JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

i. **Crl. Original No. 387/2013 in W.P. No. 2828/2013**
Yousaf Ghaffar Khan v. Tariq Bajwa, etc.

ii. **Crl. Original No. 388/2013 in W.P. No. 2827/2013**
Yousaf Ghaffar Khan v. Tariq Bajwa, etc.

iii. **W.P. No. 3682/2014**
Yousaf Ghaffar Khan v. FOP, etc.

Date of Hearing	:	27.05.2022.
Petitioner by	:	Mr. Abdur Raheem Bhatti, ASC
Respondent by	:	Mr. Muhammad Anwar Mughal & Saim ul Haq Satti, Advocates Syed Nazar Hussain Shah, AAG.

ARBAB MUHAMMAD TAHIR, J. The captioned contempt petitions and writ petition entail common subject matter besides the parties, therefore, being decided through this single order.

Crl. Original No. 388/2013 in W.P. No. 2827/2013

2. On 01.07.2013, petitioner namely Yousaf Ghaffar khan, then BS-21 officer of Inland Revenue Service, filed a writ petition No. 2827/2013, for a direction to the respondents to immediately process his case for promotion to BS-22 as he fulfils the criteria of requisite length of service of two years in BS-21 in terms of Rule 4(1)(i) of the Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules 2010. The writ-petition was taken up on 03.07.2013 when it was disposed of in the following terms:-

> **"After arguing the case at some length, learned counsel for the petitioner feels satisfied if direction is issued to the respondents to consider petitioner for promotion within fortnight, if he otherwise possesses the requisite qualification and comes within the eligibility criteria. Order accordingly."**

3. Being dissatisfied with non-compliance, petitioner filed Crl. Original No. 388/2013 on 21.08.2013 alleging that despite receipt of order and notice, respondents have not considered him for promotion.

Crl. Original No. 387/2013 in W.P. No. 2828/2013

4. On the same day i.e. 01.07.2013, petitioner filed second writ petition No. 2828/2013 praying for a direction to the respondents to consider him for grant of proforma promotion to BS-21 with effect from 02.12.2011, the date when his juniors were promoted, with consequential benefits. Through the said writ petition, the petitioner also questioned Notification dated 02.04.2013 whereby his promotion was actualized with effect from 19.04.2013. The writ petition was also taken up on 03.07.2013 when it was disposed of in following terms:-

> **"Learned counsel for the petitioner feels satisfied if direction is issued to respondents to consider the request of the petitioner and some appropriate order in accordance with the law be passed within a fortnight. Order accordingly."**

5. Being dissatisfied with non-compliance, petitioner filed Crl. Original No. 387/2013 on 21.08.213 alleging that despite receipt of order and notice, respondents have not considered him for promotion.

W.P. No. 3682/2014

6. On 07.08.2014, petitioner brought third writ petition wherein letter dated 14.07.2014 of the respondent-FBR had been questioned whereby on the subject (WP 2827), the petitioner was apprised that as he stood retired before completion of two years' service in BS-21, therefore, his case was not forwarded to HPSB for

consideration being ineligible for promotion to BS-22 on the basis of lack of required length of service. In-addition, the petitioner also prayed for a direction to respondents to process his case for proforma promotion under FR-17.

7. In order to counter the claim of the petitioner with regard to his eligibility of having less than two years' service in BS-21 in terms depicted in paras 4 to7 of the memo of the petition, the respondents in their written comments had taken the stance that the petitioner remained posted as Chief Commissioner inland revenue, Regional Tax office, Peshawar in BS-20 from 14.08.2010 to 30.05.2011 and also posted as Chief FBR (BS-20) from 10.05.2011 to 23.11.2013.

8. It was further stated that in pursuance of sub-section 4 (b) of section 130 of the Income Tax ordinance, the petitioner was appointed as Accountant Member (BS-20) Appellate Tribunal IR from 23.11.2011 to 23.01.2013. As per said section, any BS-20 Office of Inland Revenue Service having three years' experience in BS-20 can be appointed as Member ATIR. The petitioner remained posted as member ATIR in BS-20 and not in BS-21. As such the condition of two years' service for promotion to BS-22 was not fulfilled by the petitioner. For promotion to BS-22, two years' active service in BS-21 is the mandatory requirement, whereas the petitioner retired from government service before completing the requisite two years' active service in the respondent department.

9. Heard the learned counsel for the petitioner, learned counsel for the respondent-FBR, learned AA-G and have consulted the record with their able assistance.

10. it is quite obvious from the record that promotion of the petitioner in BS-21 was actualized against the post of Chief Commissioner Inland Revenue, Regional Tax Office, Peshawar,

after the retirement of the then incumbent namely Mr. Qaisar Ali, IRS/BS-21, with effect from 19.04.2013. The petitioner after about four months of the actualization of his service in BS-21 stood retired on 08.08.2013. The petitioner has not produced on record any document to counter the Notification dated 02.04.2013 whereas his stance to have worked against the posts of BS-21 and had already been promoted, has been refuted in terms that in terms of sub section 4 (b) of section 130 of the Income Tax Ordinance, the petitioner was appointed as Accountant Member (BS-20) Appellate Tribunal IR from 23.11.2011 to 23.01.2013. As per said section, any BS-20 officer of Inland Revenue service having three years' experience in BS-20 can be appointed as Member ATIR. The petitioner remained posted as member ATIR in BS-20 and not in BS-21. As such the condition of two years' service for promotion to BS-22 was not fulfilled by the petitioner. For promotion to BS-22 two years' active service in BS-21 is the mandatory requirement, whereas the petitioner retired from government service before completing the requisite two years' active service in the respondent department. The stance of the petitioner to this effect is, therefore, repelled.

11. The second part of the prayer is with regard to eligibility for proforma promotion to BS-22 under FR-17. It is significant to note that after actualization of promotion in BS-21 with effect from 19.04.2013, petitioner stood retired from service on 08.08.2013 and due to having incomplete requisite length of service, his case could not be forwarded to HPSB for consideration for promotion to BS-22. As the petitioner lacked the requisite threshold, therefore, there arises no question of his consideration for proforma promotion to BS-22.

12. However, it is a matter of record that once on the recommendations of Junior Level Committee meeting dated 25.06.2015, the High Level Committee on FR-17 recommended the

petitioner for grant of proforma promotion/consequential benefits of BS-21 w.e.f. 02.12.2011, but the recommendations did not receive assent of the competent authority, who posed certain objections, therefore, till the same gets approval, cannot be termed as vested right accrued in favour of the petitioner particularly when there was/is a contest by the respondent-FBR on account of having deficient length of service and actualization of promotion in BS-21 with effect from 19.04.2013. If the contention of the petitioner, based on the recommendations of JLC and HLC, is accepted, it would amount to hold him entitled for proforma promotion to BS-22 as well but as the recommendations were not approved by the competent authority and were also subsequently overturned by the committee itself, the claim of the petitioner in this respect is groundless.

13. It was also for the reasons that in the de-novo consideration for promotion of officers of Inland Revenue from BS-20 to BS-21, held by the CSB in 2015 pursuant to directions of this Court, whereby supersession/deferment by the CSB meetings held in 2010 and 2011 were set aside, the petitioner was recommended for deferment. After the said decision, there was no justification to extend benefit of proforma promotion as prayed for. It was so happened as revealed through the minutes of the meeting of HLC on FR-17, held on 22.11.2019 wherein following decision was taken:-

> **"3. The High level committee of FR-17 (1) discussed the case in detail on 22.11.2019 and observed that since the de-novo CSB session held in May, 2015 in compliance of Court order has deferred Mr. M. Yousaf Ghaffar, retd. IRS/BS-21 for antedated promotion to BS-21 and the said deferment has also been approved by the Prime Minister, hence, FR-17(1) Committee cannot review/alter the recommendations of the CSB. In view of**

these observations, the High level Committee DOES NOT RECOMMEND grant of antedated promotion to Mr. M. Yousuf Ghaffar to BS-21 for payment of arrears of pay and allowances."

14. In view of above, no case of contempt as alleged is made out whereas claim of having eligibility to be awarded proforma promotion in BS-22 or in BS-21 with effect from 02.12.2011 is without any substance. Consequently, captioned petitions along with instant writ petition fail and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on __06.2022.

JUDGE

//Kamran//