

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. D –5391 of 2020

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Priority :

1. For order on office objection :
2. For hearing of CMA No.23947 of 2020 :
3. For hearing of CMA No.22968 of 2020 :
4. For hearing of main case.

02.12.2020

Mr. Irtafa-ur-Rehman, advocate for the petitioner.
Mr. Ali Safdar Depar, Assistant A.G Sindh.

Petitioner is the Executive Engineer (BPS-18) in the Irrigation Department of Government of Sindh is seeking promotion to the post of Superintending Engineer (Civil) BPS-19, which has been deferred on account of pendency of criminal proceeding against him whereas private respondents 5 to 13 have been promoted from the posts of Executive Engineers (Civil) BPS-18 to Superintending Engineer (Civil) BPS-19 vide notification dated 29.9.2020.

2. The grievance of the petitioner is that the said respondents were junior to him according to the list of seniority issued by the respondents and as such, they could not be promoted by superseding him.

3. At the outset, we enquired from the learned counsel for the Petitioner whether a Civil Servant can be promoted against whom prima facie involvement in the serious charges of misconduct as defined under The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, was available in the shape of criminal proceedings.

4. Mr. Irtafa-ur-Rehman learned counsel for the petitioner, argued that the petitioners' promotion has been deferred and he has been superseded on the sole ground that he is facing criminal proceedings. It is further contended that the promotion of the petitioner was deliberately deferred which is a clear case of discrimination against him. It is 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 in its meeting does not cover the case of prolonged pendency of the criminal case. He lastly prayed for the direction to the competent authority of respondents to consider the petitioner's case for promotion purely on merits.

5. We have observed that constitutional petitions are filed before this Court frequently alleging that promotion is deferred or denied to Civil/government servants by the competent authority on the ground that disciplinary proceedings or criminal cases

are pending against them. Keeping in view the above factual as well as the legal position of the case, this Court vide order dated 09.11.2020 directed the Chief Secretary Sindh to submit before this Court a list showing details of all such civil / government servants whose cases for promotion have been deferred or denied on the above ground, and details of the disciplinary proceedings or criminal cases pending against them.

6. Today learned AAG has submitted a partial compliance report duly signed by the Secretary Services and General Administration and Coordination Department Government of Sindh, showing 63 officials of Government of Sindh facing such proceedings without initiation or conclusion of disciplinary proceedings against them and allowing them to hold their respective post despite the aforesaid factum. We inquired from learned AAG as to what action has been taken against the delinquent officials under The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, and Sindh Civil Servants (Conduct) Rules, 2008, who are facing disciplinary proceedings or criminal cases, he submits that nothing has been done yet.

7. We have noticed that a similar kind of petition bearing C.P. No.D-4802 of 2020 came up before this Court for hearing on 16.11.2020 and the following order was passed:

“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.”

8. In view of the statement of learned AAG, let notice be issued to the Chief Secretary, Sindh, to submit complete details of such cases of the Civil / Government Servants who are facing disciplinary proceedings or criminal cases, and enjoying the posting even those who entered into plea bargaining and Voluntary Return (VR) under the NAB law. To be listed on **21.12.2020 at 11:00 a.m.**

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