

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –4201 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Shamsuddin Dal

Versus

Province of Sindh and 02 others

Date of hearing & order : 03.12.2020

Mr. Faizan Hussain Memon, advocate for the petitioner.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has prayed that the respondents may be directed to promote him to the post of Deputy Director BPS-20 in Education and Literacy Department, Government of Sindh. He has also impugned the decision of the Provincial Selection Board-I whereby his case for promotion to the post of Head Master / Director in BPS-20 has been deferred. The sole ground on which his case has been deferred is that a minor penalty of Withholding of Annual Increment was imposed upon him and he had remained suspended from service for some period.

2. We asked learned counsel to satisfy this Court about maintainability of this petition on the ground that under the disciplinary proceedings, he was found guilty and awarded a penalty of stoppage of increments for three years vide order dated 5.3.2019 which period has not yet expired.

3. Mr. Faizan Hussain Memon, learned counsel for the petitioner, has urged that his case could not be deferred on the above ground as the learned Sindh Service Tribunal, vide order dated 04.10.2017 passed in the petitioner's Appeal No.718/2017, had ordered that his case for promotion be considered on merits by the Board, in the next meeting and be decided in accordance with law. It is further urged that the impugned decision of deferment by PSB-I was / is malafide and discriminatory. He pointed out that the petitioner has been exonerated from the NAB Reference No.15/2016 vide judgment dated 10.11.2018, as such petitioner is liable to be considered afresh for promotion in the next rank. He

further argued that a minor penalty was imposed on him, this could not be posed a hurdle for consideration of his case for promotion by the Provincial Selection Board-I. It was urged that under the rules, on account of a minor penalty, award of promotion to the petitioner could not have been withheld. It is contended that pending inquiry is no ground for deferment of his promotion. In support of his contention, he relied upon in the case of Capt. Sarfraz Ahmed Mufti v. Government of the Punjab and others, **1991 SCMR 1637**, Muhammad Yaseen v. Secretary Government of Punjab and others, **2007 PLC (C.S) 303**, and Abdul Rauf v. Government of the Punjab and another, **2016 PLC (C.S) 1099**.

4. Learned AAG has supported the stance of respondents 2 and 3 and argued that petitioner was facing disciplinary proceedings and was found guilty of misconduct and was awarded a penalty of withholding of annual increment for three years vide office order dated 05.03.2019. Per learned AAG, the said period has not yet elapsed. He further argued that the case of the petitioner was placed before the Provincial Selection Board-I on 18.07.2020, whereby his case was deferred for the reasons that the penalty period has not yet expired. Besides, he remained under suspension from 04.07.2013 to 23.10.2019 thus could not earn any ACR after reinstatement in service on 24.10.2019.

5. We have heard learned counsel for the parties on the subject issue and perused the material available on record.

6. The pivotal question involved in the present proceedings is whether a Civil / Government Servant who is found guilty of misconduct under The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, and a minor penalty was imposed upon him could be considered for promotion?

7. On the aforesaid proposition Section 13 of the Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975, is clear in terms that the promotion of a Civil Servant can be deferred in the following categories:

- i) his seniority is under dispute or is not determined; or
- ii) he is on deputation, training or leave; or
- iii) disciplinary proceedings are pending against him; or
- iv) he is not considered for promotion for any reason other than his unfitness for promotions;

8. In view of the above, the competent authority can take disciplinary action against the civil servant in the following cases:-

- (a) Where two or more penalties under the Government Servants (Efficiency & Discipline) Rules, 1973, have been imposed on a civil servant.

(b) Where overall grading of the ACRs is Average, and/or where adverse remarks in regard to acceptance of responsibility, integrity, reliability, output of work and behavior with the public were recorded in the ACRs (duly conveyed to the concerned civil servant and his representation against it finalized, as per rules).

(c) Where a civil servant is twice recommended for supersession by the Selection Board/DPC and the recommendation of the Selection Board/DPC is approved by the competent authority.

(d) Where other specific and cogent grounds, including the following, may warrant retirement of a civil servant:-

- (i) persistent reputation of being corrupt;
- (ii) possessing pecuniary resources and/or property etc. disproportionate to his known sources of income; and
- (iii) frequent unauthorized absence from duty.

9. We are cognizant of the fact that the recommendations, as contained in the Establishment Division's OM No. 1/3/2007/CP/ II dated 24th October 2007 "Promotion Policy" adopted by Sindh Government, also prescribed conditions for deferment and also required that the officers superseded / deferred by the competent authority be informed about the reason for his supersession / deferment to enable him to improve his performance and to complete his records or to make up any other deficiency, as the case may be.

10. In our view, the promotion to a post depends upon several circumstances. To qualify for the promotion, the least that is expected of an employee is to have an unblemished record. An employee found guilty of misconduct cannot be placed at par with the other employees, and his case has to be treated differently. While considering an employee for promotion his entire service record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial cannot be termed as arbitrary, discriminatory, illegal or unjustified. In our view, the evaluation made by an Expert Committee should not be easily interfered with by this Court which does not have the necessary expertise to undertake the exercise that is necessary for such purpose. It is a settled proposition that the DPC, within its power to make its assessment, has to assess every proposal for promotion, on case to case basis. In cases where disciplinary case / criminal prosecution against the Civil / Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC which kept its findings in respect of the Government servant the appointing authority may consider the desirability of giving him an ad-hoc promotion.

11. Adverting to the contention of the learned counsel for the petitioner as discussed supra, we are not impressed with such assertions for the reason that departmental action against the petitioner having been initiated independently of a criminal case registered against him. Merely obtaining an acquittal order in a criminal case would not nullify the outcome of the departmental proceedings and on this score, the departmental penalty cannot be set aside, which prima-facie has attained finality.

12. The case law cited by learned counsel for the petitioner is not akin to the facts and circumstances of the present case.

13. We, for the aforesaid reasons, and in the given circumstances hold that this petition is not maintainable, which is accordingly dismissed along with pending applications with no order as to costs.

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