

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D –3668 of 2020

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| Date | order with signature of Judge(s) |
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For direction:

1. For order on CMA No.9794/2021 (Contempt)
2. For hearing of CMA No.11052/2021 (Contempt)

10.02.2022

Malik Altaf Hussain, advocate for the petitioners
Mr. Ali Safdar Depar, AAG

ORDER

This petition was disposed of vide order dated 16.02.2021 with the following observation:

“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).”

Petitioners have filed applications under Section 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No. 9794/2021 & 11052/2021) for initiation of contempt proceedings against the alleged contemnor on account of her willful, intentional, and deliberate act of disobeying the above-mentioned order passed by this Court.

We have also scrutinized the compliance report submitted on behalf of the alleged contemnor vide appellate order dated 21.10.2021 whereby the respondents have directed to the Regional Director Colleges, Shaheed Benazirabad as under:

- (i) the promotion of as at Para-2(A) of 05 Senior Clerks (BS-14) to the post of Assistant (BS-16) and Promotion as at Para 2(B) of 6 Junior Clerks (BS-11) to the post of Senior Clerks (BS-14) may be implemented after fulfillment of all codal formalities
- (ii) Promotions as at Para-2(C) of 23 Non-Teaching staff working in BPS-01 to BPS-04 who were promoted to the post of Junior Clerk (BPS-11) issued vide order No. RDCSBA/HR/479/2019-20 dated 28.5.2020 may be canceled on the grounds that no Department Recruitment were available

- (iii) To prepare the Seniority list afresh (Tentative & Final Seniority) of officials of BS-01 to BS-04 of the Region and then consider the promotions of officials of BS-01 to BS-04 to the post of Junior Clerks (BS-11) as per Recruitment Rules to the post of Junior Clerks recently issued by this Department on 07.09.2021, after checking the suitability as to fitness and aptitude.

The Petitioners have pointed out discriminatory attitudes with the petitioners in paragraph 10(1) of the appellate order on the ground that he favored curtailed employees and on the other hand, he canceled the promotion of the petitioners on the plea that no departmental recruitment rules were available. Per learned counsel, if the department recruitment rules were not available, then how the other employees could be promoted, therefore, he has pleaded malice on the part of the alleged contemnor warranting interference of this Court to take action against the alleged contemnor under Article 204 of the Constitution, who failed and neglected to promote the petitioners. Because of the statement, prima-facie the explanation offered by the respondents vide appellate order dated 21.10.2021, has to be looked into in its entirety.

In view of the facts and circumstances of the case and for the reasons alluded above, we are not satisfied with the explanation offered by the alleged contemnor that substantial compliance of the order 16.02.2021 passed by this Court has been made in its letter and spirit. Let show cause notice be issued to the alleged contemnor. The listed applications bearing (CMA No. 9794/2021 & 11052/2021) are adjourned.

JUDGE

JUDGE

Nadir*