

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP. No. D- 594 of 2017

Muhammad Urs

v. Province of Sindh and others

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner: Muhammad Urs through Mr. Noorul Amin Sipio, Advocate

Respondents: Chief Administrator Auqaf through Mr. Anees-ur-Rehman Siddiqi, Advocate
Mr. Ayaz Ali Rajpar, Asstt: A.G.

Date of hearin & decision: 27.10.2021

O R D E R

ADNAN-UL-KARIM MEMON, J:- Through instant petition the petitioner has prayed as under:-

- a. that this Honourable Court may kindly be pleased to direct the respondents promptly to start the pension and payment of gratuity, GP fund is and other inadmissible retirement benefits to the petitioner as per the notification No: SO (Auqaf) 1 is(22) PF/Jakhro, 2012 issued by the respondent No.1 vide dated 13.01.2016.
- b. That this Honourable Court may kindly be pleased to direct the respondents to promptly release the salary of the petitioner for the month of December 2015.
- c. To declare that the petitioner promoted after observing all codal formalities by the competent authority through departmental promotion committee and cannot be questioned under any ground of whatsoever nature and the act of the respondents, as well as notification issued by respondent No. 1, vide dated 11.02.2016 are illegal, unlawful null and void and have no any legal value in accordance with law.

2. Mr. Noorul Amin Sipio learned counsel for the petitioner has briefed us on the subject issue and submitted that the petitioner was appointed as Junior Clerk on 12.01.1974 in Auqaf Department, and during his service tenure he was promoted to the post of Senior Clerk in the year 1980, thereafter he became Assistant in the year 1993; and, succeeded in getting further promotion as Accountant BPS-14 vide office order dated 7.9.1998; luckily he obtained another promotion as Manager BPS-16 by Departmental Promotion

Committee (DPC) vide notification dated 31.05.2013; and, finally, luck prevailed and he became a Public Relation Officer BPS-17 vide notification dated 25.03.2015 and his pay was re-fixed accordingly. Per petitioner, he reached the age of superannuation i.e. 60 years on 9.1.2016. Petitioner has averred that the last salary of the petitioner for December 2015 has yet not been paid to him by the respondents. Subsequently, after issuance of notification of retirement of the petitioner, respondent No.1 vide notification dated 11.02.2016, recalled his promotion and reverted him to his previous position, without due course of law. Petitioner further added that the respondents realized their mistake, but nothing concrete could be done till date. Petitioner has submitted that he is a retired employee of Auqaf department and is an old-aged person and is entitled to all benefits according to law. He prayed for allowing the instant petition.

3. Prima-facie the impugned notification dated 11.02.2016 explicitly shows that in pursuance of the judgment dated 12.6.2013 passed by Honorable Supreme Court, the respondent department recalled the promotion of the petitioner from the post of Public Relation Officer BPS-17 and reverted him to the position of Manager Auqaf BPS-16. The petitioner has taken the plea that since he stood retired from service on 9.1.2016, therefore his promotion ought not to have been recalled. This plea of the petitioner is untenable for the simple reason that appointment / promotion to the post in BS 16 to 17 is to be made, under the recruitment rules, by the competent authority with which such power vests in the manner prescribed by law and not otherwise; and, only such recommendation will be meaningful and effective which is made under the law and not which violates the law or which will have the effect of frustrating the law. In principle, we are unable to understand how a Junior Clerk who was appointed in the year 1974 in Auqaf Department reached the post of Public Relation Officer BPS-17 in the year 2015. Prima-facie the recruitment rules do not permit such eventuality as depicted by the petitioner.

4. The Hon'ble Supreme Court in the case of Shahid Pervaiz v. Ejaz Ahmed and others (**2017 SCMR 206**), was pleased to hold, inter alia, that if an illegal benefit was accrued or conferred under a statute, whether repealed/omitted or continuing, and its benefits continue to flow in favor of beneficiaries of such an unconstitutional Act which is declared ultra vires, the benefits so conferred would

have to be reversed irrespective of the fact that the conferring Act was still on the statute book or not; and, such beneficiaries cannot take the plea of past and closed transaction as such plea would apply only in cases where rights were created under a valid law. It may be noted that the case of Shahid Pervaiz supra went under review and the judgment of the said review proceedings is reported as *Akhtar Umar Hayat Lalayka and others V/S Mushtaq Ahmed Sukhaira and others*, **(2018 SCMR 1218)**, whereby the review petitions were dismissed/disposed of, and even the exception granted in paragraph 111 of the judgment in Shahid Pervaiz supra read with paragraph 143 thereof was withdrawn. As held by the Hon'ble Supreme Court in various pronouncements that its decisions laying down any proposition in law becomes the law binding on all whether or not they were party to the proceedings before the Hon'ble Supreme Court. Under Article 187(2) of the Constitution, this Court has to ensure execution and enforcement of directions, orders, and judgments of Hon'ble Supreme Court. Therefore, the purported promotion of the petitioner as Public Relation Officer BPS-17 in the year 2015 was rightly reversed.

5. Mr. Ayaz Ali Rajpar, Asstt: A.G has submitted that respondent-department has issued notification dated 11.5.2020 whereby sanction was accorded for grant of 365 days Leave encashment instead of LPR in favor of the petitioner. Be that as it may, if the petitioner is entitled to the grant of 365 days Leave encashment in lieu of LPR, let the department decide under the law within a reasonable time, more particularly in the light of paragraph 111 of the judgment of the Honorable Supreme Court in Shahid Pervaiz supra.

6. As a result of above discussion, this petition and applications pending therein are disposed of in the above terms with no order as to costs.

JUDGE

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