

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**  
**Constitutional Petition No. D –4077 of 2016**

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Yar Muhammad Bozdar

*Versus*

Province of Sindh and another

Date of hearing & order : 17.11.2020

Mr. Waheed Ali Ghumro, advocate holding brief for

Mr. Ahmed Ali Ghumro, advocate for the petitioner.

Mr. Ali Safdar Depar, Assistant Advocate General.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** In principle petitioner has questioned his repatriation, from the appointment as Assistant Commissioner (BPS-17) in Ex-PCS Cadre by way of nomination, to his parent department i.e. Board of Revenue, Sindh vide Notification dated 2.7.2013 issued by Chief Secretary, Government of Sindh, which is in pursuance of the directions contained in the Judgment dated 12.06.2013 passed by the Honorable Supreme Court of Pakistan in Criminal Original Petition No.89 of 2011 and Civil Review Petition No.193 of 2013 respectively.

2. Relevant facts of the case that have emerged from the petition and documents filed therewith are that, petitioner was appointed in the year 1996 as Assistant (BS-14) in Board of Revenue, Sindh. Thereafter, he was promoted to the post of Superintendent (BS-16) vide office order dated 23.12.2008. Petitioner averred that he was appointed as Deputy District Officer (Revenue)/Assistant Commissioner (BS-17) by the competent authority i.e. Chief Minister Sindh, by way of nomination vide Notification No.SO-V (S&GAD) X-292/2008 dated 30.09.5.2011; it is further averred that his appointment in Ex-PCS cadre (BS-17) was under Rule 5(5) (C) of West Pakistan Civil Service (Executive Branch) Rules, 1964. Finally, he was relieved from the post of Deputy Secretary in Land Utilization Department, Government of Sindh to report to his parent department i.e. Board of Revenue, Sindh on his original post vide notification dated 2.7.2013 issued by the Chief Secretary, Government of Sindh in pursuance of Judgment dated 12.06.2013 passed by the Hon'ble Supreme Court in the aforesaid matters. He and his colleagues being aggrieved by and dissatisfied with the aforesaid

notification approached the Honorable Supreme Court by filling review petitions No.70/2013 and 72/2013, which were dismissed vide Judgment dated 05.01.2015 passed in Cr. Review Petition No.193/2013. The petitioner has approached this Court on 20.07.2016.

3. At the outset, learned counsel for the petitioner was directed to satisfy this Court about the maintainability of this petition in view of the orders passed by the Honorable Supreme Court of Pakistan, whereby respondent-Chief Secretary, Government of Sindh, was directed to repatriate the petitioner to his parent department i.e. Board of Revenue, Sindh.

4. Mr. Waheed Ali Ghumro, advocate requested that the matter shall be argued by his senior Counsel Mr. Ahmed Ali Ghumro. This is an old matter and pending since 2016 and there are certain directions of the Honorable Supreme Court on the subject issue therefore we deem it appropriate to decide the present lis as per material available on record with the assistance of learned Assistant Advocate General Sindh.

5. Main contentions of the petitioner as per his pleadings is that his appointment in Ex-PCS cadre (BS-17) in Sindh Government was under Rule 5(5) (C) of West Pakistan Civil Service (Executive Branch) Rules, 1964. It is averred by the petitioner that the appointment of the petitioner as Deputy District Officer (Revenue)/Assistant Commissioner (BS-17) in Ex-PCS cadre was permissible as this was the appointment by nomination within the quota prescribed under Rules of West Pakistan Civil Service (Executive Branch) Rules, 1964; that he had also qualified the Departmental Examination of Assistant Collector Part-I & II conducted by the Sindh Public Service Commission. It is further averred by the petitioner that he has approached this Court for implementation of the Judgment of the Hon'ble Supreme Court rendered in the case of Ali Azhar Khan Baloch versus Province of Sindh (2015 SCMR 456), whereby direction was issued to the Government of Sindh to frame a transparent policy for the nomination of the officials, which could ensure that meritorious employees of the department mentioned in the rules of 1964 could be nominated on merits after proper scrutiny; that the Government of Sindh has not formulated any policy for the aforesaid purpose. His last submission is that the instant petition may be allowed.

6. Learned AAG has pointed out that the Hon'ble Supreme Court at paragraph 110 of the judgment rendered in the case of Ali Azhar Khan Baloch as discussed supra directed that all the aforesaid officers inducted in excess of the

quota shall be relegated to their original position, and in the future, the Government of Sindh shall formulate a mechanism for the nomination of such appointments by transfer to the post of Assistant Commissioner (BS-17) in Ex-PCS Cadre. He further argued that the Hon'ble Supreme Court vide order dated 21.09.2016 passed in Cr. Misc. Application No.1411/2016 in Cr. Misc. Application 418/2016 in Cr.Org. Petition No.89/2011 passed the following order:-

*"2. The Additional Secretary, Services, Government of Sindh, has made a statement that after the aforesaid judgment, no induction has been made under the aforesaid rules by the Chief Minister. We, as a precautionary measure, restrain the Sindh Government from exercising such power till the vires of the rules of 1964 are examined by this court, as we are informed by the learned Law Officer that in the case of C.M.A No.281-K of 2015 and Civil Petition No.3665 of 2015, this Court has already undertaken this exercise".*

He further submitted that the Government of Sindh has amended the West Pakistan Civil Service (Executive Branch) Rules, 1964 vide notification dated 20.03.2018 whereby new service rules have been framed called as "the Sindh Civil Servants (Provincial Management Service) Rules, 2018". Therefore, the petitioner is not entitled to the relief claimed in the instant petition. He lastly prayed for the dismissal of the instant petition.

7. We have noticed that the petitioner filed Cr. Review Petition No.70/2013 before the Hon'ble Supreme Court against his repatriation notification, which was dismissed vide judgment dated 05.01.2015. The aforesaid matter is reported in 2015 SCMR 456. The relevant paragraphs No. 211 and 212, are as under:-

*"211. The petitioners claim to have been nominated by the Chief Minister as Assistant Commissioners under Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964. The grievance of the petitioners is that on account of paras 102 to 111 of the judgment under review, their nominations were withdrawn and they were reverted back to their parent Departments. We have already dealt with this issue in the aforesaid paras. During the hearing of the Review Petition, we have noticed that no mechanism has been provided for nomination of the officers. It is the sole discretion of the Chief Minister to recruit/nominate an employee to the post of Assistant Commissioner in exercise of powers under Rule 5(4) (b) of the Rules of 1964. The discretion to exercise the powers needs to be structured by framing policy, which should encourage merit. On query from the learned Additional Advocate General, Sindh as to how the employees are chosen from different Departments for nomination as Assistant Commissioners; he, on instructions, informed the Bench that no policy has been framed and it is the sole discretion of the Chief Minister. These Rules are not meant to ignore transparency in nomination as such appointments are made by bypassing the regular procedure provided for appointment of a Civil Servant in BS-17. We have noticed that most of these appointments were made amongst the employees, who have been excluded from the purview of the Public Service Commission. Therefore, in absence of policy for nomination to the post of Assistant Commissioner, blue eyed of the*

high ups will get these jobs. We, therefore, direct the Sindh Government to frame a transparent policy for nomination of these officials, which could ensure that meritorious employees of the Departments mentioned in the Rules of 1964, could be nominated on merits, after proper scrutiny.

212. The petitioners were found in excess of the quota as per the list provided to us by the Sindh Government and, therefore, for the reasons already recorded by us in the judgment under review, they were not entitled to continue in their Offices. These Review Petitions having no merit are, accordingly, dismissed.”

8. In view of the direction of the Hon’ble Supreme Court as discussed supra, we are not impressed with the grounds urged by the petitioner in his petition for the simple reason that the appointment of the petitioner in Ex-PCS cadre (BS-17) had already been declared as illegal by the Honorable Supreme Court and ordered his repatriation to his parent department i.e. Board of Revenue. His review petition was dismissed vide Judgment dated 05.01.2015 passed in Cr. Review Petition No.193/2013. Besides that, the competent authority has amended the West Pakistan Civil Service (Executive Branch) Rules, 1964 vide notification dated 20.03.2018 as discussed supra.

9. In our view, since the directions of the Honorable Supreme Court in the aforesaid matters are still in the field, we are bound to follow it under the Constitution. Besides the respondents have issued the impugned notification in pursuance of the orders passed by the Honorable Supreme Court in the aforesaid proceedings, therefore, no indulgence of this Court is required in the present matter.

10. In the light of the above discussed legal position of the case, this petition is hereby dismissed along with the pending application(s) with no order as to costs.

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