

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-7229 of 2021

(Capt. Rizwan Saif Khan v. Federation of Pakistan & others)

Petitioner : through Mr. Talha Abbasi, advocate.
Respondents No. 1 Ms Zehra Sahar, Assistant Attorney General
Respondents Nos 2 to 3 : Mr. Arshan Khan Tanoli, advocate
Date of hearing : 13-05-2025
Date of order : 13-05-2025

ORDER

Adnan-ul-Karim Memon, J., The Petitioner seeks the following relief from this Court:

- i. A declaration that the office order dated October 18, 2021, is illegal, malicious, unconstitutional, discriminatory, and in violation of Supreme Court precedents, and its annulment as it applies to the Petitioner.*
- ii. A directive for Respondents No. 2 and 3 to immediately evaluate the Petitioner for promotion to the Director (Marine Operation) (BS-20) position and to assign the Petitioner the current charge of that position until a permanent appointment is made.*
- iii. An injunction preventing the Respondents from allowing or continuing Respondent No. 4 in the current charge appointment for the Director (Marine Operation) (BS-20) post at PQA.*
- iv. Any other just and equitable relief as the Honorable Court may deem fit.*

2. On April 29, 2022, this court issued an order addressing the legality of appointments within the Port Qasim Authority (PQA), focusing on competitive processes, out-of-cadre postings, promotion criteria, and re-employment. This court expressed concern about deviations from Supreme Court directives regarding transparency and equal opportunity (as enshrined in Articles 18 and 27 of the Constitution), emphasizing the necessity of public advertisement and merit-based selection based on established legal precedents. Specifically, this court deemed the out-of-cadre "own pay and scale" (OPS) posting of a junior officer to a senior position illegal. This order stipulated that re-employment should only occur when demonstrably in the public interest and managed through structured discretion. Regarding the Director (Marine Operation) (BS-20) post, this court directed that it be filled through a competitive process (promotion for eligible candidates, otherwise open merit), strictly prohibiting ad-hoc and OPS

appointments, as well as out-of-cadre transfers. The PQA was further directed to adhere to all Supreme Court principles concerning officer transfers and postings. Additionally, this court mandated an investigation into past irregular appointments from 2010, requiring future appointments to comply with recruitment rules, competitive procedures, and thorough scrutiny. Subsequently, this court's interlocutory order of April 29, 2020, was appealed to the Supreme Court (CP No. 768-K of 2022). In its order dated March 19, 2025, the Supreme Court refused leave to appeal, clarifying that observations in interlocutory orders are provisional and do not predetermine the outcome. The Supreme Court expressed its expectation that this court would conduct a swift hearing and decide the case purely on its merits, following the law, while acknowledging the respondents' right to appeal any unfavorable final judgment/order.

3. At the beginning of the hearing, the PQA's counsel reiterated his arguments as recorded earlier; however, he further argued that the petition is no longer alive to be adjudicated due to the petitioner's retirement on August 19, 2022, and requested its dismissal. However, the petitioner's counsel countered, asserting that the legal reasoning in the order dated April 29, 2022, remained valid and binding.

4. In view of the above facts and circumstances of the case, this court deems it proper to dispose of the captioned petition based on the observations made in paragraphs 5 to 13 of its prior order dated April 29, 2022, and preceding paragraphs, for the reason that these observations served the broader public interest and aligned with Supreme Court decisions, and this order is in rem not personam therefore, the petitioner's retirement in 2022 did not render the legal principles outlined therein irrelevant.

5. Petition stands disposed of accordingly. Let a copy of this order be transmitted to the Chairman Port Qasim Authority for compliance within time.

J U D G E

HEAD OF CONST. BENCHES

SHAFI