

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –2318 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Ahsan Ali Chohan

Versus

Province of Sindh and 02 others

For hearing of CMA No.20545 of 2020 (Contempt) :

Date of hearing & order : 19.11.2020

Mr. Ahmed Ali Ghumro, advocate for the petitioner.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. This petition was disposed of vide order dated 12.05.2020 with direction to the competent authority of the respondents to consider the case of the petitioner for promotion within two (02) months and in case of deferment, a speaking order should be passed after providing the opportunity of hearing to him in accordance with law.

2. Mr. Ahmed Ali Ghumro, learned counsel for the petitioner, submits that order passed by this Court has been complied with partially as Departmental Promotion Committee (DPC) cleared him for promotion in next rank, however, the representative of Services General Administration & Coordination Department put his dissenting note and proposed that since petitioner was / is facing disciplinary/departmental proceedings his case may be deferred till finalization of the proceedings against him, consequently his promotion in next rank has not been actualized, therefore, strict action shall be taken against the alleged contemnors.

3. Learned AAG has contradicted the stance of the petitioner with the same analogy as discussed supra with the reasoning that the petitioner is still facing a criminal case regarding the utilization of Federal Government Funds, therefore, is not entitled for promotion in the next rank till completion of the proceedings against him.

4. We have heard the learned counsel for the parties on the listed application and perused the material available on record.

5. Admittedly the petitioner is facing a criminal case arising out of FIR No.G-48 / 2014 registered by FIA Circle Sukkur in 2014 regarding utilization of Federal Government Funds. Prima-facie the allegations against the petitioner are based on alleged corruption and corrupt practices, which is pending adjudication before the competent Court of law.

6. In Contempt Proceedings, we cannot enlarge the scope of disposal order dated 12.05.2020 passed by this Court and cannot allow the parties to argue the matter on merits of the case or refer the matter to the respondents for further deliberation on the issue. We are of the view that the Respondents have submitted a compliance report to the effect that it had complied with the aforesaid order of this Court in its letter and spirit. The explanation offered by the respondents, prima-facie, is tenable under the law as the petitioner was considered for the promotion in DPC in compliance of the order passed by this Court on 12.05.2020. It is noted that the representative of SGA&CD opined for deferment of the promotion of the petitioner and consideration of his case after finalization of the proceedings against him, in our view, this is the correct approach. Prima-facie such decision of the DPC to clear him for promotion during the pendency of criminal proceedings is erroneous. However, his deferment shall be subject to the outcome of the criminal proceedings presently pending against him. 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 rights cannot be claimed.

7. In view of the facts and circumstances of the case and for the reasons alluded as above, we are satisfied with the explanation furnished by the alleged contemnors that substantial compliance of the order dated 12.05.2020 passed by this Court has been made in its letter and spirit, therefore, at this juncture, no case for initiating contempt proceedings is made out against the alleged contemnors. Thus, we are not inclined to continue with any further on the listed application bearing CMA No. 20545 of 2020, having no merits, is accordingly dismissed with no order as to costs.

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Nadir*