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IN THE HIGH COURT OF SINDH KARACHI

C.P No.D-1820 of 2013

Before: **Mr. Justice Muhammad Ali Mazhar,J.**
Mr. Justice Muhammad Karim Khan Agha,J.

Date of hearing. 10.11.2015

Petitioners: Atta Muhammad Qureshi and six others through
Mr.Muhammad Arshad Khan Tanoli, advocate

Respondent No.4: M/s Barrister Zamir Hussain Ghumro and Malik
Naeem Iqbal, Advocates.

The State:- Province of Sindh and others, through Mr.Sibtain
Mehmood, Assistant Advocate General Sindh

JUDGMENT

Muhammad Karim Khan Agha,-J:- The six petitioners are all Assistant Executive Engineers in BS 17 being employees of the Sindh Local Government. They are all aggrieved and dissatisfied with the promotion in violation of seniority and the Sindh Councils Unified Grades Service Rules 1982 (SCUG Rules) of Respondent No.4 (Mr.Shahabuddin Mangi) from Assistant Executive Engineer BS 17 to Executive Engineer in BS 18 as such the Petitioners have all moved this Court for the following relief.

- a) To declare the promotion of the respondent No.4 as Executive Engineer (BS-18) through Order No.SLGB.SCUG-ENGG.I 6 (153) 2012/1725 dated 01.04.2013 is unlawful, void ab initio.(the Impugned Order)
- b) To call upon respondent No.4 as to under what authority of law he has been promoted in BS-18 on regular basis in violation of Statutory Rules.
- c) To struck (sic) down the name of respondent No.4 from the Final seniority list of Officers of SCUG Service (Engineering Branch) (BS-17) (Civil) as stood on 05.11.2012, dated 12.12.2012.
- d) To declare that promotion of the Private Respondents No.4 as Assistant Engineer (BS-17) through Order No.SLGB/SCUG/AO/ENGG.II/4(302) 2012/648 dated 31.01.2012 is unlawful, void ab initio.

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2. The Petitioners contend that they had initially been appointed in BS 11 on different dates between 1983 and 1993 on the basis of their qualification as DAE. Subsequently during their service in BS 11 on different dates between 2007 and 2010 they had improved their qualification by acquiring B.Tech (Hons) (Civil). Subsequently the Petitioners were promoted to Assistant Engineer (Civil) (BS 17) on the basis of their seniority cum fitness and improved qualifications and were thereafter placed on the seniority list as at 3-3-12 from the date of acquiring higher qualification of B.Tech.

3. According to the Petitioners Respondent No.4 seems to have been a blue eyed boy of the Respondents 1 to 3 and appears to have been favored by Respondents 1 to 3 on a number of occasions. Firstly he was appointed in 2010 to BS 11 and despite being on a 2 year probation was promoted within 18 months to BS 17 which was an invalid appointment. Secondly, that despite being placed below the Petitioners in the seniority list of 3-3-12 he had later managed to get himself placed above them in the seniority list dated 12-12-12 through the influence of the other Respondents by their misusing and misinterpreting the amended provision to Rule 12(3) of the SCUG Rules which lead to Respondent No.4 being promoted to BS 18 ahead of them in violation of the SCUG Rules.

4. It was further argued that the Departmental Promotion Committee (DPC) had discriminated against the Petitioners by arbitrarily promoting the Respondent No.4 to BS 18 ahead of them. That the Petitioners had made representations to the Secretary Local Government concerning the illegal elevation of Respondent No.4 in the seniority list but to no avail.

5. In essence the case of the Petitioners was that the amended provision to S.12(3) had been deliberately misused and misinterpreted by the Respondents 1 to 3 in order to favour Respondent No.4 as it was only meant to apply to those officers like themselves who had attained B.Tech after appointment whilst in service in BS 11 and coming under SCUG Rules and not to those officers who had already attained B.Tech before being appointed in the Sindh Local Government Service in BS 11 like Respondent No.4. That even otherwise Respondent No.4 had insufficient service under SCUG Rules to even qualify for promotion to BS 18. Reliance was placed on **Government of Pakistan V Hammed Akhtar Niazi PLD 2003 SC 110** for the proposition that seniority was only to be one factor to be considered in promotion

6. Learned Counsel further submitted that since the Petitioners were not Civil Servants and the SCUG Rules were statutory this Petition was maintainable and that the question of laches was not relevant as laches did not apply to writs of quo

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warranto. In this respect he placed reliance on the unreported Judgment of Dr .Nasimul Ghani Sahito and others V Government of Sindh and others.

7. On the other hand learned Counsel for Respondent No.4 submitted that the promotion of Respondent No.4 was entirely legal being in accordance with the SCUG Rules, final seniority list which had been correctly determined and the recommendations of the DPC which had considered his case on merits and not in an arbitrary or discriminatory manner. Even otherwise the Petition was not maintainable in that the Petitioners were not aggrieved persons, the petition suffered from Laches and the Petitioners had not come to the Court with clean hands.

8. According to Respondent No.4 he had been in Government service since 10-10-93 when he had been appointed as sub engineer in Public Health Engineering Department (PHED) Government of Sindh. On 14-10-2010 he was appointed in BS 11 in Sindh Council Unified Grade service, Local Government Department after applying through the proper channels pursuant to an advertisement published in the Dawn news paper on 14-7-08 and after fulfilling all necessary requirements for the post. He contended that he was both qualified and had sufficient experience/service to be promoted to both BS 17 and BS 18 respectively at the relevant time

9. Learned Counsel for Respondent No.4 in this respect further placed reliance on an order dated 24-11-11 of the Sindh Local Government Board whereby previous service rendered by the him in PHED prior to his appointment in BS 11 in Sindh Council Unified Grade service, Local Government Department was to be counted in terms of his seniority in his new position and that he had rightly been placed higher in the seniority list than the Petitioners based on the fact that he had obtained his B.Tech earlier than them. He further stressed that the earlier seniority lists referred to by the Petitioners were provisional ones and that the final seniority list as of 12-12-12 after hearing all representations correctly showed him as being senior to the Petitioners.

10. Learned Counsel for Respondent No.4 also pointed out that the Petitioner's had not come to this Court with clean hands as they had deliberately concealed the earlier Court order dated 28-5-14 passed in CP 4200/2013 in respect of this matter.

11. Mr. Sibtain Mehmood the learned Additional Advocate General on behalf of the Government of Sindh made submissions in support of the case of Respondent No.4 to the effect that his promotion had been made legally in accordance with the relevant SCUG Rules and that he was senior to the

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Petitioners and had sufficient service/experience to qualify him for promotion to BS 18.

12. With regard to the question of quo warranto the learned AAG stressed that since the Petitioners would benefit in terms of their seniority if the Notification promoting Respondent No.4 was struck down and Respondent No.4 was placed below them in the final seniority list a writ of quo warranto was excluded under these circumstances. Even otherwise this was essentially a case of seniority and should be challenged under the relevant service rules. Reliance in this regard was placed on **Dr.Azim-ur-Rehman Khan Meo V Government of Sindh 2004 SCMR 1299** for the proposition that where the dispute related to terms and conditions of service quo warranto did not apply and the matter fell within the exclusive jurisdictional domain of the service tribunal.

13. On rebuttal with respect to quo warranto learned counsel for the Petitioners submitted that the Petitioners had no personal interest in the ouster of Respondent No.4 and would not personally benefit by his ouster and the allowance of their Prayer by this Honourable Court.

14. We have heard the learned Counsel at length and have carefully gone through the court file with their able assistance. With regard to maintainability. The SCUG Rules are Statutory in nature being framed under S.103 of the Sindh Local Government Ordinance 1979. Thus, since the Petitioners and Respondent No.4 are governed by Statutory Rules of service we find that on this count the Petition is maintainable. Reliance is placed on the cases of **Ali Azhar Khan Baloch V Province of Sindh (SCMR 2015 456)** and **Pakistan Defense Officers Housing Authority V Jawaid 2013 SCMR 1707** which at P.1738 Para 50 stated that after surveying the relevant case law it was able to deduce, amongst others, the following principle at Para 50.(i) which is set out as under:

(i) Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.

15. Turning to the question of quo warranto. It is settled law that laches does not apply to such writs and that you do not have to be an aggrieved party to file such a writ.

16. A.199.(2) (b) (ii) which deals with writs of quo warranto gives the High Court the power stated as under: .

(b) On application of any person, make an Order

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- (ii) Requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office.

17. It is however settled law that a person who has an interest in the outcome of the Quo Warranto Petition may not fall within the ambit of the discretionary relief and the Court may inquire into the motivation behind the filing of the writ and then decide upon its maintainability. Reliance in this behalf is placed on **M.U.A.Khan V Rana M.Sultan and another** (PLD 1974 SC 228) which held as under at page 232:

“It will be seen that for the purposes of the applications under sub clause (b) the Petitioner did not have to be an aggrieved party; he could be any person. The reason for this distinction between the position of the petitioner under sub clauses (a) and (c) on the one hand and sub clause (b) on the other is that the matters contemplated in sub clause (b) are of public importance and interest and it is enough that they are brought to the notice of the Court **without the petitioner having any personal interest in the matter**” (bold added)

18. Based on the facts and the circumstances of this case it would appear that the Petitioners primary motive in filing the writ for quo warranto is not for the public good to ensure that only a lawful appointee holds a public office but rather to benefit themselves by not only canceling Respondents No.4's promotion to BS 18 but by so doing moving themselves further up the seniority list and giving themselves a better chance of promotion to BS 18.

19. Under such circumstances we are therefore of the view that the discretionary writ of quo warranto is not open to the Petitioners in this case. This is important because it means that the aspect of laches will apply to the other aspects of the Petitioners case.

20. The matter therefore would seem to turn primarily on whether Respondent No.4 had sufficient length of service/experience to justify his promotion under the SCUG Rules, whether he had sufficient seniority and whether he was suitably qualified.

21. For ease of reference the Order dated 31-1-12 which the Petitioners seek to strike down as being unlawful and void ab initio is set out below:

“Government of Sindh
Local Government Department
(Sindh Local Government Board)
No.SLGB/SCUG/ENGG-1/6(153)/2012/1725
Karachi dated the 01 APR 2013

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ORDER

On the recommendations of meeting of Sindh Local Government Board dated 8.11.2012 and with the approval of competent authority i.e. Chief Secretary, Sindh Mr. Shahabuddin Mangi is hereby promoted from BS-17 to BS-18 (Civil) of Sindh Councils Unified Grades Service (Engineering Branch) with immediate effect.

‘SECRETARY TO GOVERNMENT OF SINDH’

22. Turning to the first attack on the Respondent No.4's promotion to BPS 18 as to whether the date of Respondent No.4 acquiring his B.Tech should place him on the top of the seniority list of B.Tech holders above the Petitioners. In this respect the requirements of the SCUG Rules are relevant and in particular the amendment made to S.12 (3) of the Rules dated 19-2-2011 which is set out below for ease of reference.

“Government of Sindh
Local Government Department
(Sindh Local Government Board)
Karachi dated the 19 FEB 2011

NOTIFICATION

No.SLGB/SCUG/ENGG-1/6(148)/2011/806. In exercise of powers conferred by Section 191 of the Sindh Local Government Ordinance, 2001, the Government of Sindh is pleased to make following amendments in the Sindh Councils Unified Grades Service Rules, 1982:-

AMENDMENTS

1. In rule 12, in sub-rule(3), the full stop at the end shall be replaced by a colon and thereafter the following proviso shall be added:-

“Provided that seniority list of BS-17 officers of Service (Engineering Branch) **who acquired qualification of B.Tech (Hons) shall be maintained from the date of passing of such examination** whereas the seniority of B.E. or B.Sc. and diploma holders shall be reckoned from the date of their appointment or promotion in BS-17.”(bold added)

2. In the appendix, under the heading “V-Engineering Branch”, in Serial No.3, for entries in column 4, the following shall be substituted:-

“(i) Fifty percent by promotion from amongst the members of the service in BS-17 of the Engineering Branch with at least 5 years experience and possessing of B.E or B.Sc in Civil, Electrical or Mechanical or an equivalent degree from a recognized University or Institution and registered with Pakistan Engineering Council;

(ii) Thirty five percent by promotion from amongst the members of the service in BS-17 of the Engineering Branch with at least 5 years experience and possession degree of B.Tech (Hons) in Civil, Electrical or

Mechanical from a recognized University or Institute;
(bold added)

(iii) Fifteen percent by promotion from amongst the members of the service in BS-17 of Engineering Branch possessing three years Diploma in Civil, Electrical or Mechanical with at least five years service.

Khurshid Naeem Mallik
Secretary to Government of Sindh"

23. It is pertinent at this juncture to point out that an earlier Notification dated 8th October 2005 under the heading Engineering Branch for serial No.4 for entries in column 4 to the Appendix had specifically noted that:

Note: Seniority of the Sub Engineers would be maintained separately qualification wise i.e. B.E, B.Tech (Hons) and diploma holders.

24. The fact that the seniority of B.Tech holders would be fixed based on the date they passed their B.Tech was confirmed by letter dated 5-12-2008 as set out below:

"GOVERNMENT OF SINDH
SERVICES, GENERAL ADMINISTRATION &
COORDINATION DEPARTMENT
(REGULATION WING)
New Sindh Secretariat Building No.1

Subject: SEPARATION OF SENIORITY LIST QUALIFICATION-WISE OF ASSISTANT ENGINEERS (B-17) OF SCUG SERVICE (ENGINEERING BRANCH).

1. The Director – I, Sindh Local Government Board, Local Govt. Department, may please refer to his letter No.SLGB/SCUG/AO-SE/4(95)/2008/2807, dated 23.10.2008, on the subject noted above.

2. He is advised that seniority of the Assistant Engineers who acquired B.Tech (Hons) qualification later is to be maintained from the date of passing B. Tech (Hons) Examination. Subsequently, Sindh Local Govt. Board may process its recruitment rules by fixing their ratio for further promotion.

Sd/-5.12.2008
(Mukhtiar Ahmed Mallah)
Section Officer (Reg: III)"

25. It is significant that none of the Petitioners challenged 8-10-2005 Notification, the above referred 5-12-2008 letter, the 19-2-2011 Notification or seriously pursued a challenge to the 20-9-12 Order set out below fixing Respondent No 4's seniority as No.1 based on the date of his passing of B.Tech which would therefore seem to indicate that initially the Petitioners had accepted the situation. Para 1 of the Notification dated 19-2-2011 relates to the seniority list

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which makes it clear that the seniority list of BS 17 officers (Engineering Branch) who acquired qualification of B. Tech (Hons) shall be maintained from the date of passing of such examination. The seniority list as it stood on 3-3-12 which placed Respondent No.4 junior to the Petitioners was only provisional in nature. On 21-6-12 Respondent No.4 objected to the provisional seniority list on the basis that since he had passed his B.Tech earlier in time as per above amendment to S.12 (3) he should be placed in a more senior position on the seniority list. This being the legal position, and it is important to emphasize that none of the amendments to S.12(3) and its appendix are under challenge, Respondent No.4 was given seniority as from the date of the award of his B.Tech i.e. 6-1-2000. Accordingly an Order dated 20-9-12 was issued giving effect to this which for convenience is set out below:

"GOVERNMENT OF SINDH
LOCAL GOVERNMENT DEPARTMENT
(SINDH LOCAL GOVERNMENT BOARD)
No.SLGB/SCUG/ENGG-1/6(196)/2011/4301
Karachi dated the 20 SEP 2012

ORDER

Mr. Shahabuddin Mangi BS-17(Civil) officer of SCUG Service (Engineering Branch), Transition Officer, defunct TMA, Bakrani is hereby assigned seniority at S.No.1 in BS-17 (Civil) of SCUG Service (Engineering Branch) over and above Mr. Azmat Ali Shah on account of passing B.Tech (Hons) on 06.01.2000.

SECRETARY TO GOVERNMENT OF SINDH"

26. The next attack by the Petitioners against Respondent No.4's promotion to BS 18 was based on the ground that as per the methods of selection as set out in Notification dated 19-2-2011 in Para 2 (ii) the Respondent No.4 did not have the required amount of experience to make him eligible for promotion to BS 18. For ease of reference Para 2(ii) is set out again as under:

(ii) Thirty five percent by promotion from amongst the members of the service in BS-17 of the Engineering Branch **with at least 5 years experience** and possession degree of B.Tech (Hons) in Civil, Electrical or Mechanical from a recognized University or Institute (bold added);

27. The contention of the Petitioners was that since Respondent No.4 had only been appointed on 14 October 2010 in BS 11 and promoted to BS 17 on 31-1-2012 he lacked 5 years experience at the time when he was considered by the DPC for promotion and as such was ineligible to be considered. In terms of length of service/experience the issue boiled down to whether the time spent by Respondent No.4 in Government service since 1993 where he had been appointed as sub engineer in Public Health Engineering Department (PHED) Government of

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Sindh could be counted towards his service/experience. The Petitioners contention was that it could not be and that only service/experience gained after being appointed in SCUG could be counted. The first point to note is that in his prior service since 1993 Respondent No.4 was also working as an Engineer and when he joined the Sindh Local Government he continued to work in an engineering capacity. Hence his experience was one of an engineer and compatible with the concept of an engineer being appointed to a more senior position as engineer.

28. Furthermore, and more significantly, there is an Order of the Local Government on record dated 24-11-2011 which indicates that the previous service of Respondent No.4 may be counted towards his protection of pay and pension. The aforesaid order is set out below for convenience:

“Government of Sindh
(Sindh Local Government Board)
No:SLGB/SCUG/AO/Engg-
II/S.No.142/2011
Karachi Dated the 24 NOV 2011

ORDER

In pursuance of Rule 2.2 & 2.3 of the West Pakistan Civil Service Pension Rules 1963 read with Finance Department Government of Sindh's Notification No.FD-SRI-1(24)/85, dated 10.11.1985 and as verified by the Assistant Director, Local Fund Audit Sindh Karachi vide letter No.LFA-II-PF(SCUG)/1164 dated 11.4.2011, the previous services rendered by Mr. Shahabuddin Mangi (BS-11) official of SCUG Service (Engg Branch) Sub-Engineer (Civil) TMA (defunct) Sujawal Junejo District Kambar Shahdadkot as a Sub Engineer (Civil) Public Health Engineering Department Government of Sindh from 10.10.1993 to 19.10.2010 are hereby counted towards protection of pay and pension in SCUG Service (Engg: Branch).

Special Secretary, (Local Govt: Deptt:)”

29. The Sindh Local Government in their comments has in essence stated that Respondent No.4 was given seniority from the date of his passing his B.Tech pursuant to the advice of the Sindh General Administration and Co-Ordination Department (SGA&CD) dated 5-12-2008 already cited above. We see no reason not to infer that this letter was also intended to protect Respondent No.4's seniority, as well as pay and pension, especially as he was moving from one Sindh Government Department to another and was performing essentially the same function in the field of engineering. Furthermore learned Counsel for the Petitioner cited no authority to the contrary. As such we find that Respondent No.4 has experience since 1993 and fulfills the criteria of having at least 5 years experience and sufficient service. The minutes of the DPC held on 8-11-12 when considering the promotion of officers of SCUG (service Engineering Branch) from BS 17 to BS 18 against future vacancies at item 4 resolved as under with regard to Respondent No.4:

<p><u>Item No.4</u> Promotion of officer of SCUG service (Engineering Branch-Civil)from BS-17 to BS-18 against future vacancies.</p>	<p><u>RESOLUTION</u> The Board after careful examination of the service record and perusal of PERs, recommended Mr.Shahabddin Mangi for promotion from BS-17 to BS-18 (Civil) of SCUG Service (Engineering Branch) against future vacancy.</p>
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30. It would therefore seem that Respondent No4's case was considered on merit by the DPC and his promotion was not approved in an arbitrary manner or he was given any undue favour. It is notable in this respect that no adverse comments on PER's/Sevice Record etc of Respondent No.4 was placed on record.

31. As a result of our discussion we do not find any illegality in the promotion of Respondent No.4 and this Petition is hereby dismissed.

Dated: 22-02-2016