

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 3603 of 2016

Date Order with Signature(s) of Judge(s)

Direction

1. For order on MIT-II report dated 18.09.2021
2. For hearing of Misc No.6199/2022 (Contempt)

31.01.2023

Mr. Arsalan Wahid, advocate for the petitioner/applicant.
Mr. Yasir Ahmed Shah, Assistant Attorney General

This petition was disposed of by this Court vide order dated 21.05.2021 relevant para-13 is reproduced as under:

"13. In the light of the above facts and circumstances of the case, the instant petition is allowed in the terms whereby the Competent Authority of the respondent-department is directed to take a fresh decision on the issue of proforma promotion of the Petitioner as Assistant Librarian in BPS-16 with effect from the date when she was promoted to the post of Assistant Librarian in the year 1984, and/or Librarian in BPS-17 when DPC recommended her case for selection as Librarian, strictly in accordance with law without discrimination with consequential benefits aforesaid exercise shall be undertaken within two (02) months' time from the date of receipt of this Judgment. Compliance report shall be submitted through MIT-II of this Court."

2. Mr. Arsalan Wahid, learned counsel for the applicant, contended that despite clear directions, the respondents have not complied with the aforesaid order of this Court in its true perspective, and the compliance report submitted by respondents No.2 and 3 have not been signed by any of the officers to take responsibility of such an attempt to mock the directions passed by this Court, therefore, the conduct of the respondents/contemnors calls for immediate action against them for redressal of the grievance of the petitioner for proforma promotion.

3. Learned AAG while referring to the compliance report has submitted that to comply with Order dated 10.05.2022 passed by this court a Special Departmental Promotion Committee was constituted vide Order dated 20.07.2022 to consider the case of the Petitioner for promotion. The Special DPC was held on 27.07.2022 and Speaking Order was passed on 15.08.2022 whereby stating that her case for promotion was not covered under the law/rules. He emphasized that if the rules do not permit, the proforma promotion could not be allowed. He prayed for the dismissal of the contempt application.

4. We have heard the learned counsel for the parties on the listed application and perused the record with their assistance.

5. The compliance report shows that the case of the petitioner for proforma promotion was not covered under the law/rules vide order dated 15.08.2022 which is extracted as under:

“The meeting of the SDPC was held on 27.07.2022 under the Chairmanship Shahnaz Zaidi, ex-Library Assistant (BS-12) to the post of Assistant Librarian (BS-16), the Committee has examined the service record, facts of the case, the prayer of the appellant filed in the Court and the Court's orders.

3. The Committee observed that Ms. Shahnaz Zaidi was appointed as Cataloguer (BS-10) in the Directorate General of Training & Research-Customs, Karachi (now the department renamed as Pakistan Customs Academy, Karachi) vide appointment letter dated 06.04.1981. Subsequently, the petitioner was promoted to the post of Library Assistant (BS-11) vide Office Order dated 01.01.1984. However, the record shows that nomenclature of the post of Library Assistant (BS-11) was written as Assistant Librarian (BS-11) inadvertently in the said office order. However, it was noticed that the pay scale of the post was correctly written as BS-11. Moreover, the pay of the petitioner was also fixed in the same pay scale i.e. BS-11 by the sub-Office, AGPR, Karachi. It was noticed that record shows that Ms. Shahnaz Zaidi claiming proforma promotion of the post of Assistant Librarian (BS-16) signed various letters during the service duly placed in the record where she herself by her free will called her as Library Assistant (BS-12).

4. In the year 2009, Ms. Shahnaz Zaidi, ex-Library Assistant (BS-11) made a presentation to FBR for the upgradation of the post of Library Assistant (BS-11) to Library Assistant (BS-15/16). The matter of upgradation was taken up by the FBR with Establishment Division. The Establishment Division concurred the upgradation of the posts of Cataloguer (BS-10) and Library Assistant (BS-11) to Cataloguer (BS-12) and library Assistant (BS-12) in line with the standardization of pay scales and recruitment rules for librarians working in the Federal Government Organizations. Accordingly, FBR issued necessary sanction letter dated 31.07.2013 by which both posts of Cataloguer (BS-10) and Library Assistant (BS-11) were upgraded to Cataloguer (BS-12) and Library Assistant (BS-12).

5. Subsequently, Ms. Shehnaz Zaid, ex-Library Assistant (BS-12) filed Constitution Petition No. D-3603/2016 before the Hon'ble High Court of Sindh, Karachi on 11.05.2016 regarding her proforma promotion / selection as Assistant Librarian (BS- 16) or Librarian (BS-17) w.e.f. 12.02.1985. During pendency of case in the court, Ms. Shahnaz Zaidi, ex-Library Assistant (BS-12) retired from government service on 13.08.2019.

6. In this context, the Committee observed that there existed one sanctioned post of Assistant Librarian (BS-16) in the Directorate General of Training & Research (Customs), Karachi. In this regard, the Committee perused the prescribed unified recruitment rules of the Federal Government for librarians working in the Federal Government Organizations provided at S.No.2.6 of the Estacode, Edition-2021. According to these prescribed recruitment rules, the post of Assistant Librarian (BS- 16) is notified vide SRO.9(KE)/88 dated 25.01.1988 and is meant to be filled by initial appointment. Moreover, it was also noticed that appointment to the said post comes under the purview of FPSC in accordance with section 7(1)(a) of FPSC Ordinance, 1977 being a BS-16 post.

7. The Committee therefore held that Ms. Shahnaz Zaidi, ex-Library Assistant (BS-12) is neither eligible for proforma promotion nor for selection as Assistant Librarian (BS-16) and therefore, unanimously regretted to recommend proforma promotion / selection to the post of Assistant Librarian (BS-16) to Ms. Shahnaz Zaidi, Ex-Library Assistant (BS-12).

8. Accordingly, in view of above, the case of proforma promotion in respect of Ms. Shahnaz Zaidi, ex-Library Assistant (BS-12) to the post of Assistant Librarian (BS-16) or selection to the post of Librarian (BS-17) is not covered under the law/rules.”

6. We have cautiously evaluated the compliance report as discussed supra however, we do not intend to express our view on the purported compliance report as the directions contained in the judgment dated 21.05.2021 has been stated to have been complied with by taking fresh decision dated 15.08.2022, thus we leave it to for the applicant to call in question the legality of the order dated 15.08.2022 on the grounds agitated by her through the contempt application as we do not want to stretch the case further through contempt proceedings to the effect whether the petitioner was/is entitled to proforma promotion as Assistant Librarian (BPS-16), as her case has been discarded by the respondents on the analogy that petitioner was/is neither eligible for proforma promotion nor for selection as Assistant Librarian (BPS-16) as the same post falls within the purview of Federal Public Service Commission, which narration, prima facie, needs to be looked into in another proceeding, if filed as the purpose of the filing the application has been served.

7. In the wake of the above discussion. The contempt application is disposed of in the above terms.

JUDGE

JUDGE

Nadir*