

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D – 4802 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Mansoor Ahmed Rajput and another

Versus

Province of Sindh and 07 others

Date of hearing & order : 16.11.2020

Mr. Ali Asadullah Bullo, advocate for the petitioners.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh along with Muhammad Shabih Siddiqui respondent No.4, Muhammad Ali Riaz respondent No.5, Hisbullah Memon respondent No.6, and Muhammad Zafar Khan respondent No.8.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioners, who are serving as Deputy Directors in BPS-18 in the information Department of Government of Sindh, are seeking promotion to the post of Director Information BS-19, which has been deferred vide notification dated 29.9.2020 on account of pendency of NAB reference / proceedings.

2. At the outset, we queried from the learned counsel for the Petitioners whether a Civil Servant can be promoted against whom prima facie involvement in the serious charges of misconduct was available in the shape of NAB reference / proceedings ?

3. Mr. Ali Asadullah Bullo, learned counsel for the petitioners, argued that the petitioners' promotion has been deferred and they have been superseded on the sole ground that they are facing NAB reference / proceedings. It is further urged that promotion cannot be deferred on such ground ; that no one could be punished by denying him promotion or consideration for promotion before the charge is established against him ; that mere pendency of a criminal case / disciplinary proceedings is no ground for denying consideration for promotion ; he next argued that though Promotion is not the petitioner's vested right, consideration for promotion under the law, indeed is his right; that there cannot be an absolute bar on promotion and findings of the Provincial Selection Board-II in its previous Meeting does not cover the case of prolonged pendency of criminal case; he prayed for a direction to the competent authority of respondents to consider the petitioner's case for promotion purely on merits.

4. Learned AAG opposed the request of the petitioners on the premise that the petitioners are facing criminal charges, therefore, they are not entitled to further promotion. He urged that the case of the petitioners was considered by the Provincial Selection Board-II in its previous meeting. He stressed upon the word “consideration”, which clearly means that the authority should deliberate with care on the matter and as a result of such careful deliberation pass an order. Per learned AAG such deliberation took place, however it was deferred due to the reason assigned by the Competent Authority as discussed supra.

5. We have heard learned counsel for the petitioners on the point of maintainability of the instant petition.

6. Admittedly the petitioners are facing NAB Reference before the Accountability Court based on alleged corruption and corrupt practices, which is pending adjudication. The petitioners were considered for promotion in the Provincial Selection Board, but were superseded on account of many factors, including the reason as discussed supra. In this context, it may be observed that the writ jurisdiction of this Court is not meant to be exercised to compel the competent authority to promote a Civil Servant against whom prima facie involvement in serious charges of misconduct was available, for the reason that any such direction would be disharmonious to the principle of good governance and canons of service discipline causing undue interference to hamper smooth functioning of the departmental authorities. This view is fortified by the decision rendered by the Hon’ble Supreme Court of Pakistan in the case of Mst. Ifat Nazir vs. Government of Punjab and others, **2009 SCMR 703**. It is well-settled law that in case of promotion vested / fundamental right cannot be claimed.

7. We have observed in number of cases that disciplinary proceedings initiated against government / civil servants are not decided or concluded within a reasonable time, and due to this reason, the cases of their promotion are deferred. Such unreasonable delay on the part of the department(s) concerned causes hardship for the government / civil servants, uncertainty within the department and unnecessary litigation before the Courts. Therefore, we deem it appropriate to direct the Government of Sindh to ensure that in future action must be taken under Rule 5 of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, against all government / civil servants, against whom disciplinary and/or criminal proceedings are pending ; and, in case of disciplinary proceedings against them, the same must be concluded / decided expeditiously in accordance with law. Needless to say if the government / civil servant is exonerated of the charge(s) leveled against him, he/she shall be

given the treatment provided for in Rule 8-A of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, and Rule 13 of The Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975. Let notice be issued for compliance to the Chief Secretary Sindh and the Secretaries of all departments in the Government of Sindh.

8. In view of the legal position discussed above, we are of the view that the case of the petitioners for promotion was rightly deferred by the competent authority / Board, and such decision does not call for any interference by this Court. However, their deferment shall be subject to the final outcome of the NAB reference / proceedings presently pending against them. Accordingly, the petition stands disposed of along with pending application with no order as to costs in terms of the observation made and direction given in paragraph 7 above.

J U D G E

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Shahzad*