

IN THE SUPREME COURT OF PAKISTAN
(REVIEW/ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

CRIMINAL REVIEW PETITION NO. 207 OF 2016 IN CRIMINAL ORIGINAL PETITION NO. 89 OF 2011, CRIMINAL ORIGINAL PETITION NO. 62 OF 2016 IN CRIMINAL ORIGINAL PETITION NO. 89 OF 2011, CRIMINAL M.A. NO. 1758 OF 2016 IN CRIMINAL ORIGINAL PETITION NO. 62 OF 2016, CRIMINAL M.A. NO. 86 OF 2017 IN CRIMINAL ORIGINAL PETITION NO. 62 OF 2016, CRIMINAL M.A. NO. 87 OF 2017 IN CRIMINAL ORIGINAL PETITION NO. 62 OF 2016, CRIMINAL M.A. NO. 404 OF 2017 IN CRIMINAL ORIGINAL PETITION NO. 62 OF 2016, CRIMINAL ORIGINAL PETITION NO. 22 OF 2017 IN CRIMINAL ORIGINAL PETITION NO. 89 OF 2011, CRIMINAL ORIGINAL PETITION NO. 69 OF 2017 IN CRIMINAL ORIGINAL PETITION NO. 89 OF 2011 AND CRIMINAL M.A. NO. 1521 OF 2016 IN CRIMINAL ORIGINAL PETITION NO. 62 OF 2016

(To review and against the alleged contempt of this Court's judgment dated 12.06.2013 passed in Criminal Original Petition No. 89/2011 etc)

Sr. No.	Parties' names	Case No.
1.	Hamid Saeed etc Vs. Government of Sindh through Chief Secretary and others	Cr. RP 207/2016 in Cr.O.P. 89/2011
2.	Khalid Mehmood etc Vs. Syed Tahir Shahbaz and others	Cr.O.P. 62/2016
3.	Impleadment application on behalf of Shah Nawaz and others	Cr.M.A. 1758/2016
4.	Application of joinder by Iqbal Ahmed Khan	Cr.M.A. 86/2017 in Cr.O.P. 62/2016
5.	Application of joinder by Muhammad Asad	Cr.M.A. 87/2017 in Cr.O.P. 62/2016
6.	Application for impleadment of applicant namely Abdur Rauf Qureshi, DSP/CPO, National Highways and Motorway Police	Cr.M.A. 404/2017 in Cr.O.P. 62/2016
7.	Rizwan Ahmed Qazi and others Vs. Shaukat Hayat and another	Cr.O.P. 22/2017 in Cr.O.P. 89/2011

8. Syed Khurram Abbas **Vs.** Cr.O.P. 69/2017 in
Syed Tahir Shahbaz and Cr.O.P. 89/2011
others
9. Khalid Mehmood and others Cr.M.A. 1521/2016
Vs. Syed Tahir Shahbaz and in Cr.O.P. 62/2016
others

For the Petitioners: Raja Muhammad Ibrahim Satti, Sr. ASC
(In Cr.R.P. 207/2016)

Mrs. Misbah Gulnar Sharif, ASC
(In Cr.O.P. 62/2016 & Cr.MA 1521/2016)

Rai Muhammad Nawaz Khan Kharal, ASC
(In Cr.O.P. 22/2017)

Mian Mehmood Hussain, ASC
(In Cr.O.P. 69/2017)

Ch. Imran Hassan Ali, ASC
(In Cr.MA 1758/2016)

In person
(In Cr.MAs 86, 87, 1016 & 1027/2018)

For the Respondent: Ch. Amir Rehman, Addl. Att. General
Mr. M.S. Khattak, AOR
Raja Riffat Mukhtar, DIG, HQ, NH&MP
Mr. Muhammad Iqbal Ahmed, DSP Legal,
NH&MP

Date of Hearing: 05.10.2018

JUDGMENT

CRIMINAL REVIEW PETITION NO. 207/2016, CRIMINAL ORIGINAL PETITION NO. 62/2016, CRIMINAL ORIGINAL PETITION NO. 22/2017 AND CRIMINAL ORIGINAL PETITION NO. 69/2017

FAISAL ARAB, J.- Petitioners in Criminal Review Petition No. 207/2016 were all Sub Inspectors in BPS-14 and were performing duties in National Highway and Motorway Police ('NH&MP') as Patrolling Officers. Originally they were employees of different Police departments from all over Pakistan. After the creation of the National Highway and Motorway Police, they joined it on deputation/transfer basis. Subsequently, they were absorbed in the NH&MP. However, in compliance with the judgment of this

Court reported in the case of contempt proceedings against Chief Secretary, Sindh etc (2013 SCMR 1752), NH&MP withdrew/cancelled the absorption/induction of the petitioners in its establishment and repatriated them to their respective parent departments on the ground that their induction in NH&MP was without the recommendations of the Departmental Induction Committee. The petitioners had also approached Islamabad High Court against the order of NH&MP by filing ICAs wherein stay was initially granted but subsequently, in the light of the order passed by this Court in Criminal Original Petition No. 31/2016 dated 10.05.2016, whereby it was observed that the High Court could not exercise its jurisdiction in relation to the matters pertaining to the terms and conditions of service of civil servants in view of the bar contained under Article 212(3) of the Constitution, the said ICAs were dismissed. Hence, the petitioners have come before us to review the judgment of this Court passed in Criminal Original Petition No. 89/2011 etc.

2. In Criminal Original Petition No. 22/2017, the petitioners were civil employees of different government departments. After the inception of NH&MP, they joined it on deputation/transfer basis. Subsequently, they were absorbed in the NH&MP, however, in compliance with the judgment of this Court reported in contempt proceedings against Chief Secretary, Sindh etc (2013 SCMR 1752), the NH&MP withdrew the absorption/induction of the petitioners in its establishment and repatriated them to their parent departments. Hence, they have filed this contempt petition on the ground that the respondent Authority has misinterpreted the judgment of this Court as it was applicable only to the employees of the province of Sindh.

3. The case of the petitioners in Criminal Original Petitions No. 62/2016 & 69/2017 is that they were directly appointed employees of NH&MP; that most of the officials were hired from different departments and the petitioners are deprived of their legitimate right of seniority and that most of the deputationists lacked the requisite qualification and experience. According to them this Court in the above said judgment has cancelled all absorptions/appointments by transfer and deputations but the department has partially implemented the said judgment. Hence, they pray that contempt of court proceedings be initiated against the respondent Authority.

4. So far as the case of the petitioners in Criminal Review Petition No. 207/2016 is concerned, we have perused the judgment under review. The respondent Department on the recommendation of the Departmental Committee has repatriated the petitioners on the ground that their induction was without the recommendations of the Departmental Induction Committee, which to our mind is unexceptionable. No ground for review is made out. Criminal Review Petition No. 207/2016 is accordingly dismissed.

5. So far as the case of the petitioners in Criminal Original Petition Nos. 62/2016 & 69/2017 that they are regular employees of NH&MP and the process of absorption of several employees is illegal and has affected the seniority of regular employees is concerned, it would be appropriate to refer to our order dated 16.01.2017 passed in Civil Appeal Nos. 709 to 717 of 2016 etc in which an almost a similar question was raised. Appellants of those appeals, who were working in different Police organizations, were initially appointed on deputation basis in

NH&MP and were subsequently absorbed. However, a dispute arose with regard to their seniority which came up to this Court.

With consent of the parties, it was held as under:-

3. We have called the A.I.G. (HRM), NH&MP, and after hearing him and with the consent of the learned Counsel for the parties as well as the learned Additional Attorney General for Pakistan, intend to dispose of the Appeals in the following terms:-

"The seniority of the Police Officials in the NH&MP shall be re-fixed. The deputationists (Police Officials) who were inducted in NH&MP by extending the benefit of one step higher than their substantive rank in the parent department, shall be assigned seniority from the date they were permanently absorbed in the department by the notification issued by the competent authority and their seniority shall be placed at the bottom. The one step promotion cannot be equated as out of turn promotion in terms of judgments of this Court reported as Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456). In fact the principles which this Court has enunciated in the case of Ch. Muhammad Akram Vs. The Registrar, Islamabad High Court, Islamabad (PLD 2016 SC 961), would be attracted in the case in hand where the issue of the nature was dealt with by this Court. The seniority of all the Police Officials shall be finalized in the above terms from the date when they were permanently absorbed in the department, placing them at the bottom of seniority as concluded hereinabove."

6. The above order is very much clear regarding inasmuch as the seniority of all deputationists who are subsequently absorbed and have not been repatriated shall be placed at the bottom. In view of the above order, Criminal Original Petition Nos. 62/2016 & 69/2017 are dismissw

order of this Court is very much clear and it will include all those employees also who were originally inducted in NH&MP from BPS-1 to BPS-7 but later promoted to higher scales. The respondent Department is directed to strictly follow this principle. So far as the plea that judgment of this Court passed in Criminal Original Petition No. 89/2011 etc was only meant for civil servants of the province of Sindh is concerned, suffice it is to state that in the said judgment this Court has settled the fate of all employees who were sent on deputation, therefore, this principle can be uniformly applied in similar cases as well in rest of the provinces as well. With the above observations, this contempt petition is disposed of.

CRIMINAL M.A. NOs. 1758/2016, 86/2017, 87/2017, 404/2017 & 1521/2016

8. In view of the order passed in the connected Criminal Review Petition No. 207/2016, Criminal Original Petition Nos. 62/2016, 22/2017 and 69/2017, these miscellaneous applications have become infructuous and are disposed of accordingly.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
5th of October, 2018
Not Approved For Reporting
Khuram