

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -3668 of 2020

Dadan Khan Pirzado & 18 others

Versus

The Secretary Education (Colleges) & 03 others

Date of hearing &

Decision : 16.02.2021

Malik Altaf Hussain, advocate for the petitioners.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh a/w Qamaruddin Keerio, Assistant Director, Shaheed Benazir Abad Regional Director and Zohaib Memon Focal Person DG Colleges Nawabshah.

ORDER

ADNAN-UL-KARIM MEMON, J. - Petitioners are aggrieved by the order dated 04.8.2020 issued by Section Officer (HE-III) College Education Department, Government of Sindh, whereby the said officer has directed the responded NO.2 Regional Director Colleges Shaheed Benazirabad to cancel/withdraw promotion notifications/orders mentioned in the said impugned directions. It is contended *inter alia* by the learned counsel for the petitioners that the impugned action which has seriously prejudiced all the petitioners, has been taken in gross violation of the well-settled principles of natural justice without issuing any notice to the petitioners and without affording any opportunity of hearing to them.

2. We have heard learned counsel for the parties on the subject issue and perused the material available on record and case-law cited at the bar.

3. On the issue of recalling the promotion of the petitioners, we have noticed that though the competent authority making an order has jurisdiction to rescind the illegal or irregular order and that an illegal or irregular action can be corrected at any time, but this jurisdiction cannot be exercised arbitrarily and without recourse to legal proceedings. The recession must be under the procedure provided by law and after a show-cause notice to the person to be affected, more particularly in a case when the action of recession is based on the conduct of the person to be affected and in such state of affairs

a notice is necessary under the principle of natural justice. We have considered the stance of the learned AAG on the premise that petitioners are/were not working as Junior Clerk-cum-typist and Senior Clerk in BPS-14 respectively because their promotion from menial staff peon, lab attendant, chowkidar, etc. and Junior Clerk has been canceled/withdrawn in pursuance of the letter dated 04.08.2020, consequently on the findings of the inquiry committee to process fresh promotions of nonteaching staff of BPS-01 to 16 ensured that the process meets all codal formalities under the law, hence all the petitioners are working on the original as menial staff BPS-1 to 4 and ministerial post before their promotion.

4. Prima facie, the recruitment rules notified on 20.11.2017 explicitly provide that the post of Senior Clerk (BPS-14) is a promotion post to be filled amongst the Junior Clerk-cum-typist (BPS-11) on seniority-cum-fitness basis.

5. As per learned AAG, the legal formalities were not completed before allowing promotion to the petitioners. He referred to the findings of the inquiry committee and argued that the matter needs to be remanded back to the competent authority for reconsidering the case of the petitioners for promotion in higher rank if they at all qualify for such promotion under the law. At this stage, learned counsel representing the petitioners strongly objected to the stance of the learned AAG and argued that if this Court reached the conclusion that the matter is required to be remanded then the impugned order needs to be set aside to give a fair opportunity to the petitioners to plead their case before the competent forum under law. In support of his contention, he relied on the case of *Moin-ul-Islam v. Government of Sindh through Secretary Home Department and 2 others*, 2000 PLC (CS) 1172).

6. Prima facie, the impugned order dated 04.8.2020 does not disclose the justiciable reasons for recalling the promotion of the petitioners, however, the respondents have reservations against such promotion of the petitioners which primarily needs to be looked into by the competent authority under the relevant law and this Court, at this juncture, is not a position to thresh out such allegations and counter-allegations so raised by the parties hereinabove under writ jurisdiction.

7. In the light of the above facts and circumstances of the case, this matter is remitted to the Secretary, Education Department, Government of

Sindh, to look into the matter and examine the case of petitioners for promotion in the higher rank and if at all they meet the promotion criteria, they shall be given their due promotion to the next rank under the law without looking into the impugned order dated 04.08.2020 as discussed supra. The aforesaid exercise shall be undertaken within one month from the date of receipt of this order.

8. This petition stands disposed of in the above terms along with the listed application(s).

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Nadir*