ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.D-4468/2020

Date	Order with signature of Judge

For hearing of main case.

09.08.2021

Petitioner in person. Mr. Safdar Ali Depar, AAG.

At the outset petitioner referred paragraph No.17 and 18 of the petition which are that :-

- "17. The Honourable Supreme Court in para 160 of the judgment issued specific direction to the learned respondent to create surplus pool within the parent department, of the officers/officials where the will get salary and seniority etc. in case, if the parent department has been abolished, the competent authority, shall appoint them by transfer in terms of Rule 9-A, subject to the restrictions contained therein, in line with the findings recorded by us in these proceedings. However, the implementation of the directions is not visible and still a number of surplus staff is working in the surplus pool created by SC&GAD Sindh.
- 18. That the orders of this honourable Court could be implemented by way of using discretionary powers granted to the competent authority under section 24 of the Sindh Services Act 1973 and already discussed at length by honourable Supreme Court of Pakistan in case Ali Azhar Khan Baloch and others vs. Province of Sindh and others (2015 SCMR 456)."
- 2. Whereas learned AAG has emphasized on paragraph No.18 while referring rule 9-A of the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974 and contends that the Chief Secretary has rightly passed order dated 13.05.2019. Being relent, it would be conducive to refer impugned order which is that:-

"Such opportunities for personal hearing were provided to Mr. Afaq Qureshi on 06.02.2019, 12.02.2019. He failed to appear on the said dates.

Finally he appeared on a hearing on 23.04.2019 before me

The case was thoroughly discussed and Mr. Afaq Qureshi was given full opportunity and a meaningful hearing. He acknowledged that all his dues, including salaries for the period he was in surplus pool and his pension benefits have been paid.

He also conceded the fact that seniority could have been assigned only if he had been absorbed against some post which is not the case; 9(A) of Sindh Civil Servants (APT(Rules 1974 was relied upon (Annex-D) which stipulates that:

"....... a person who has been rendered surplus Seniority of such person in the new cadre shall be reckoned from the date of appointment in the cadre......"

In the case of Mr. Afaq Qureshi, surplus employee, now retired promotion is not possible as no appointment in any cadre was made hence no seniority was assigned.

Taking into consideration all the above and as directed by High Court, I hereby reject the prayer of the petitioner regarding determination of seniority and promotion based on seniority during his placement in surplus pool, being not covered under the relevant rules."

3. Prima facie, it is not a matter of dispute that detailed order was passed by this Court in CP No.D-4666/2013 vide judgment dated 23.10.2018 therefore, the authority was required to pass the order strictly keeping in view those detail (s) / guidelines which do not reflect from said order. The position, being so, is sufficient to say that we are not impressed by the plea taken by the AAG Sindh. Accordingly impugned order is set aside; the Chief Secretary Sindh shall pass fresh order within the light of judgment dated 23.10.2018 passed by this court in CP No.D-4666/2013 and submit compliance report preferably within one month.

To come up on 08.09.2021.

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JUDGE

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