

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-277 of 2020

Date	Order with signature of Judge
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PRIORITY.

1. For hearing of CMA No.1163/2020.
2. For hearing of main case.

Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Yousuf Ali Sayeed.

Munir Ahmed & others.....Petitioners

Versus

Province of Sindh & others.....Respondents

06.02.2020.

M/s. M. M. Aqil Awan and Danish Rasheed, Advocates for the Petitioners.

Mr. Muhammad Jawwad Dero, Addl. A. G.

Saeed Ahmed Shaikh, Additional Secretary Services-II, S&GACD, and Ghulam Ali Birhmani, Additional Secretary, Admin, Irrigation Department, Government of Sindh are also present.

Muhammad Ali Mazhar, J: The petitioners have brought this constitution petition for declaration that they are entitled to hold the post of Executive Engineers in the Administrative Department against which they are promoted which cannot be interfered or disturbed by any executive order of the competent authority unless statutorily it is determined that such posts involve professional engineering work and all executive letter/orders in negation of the recruitment rules of the Executive Engineers dated 16.12.2013 are void and ultra vires.

2. Learned Additional Advocate General, Sindh has filed comments on behalf of the Respondent No.2, in which, he has referred to the letter dated 08.01.2020 issued by the Section Officer (Legal-I), SGA&CD, Government of Sindh, which was communicated to the six (6) Secretaries of different departments including the Irrigation Department, in which they had given a reference of the judgment passed by the honourable Supreme Court of Pakistan in the case of Moula Bux Shaikh & others vs.

Chief Minister of Sindh & others – C. P. No.78-K of 2015. Learned Additional Advocate General, Sindh has relied on the Paragraphs-23 of the apex court judgment which is reproduced as under:-

“23. The net result of above discussion is that this petition fails. It is dismissed and leave refused, however with note of caution that government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.”

3. The crux of the judgment of the honourable Supreme Court of Pakistan leads to a note of caution that the Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act.

4. Mr. Ghulam Ali Birhmani, Additional Secretary, Admin, Irrigation Department, Government of Sindh is present and has also submitted a letter dated 04.02.2020 communicated to the Secretary, Irrigation Department, Government of Sindh by the Section Officer SGA&CD, Government of Sindh with reference to the same judgment of the honourable Supreme Court of Pakistan, which is reproduced as under:-

“NO.SOV(SGA&CD)8-188/2018

**GOVERNMENT OF SINDH
SERVICES, GENERAL ADMINISTRATION
& COORDINATION DEPARTMENT**

Karachi dated the 4th February, 2020

***The Secretary to Government of Sindh,
Irrigation Department,
Karachi.***

SUBJECT: PROPER ADVICE/GUIDANCE FOR COMPLIANCE OF ORDERS OF HONOURABLE SUPREME COURT OF PAKISTAN PASSED IN C.P NO.78-K/2015 (MOULA BUX SHAIKH & OTHERS) V/S. CHIEF MINISTER, SINDH & OTHERS.

Reference:

- i. No.SOV(SGA&CD)8-188/2018, dated 03.12.2019.**
- ii. U.O. No.A-1/8-260/2020, dated 27.01.2020 of Irrigation Department.**
- iii. No.AG-198 OF 2019, dated 16.01.2019 of Advocate General, Sindh.**
- iv. No.SOR-II(SGA&CD)5-35/2019, dated 28.06.2019 of Regulation Wing of SGA&CD.**

- v. **No.AG-198 OF 2019, dated 16.01.2019 of Advocate General, Sindh.**
- vi. **No.AG-198 OF 2019, dated 16.01.2019 of Advocate General, Sindh.**

Sir,

I am directed to refer to the subject noted above and to state that the advice/guideline given by the Regulation Wing of SGA&CD, Advocate General, Sindh and this Department under the above references in the light of judgment of the Honourable Supreme Court of Pakistan are very much clear and unambiguous into the subject matter. The Irrigation Department has not indicated any specific point of confusion requiring clarification in implementation/compliance of the orders of the Honourable Court.

02. The Advocate General, Sindh has conveyed the guiding principles in the light of judgment of the Honourable Supreme Court of Pakistan as under:

- i. **There is no embargo of any sort on the government in prescribing the qualification and other conditions of service for the purpose of promotion.**
- ii. **The Government's power in this regard is unfettered provided it is not in derogation of any law or provisions of the constitution.**
- iii. **It is the Government's prerogative to decide whether a particular academic qualification of a civil servant is sufficient for promotion from one grade to another higher grade.**
- iv. **It is in the domain of the Pakistan Engineering Council (PEC) to decide whether a particular academic qualification can be equated with another academic qualification but it has no power to say that the Civil Servant/employee holding a particular academic qualification cannot be promoted from a particular grade to a higher grade.**
- v. **The Government exercises its own power under the domain of law with regard to promotion of civil servants/employees under the Sindh Civil Servants Act, 1973 and Rules made thereunder while the PEC Act does not overreach or put an embargo upon the Government in the matter of prescribing of qualification and other conditions of service of civil servants/employees for their promotion to a higher grade.**
- vi. **The provisions of PEC Act and the rules and regulations made under it do not operate as bar on government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to a higher grade.**
- vii. **All sort of engineering work could not be and may not be professional engineering work within the meaning of the PEC Act for performance of which professional engineers are required. Thus technicians, mechanics, draftsman, foreman, supervisors and overseers etc. could be skilled workmen who may work independently or under the supervision of a professional engineer and for such technicians, mechanics, draftsmen, foremen, supervisors and**

overseers etc. the Government is free not to require that they hold a professional engineering degree.

viii. The Government shall not allow or permit any persons, who does not possess accredited engineering qualification from the accredited engineering institution and whose name is not registered as a registered engineer or professional engineer under the PEC Act to perform professional engineering work as defined in the PEC Act.

03. This Department has also issued advice/guideline, vide letter dated 03.12.2019 (Copy enclosed) to all the engineering related Departments to reframe nomenclature of the posts falling in the promotion quota of Diploma and B. Tech Degree holders and describe their job in such a way which may not require mandatory professional engineering degree/accredited engineering qualification and professional engineering works, as mentioned in PEC Act, without affecting their existing promotion quota. Alongside, the process of reframing of Recruitment Rules may also be initiated. It may not be out of place to mention that their reserved quota would not be utilized towards the share of graduate Engineers.

04. The other concerned Departments like Works & Service Department and Local Government Department have implemented the Court orders and have taken action into the matter in the light of the guiding principles/advice referred above, without questioning or seeking further clarification.

05. There is, thus, no confusion in the orders of the Honourable Supreme Court of Pakistan, guiding principles communicated by the Advocate General, Sindh and the advice issued by this Department. The proposal of the Administrative Department to hold meeting of concerned Secretaries of Engineering Departments and the Advocate General, Sindh by the Chief Secretary, Sindh is, therefore, not justifiable. It is the job of Administrative Department to comply with the Court orders and bring the reorganization of this particular cadre in the light of above guidance and instructions without the SGA&CD having to tutor it for its core function and responsibility.

06. It is, therefore, requested to take necessary action into the matter in the light of orders of the Honourable Supreme Court of Pakistan and the above referred guiding principles and advice of this Department.”

DA/As above

**SD/
SECTION OFFICER”**

5. Mr. Ghulam Ali Birkhmani, Additional Secretary, Admin, Irrigation Department, Government of Sindh, has given a clear statement that at present all the Petitioners are performing their duties as Executive Engineers in BS-18 and they are involved in some professional engineering work as per PEC Act. He also requests for two months' time to reframe the nomenclature of the posts falling in the promotion quota of Diploma and B.Tech Degree holders and describe their job in such a way which may not require mandatory professional engineering degree/accredited engineering qualification and professional engineering

works, as mentioned in the PEC Act, without affecting their existing promotion quotas. He further submits that within same time, recruitment rules will also be reframed in view of directions of Supreme Court. However, he has given a clear statement that till such time the rules are framed, the Petitioners shall not be demoted nor the terms and conditions of their service will be made less favourable but in compliance of the judgment of the honourable Supreme Court of Pakistan, they will not be allowed to perform professional engineering work as defined in the PEC Act. The learned counsel for the petitioners agrees to this proposal. The Petition is disposed of in the above terms. Interim order passed earlier is hereby recalled.

JUDGE

JUDGE

MUBASHIR