vis the performance of work, that did not of itself mean that an employee who had been recruited and promoted at the relevant time in accordance with law and the norms of procedure was to be demoted from the grade in which he was presently serving merely because he did not possess an “accredited engineering qualification”. He argued that whilst the educational credentials held by the Petitioners indeed did not meet the test of an “accredited engineering qualification” under the PEC Act, that did not furnish valid grounds for issuance of the Impugned Notification.

5. Referring to the Order of by the Honourable Supreme Court in Criminal Original Petition No. 89 of 2011, it was submitted that the same pertained to issues of absorption, out of turn promotion, deputation or reemployment, none of which were involved in the instant case, hence that precedent was inapplicable.
  
6. It was submitted that the Respondents had misread and misinterpreted the Judgment in C.P. No.78-K of 2015 and that the Impugned Notification, clearly being predicated on such a misreading/misinterpretation, was bad in law and ought to be struck down with the Petitioners being restored to the grades in which they had been serving immediately prior to its issuance. He placed reliance on an unreported judgment of this very Bench in C. P. No. D-277 of 2020, which was a matter pertaining to holders of B.Tech diplomas employed with the Irrigation Department, Government of Sindh, where the stance of the concerned department was that a policy would be formulated for dealing with such employees so as to ensure compliance of the Judgment of the Honourable Supreme Court whilst retaining them in their existing grades.
  
7. Conversely, learned counsel appearing on behalf of the Respondents 2 to 4 defended the Impugned Notification and submitted that the action was in consonance with the Judgment of the Apex Court. He contended that this was so since the Petitioner admittedly did not possess an “accredited engineering qualification” for purposes of the PEC Act, hence could not be allowed to perform “professional engineering work”, as held by the Apex Court, hence they could not be permitted to remain at their posts and their relegation/reversion was justified. However, it was conceded that the Petitioners had otherwise been appointed and promoted as per recruitment rules and with the approval of the competent authority.

8. Having considered the arguments advanced at the bar, it merits consideration at the outset that paragraph 23 of the Judgment of the Honourable Supreme Court in C.P. No. 78-K of 2015, being the relevant excerpt for present purposes, reads as follows:

“23. The net result of above discussion is that this petition fails. It is dismissed and leave refused, however with note of caution that government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.”

9. The operative part of the Judgment rendered by this Bench in C. P. No. D-277 of 2020, being an analogous case in so far as it related to the treatment to be meter out from the standpoint of the note of caution set out in the aforementioned Judgment of the Apex Court as regards those employees of the Irrigation Department of the Province of Sindh who hold similar qualifications to those of the Petitioners, reads as follows:

“3. The crux of the judgment of the honourable Supreme Court of Pakistan leads to a note of caution that the Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.

4. Mr. Ghulam Ali Birhmani, Additional Secretary, Admin, Irrigation Department, Government of Sindh is present and has also submitted a letter dated 04.02.2020 communicated to the Secretary, Irrigation Department, Government of Sindh by the Section Officer SGA&CD, Government of Sindh with reference to the same judgment of the honourable Supreme Court of Pakistan, which is reproduced as under:-

GOVERNMENT OF SINDH  
SERVICES, GENERAL ADMINISTRATION  
& COORDINATION DEPARTMENT

Karachi dated the 4th  
February, 2020

**The Secretary to Government of Sindh,  
Irrigation Department,  
Karachi.**

**SUBJECT: PROPER ADVICE/GUIDANCE FOR COMPLIANCE OF  
ORDERS OF HONOURABLE SUPREME COURT  
OF PAKISTAN PASSED IN C.P NO.78-K/2015  
(MOULA BUX SHAIKH & OTHERS) V/S. CHIEF  
MINISTER, SINDH & OTHERS.**

- Reference: i. No.SOV(SGA&CD)8-188/2018, dated 03.12.2019.  
ii. U.O. No.A-1/8-260/2020, dated 27.01.2020 of  
Irrigation Department.  
iii. No.AG-198 OF 2019, dated 16.01.2019 of Advocate  
General, Sindh.  
iv. No.SOR-II(SGA&CD)5-35/2019, dated 28.06.2019 of  
Regulation Wing of SGA&CD.  
v. No.AG-198 of 2019, dated 16.01.2019 of Advocate  
General, Sindh.  
vi. No.AG-198 OF 2019, dated 16.01.2019 of Advocate  
General, Sindh.

Sir,

**I am directed to refer to the subject noted above and to state that the advice/guideline given by the Regulation Wing of SGA&CD, Advocate General, Sindh and this Department under the above references in the light of judgment of the Honourable Supreme Court of Pakistan are very much clear and unambiguous into the subject matter. The Irrigation Department has not indicated any specific point of confusion requiring clarification in implementation/compliance of the orders of the Honourable Court.**

**02. The Advocate General, Sindh has conveyed the guiding principles in the light of judgment of the Honourable Supreme Court of Pakistan as under:**

- i. There is no embargo of any sort on the government in prescribing the qualification and other conditions of service for the purpose of promotion.**
- ii. The Government's power in this regard is unfettered provided it is not in derogation of any law or provisions of the constitution.**
- iii. It is the Government's prerogative to decide whether a particular academic qualification of a civil servant is sufficient for promotion from one grade to another higher grade.**
- iv. It is in the domain of the Pakistan Engineering Council (PEC) to decide whether a particular academic qualification can be equated with another academic qualification but it has no power to say that the Civil Servant/employee holding a particular academic qualification cannot be promoted from a particular grade to a higher grade.**
- v. The Government exercises its own power under the domain of law with regard to promotion of civil servants/employees under the Sindh Civil Servants Act, 1973 and Rules made thereunder while the PEC**

**Act does not overreach or put an embargo upon the Government in the matter of prescribing of qualification and other conditions of service of civil servants/employees for their promotion to a higher grade.**

- vi. The provisions of PEC Act and the rules and regulations made under it do not operate as bar on government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to a higher grade.**
- vii. All sort of engineering work could not be and may not be professional engineering work within the meaning of the PEC Act for performance of which professional engineers are required. Thus technicians, mechanics, draftsman, foreman, supervisors and overseers etc. could be skilled workmen who may work independently or under the supervision of a professional engineer and for such technicians, mechanics, draftsmen, foremen, supervisors and overseers etc. the Government is free not to require that they hold a professional engineering degree.**
- viii. The Government shall not allow or permit any persons, who does not possess accredited engineering qualification from the accredited engineering institution and whose name is not registered as a registered engineer or professional engineer under the PEC Act to perform professional engineering work as defined in the PEC Act.**

**3. This Department has also issued advice/guideline, vide letter dated 03.12.2019 (Copy enclosed) to all the engineering related Departments to reframe nomenclature of the posts falling in the promotion quota of Diploma and B. Tech Degree holders and describe their job in such a way which may not require mandatory professional engineering degree/accredited engineering qualification and professional engineering works, as mentioned in PEC Act, without affecting their existing promotion quota. Alongside, the process of reframing of Recruitment Rules may also be initiated. It may not be out of place to mention that their reserved quota would not be utilized towards the share of graduate Engineers.**

**4. The other concerned Departments like Works & Service Department and Local Government Department have implemented the Court orders and have taken action into the matter in the light of the guiding principles/advice referred above, without questioning or seeking further clarification.**

**5. There is, thus, no confusion in the orders of the Honourable Supreme Court of Pakistan, guiding principles communicated by the Advocate General, Sindh and the advice issued by this Department. The proposal of the Administrative Department to hold meeting of concerned Secretaries of Engineering Departments and the Advocate General, Sindh by the Chief Secretary, Sindh is, therefore, not justifiable. It is the job of Administrative Department to comply with the Court orders and bring the reorganization of this particular cadre in the light of above guidance and instructions without the SGA&CD having to tutor it for its core function and responsibility.**

**6. It is, therefore, requested to take necessary action into the matter in the light of orders of the Honourable Supreme Court of Pakistan and the above referred guiding principles and advice of this Department.”**

**DA/As above**

**SD/-  
SECTION OFFICER”**

5. Mr. Ghulam Ali Birhmani, Additional Secretary, Admin, Irrigation Department, Government of Sindh, has given a clear statement that at present all the Petitioners are performing their duties as Executive Engineers in BS-18 and they are involved in some professional engineering work as per PEC Act. He also requests for two months' time to reframe the nomenclature of the posts falling in the promotion quota of Diploma and B.Tech Degree holders and describe their job in such a way which may not require mandatory professional engineering degree/accredited engineering qualification and professional engineering works, as mentioned in the PEC Act, without affecting their existing promotion quotas. He further submits that within same time, recruitment rules will also be reframed in view of directions of Supreme Court. However, he has given a clear statement that till such time the rules are framed, the Petitioners shall not be demoted nor the terms and conditions of their service will be made less favourable but in compliance of the judgment of the honourable Supreme Court of Pakistan, they will not be allowed to perform professional engineering work as defined in the PEC Act. The learned counsel for the petitioners agrees to this proposal. The Petition is disposed of in the above terms. Interim order passed earlier is hereby recalled.”

[Sic]

10. However, by contrast, a Statement was filed in Court on 10.03.2020 in the instant case by the Respondent No. 4 (i.e. the Director Administration of the Respondent No.3), which reads as follows:

**“Statement**

The Pakistan Engineering Council, Government of Sindh forwarded a copy of judgment of the Honorable Supreme Court of Pakistan dated 03.10.2018 in the constitutional petition No. 78-K/2015, in which the Honorable Court put a caution note, which is re-produced below, with the request that the professional engineering works may be avoided to assign to those engineers who have not possessed accredited engineering qualification from the accredited engineering institution (s):

**“Govt shall not allow or permit any person to perform professional Engineering work as defined in the PEC act, who does not possess accredited Engineering qualification from the accredited Engineering institution and his name is not registered as a registered engineer or professional Engineer under the PEC act.”**

The then Secretary, Industries & Commerce Department constituted a committee to probe into the accreditation of technical staff & their accreditation qualification vide notification No SOI(I&D) 3-219/218 dated 13.12.2018 (Annex-I).

After thoroughly examine the matter the committee submitted its recommendation (Annex-II) and the Administrative Department issued order dated 10.04.2019 in compliance of orders of Honorable Supreme Court of Pakistan in original criminal petition No. 89 of 2011, order dated 03.10.2018 in CP No. 78-K of 2015 read with subsequent order dated 05.03.2019 in review application of original criminal petition No.11 of 2019 and Pakistan Engineering Council Act wherein M/s. Abdul Nadeem Qureshi & Muhammad Rafique were demoted to the post of Sub-Engineer (BPS-16), M/s. Mairaj Ali, Shafi Muhammad Soomro, Shehzad Ahmed and Abdul Rauf Mahar were demoted to the post of Clerks and Accounts Clerk, thus SSIC has also issued order dated 11.04.2019.

Later on Mr. Abdul Nadeem Qureshi and others have filed constitutional petition No. D-2600 in the Honorable High Court of Sindh Karachi and this office is waiting for the decision from the court.

However, it is to inform that after necessary decision by the Honorable High Court of Sindh, Karachi, the matter for placement of demoted officers/officials will be adjusted on the existing grades in their respective cadres to perform duties in the interest of the Corporation and after that management will take matter for further adjustment according to their performance and provision of rules.

**Director (Administration)  
Respondent No. 4”**

11. As can be seen, the stance adopted in the case of the Petitioners by the Respondent No.3 is far removed from the methodology devised in respect of employees of the Irrigation Department of the Province of Sindh in C. P. No. D-277 of 2020 who are similarly placed in terms of their educational qualification. Furthermore, there is nothing on record to indicate that the Petitioners were afforded an opportunity of hearing prior to the Impugned Notification or that so much as a Show-Cause was ever even issued in that regard.

12. Needless to say, under the given circumstances of the case, the failure of the Respondent No.3 to provide the Petitioners a hearing and a basic opportunity to show-cause prior to issuance of the Impugned Notification militates against the well settled principles of natural justice. Furthermore, we are of the view that disparate policies cannot be adopted as between various organs of the Government of Sindh and/or statutory corporations operating under its control on the basis of their divergent readings of the Judgment of the Honourable Supreme Court so as to give rise to such a marked variance in the treatment to be meted out to those employees who are similarly placed in terms of lacking an “accredited engineering qualification” but have otherwise been inducted in service of their respective department/corporation and promoted by the competent authority in accordance with the rules in force at the relevant time. Indeed, that would be tantamount to discrimination on the pretext of those conflicting interpretations of the Apex Court’s judgment, which cannot be countenanced. Even otherwise, a perusal of the particular Judgment does not reveal a command for the demotion/relegation of employees.

13. As a result of the above discussion, the Petitioners may not be allowed to perform “professional engineering work” in terms of the dictum laid down by the Honourable Supreme Court (Supra) and the Respondents may reframe the nomenclature of the posts falling in the promotion quota of Diploma and B. Tech Degree holders commensurate to their pay scales existing prior to the Impugned Notification in view of the Statement dated 10.03.2020, however till such time the Petitioners shall not be demoted. The Petition is disposed of accordingly.

**JUDGE**

**JUDGE**