

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No.D-2268 of 2017

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

Attaullah Khan Chandio.....Petitioner

Versus

Federation of Pakistan and another.....Respondents

Date of hearing: 24.11.2017 and 05.12.2017

Mr. M. M. Aqil Awan, Advocate for the Petitioner.

Mr. Sheikh Liaquat Hussain, Assistant Attorney General.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, the Petitioner has prayed for the following relief(s).

- i) Direct the Respondents not to discriminate the Petitioner and issue the Notification of his regular promotion in BPS-19 with effect from 04.02.2016.

2. Brief facts of the case are that in pursuance of Judgment dated 15.12.2014 passed by the Honorable Supreme Court of Pakistan in the case of Asim Gulzar and others Vs. Attaullah Khan Chandio and others (2015 SCMR 365), seniority of the Petitioner in Police Service of Pakistan was revised from 01.07.1999 to 19.10.2010. Subsequently, the Establishment Division,

Government of Pakistan revised the seniority list vide Notification dated 07.07.2015, wherein name of the Petitioner is at serial No.6. The main grievance of the Petitioner is that his junior namely Mr. Ghulam Hyder Baloch, who was at serial No. 21 of the above said seniority list was later on promoted to BPS-19 vide Notification dated 4th February 2016. The Petitioner has asserted that he made representation dated 26.09.2016 followed by reminder dated 15.11.2016 for his regular promotion from the date when his junior namely Mr. Ghulam Hyder Baloch was promoted vide Notification dated 04.02.2016. He concluded that the Respondents failed to promote the Petitioner on regular basis, hence, he being aggrieved by and dissatisfied with the inaction of the Respondents, filed the instant Petition.

3. Upon notice, the Respondents filed para-wise comments.

4. Mr. M. M. Aqil Awan, learned Counsel for the petitioner has contended that the Petitioner, being a senior Police Officer, was promoted by the Government of Sindh as Superintendent of Police in BPS-18 on regular basis in the year 1998 and pursuant to that he was encadred and allowed to join Police Service of Pakistan cadre from 01.07.1999 by the Establishment Division vide Notification No. F.No. 12(2) 10-E-3 Police dated 22.05.2012. He next argued that as per common seniority list of PSP officers in BPS-19 issued by the Respondent No.1 vide Notification dated 21.04.2014, name of the Petitioner was placed at S. No. 20 and his batch-mate's name was borne at serial No.13 out of 101 PSP officers. The learned Counsel continued his argument that according to previous/original seniority, the Petitioner was due for

promotion to BPS-20. Therefore, in the year 2013, he was nominated by the Establishment Division/Respondent No. 1 for 13th Senior Management Training Course (condition for promotion to BPS-20) and the Petitioner successfully completed the said course. He further argued that in the year 2014, the seniority issue of PSP officers and Provincial Police Officers of Khyber Pakhtunkhwa and Sindh was assailed by affected PSP officers before the Hon'ble Supreme Court of Pakistan and vide Order dated 15.12.2014, Hon'ble Supreme Court ordered for reckoning seniority of encadred police officers from date of their encadrement in PSP Cadre; hence, the promotion of the Petitioner to BPS-20 was withdrawn by the Establishment Division vide Notification dated 07.07.2015 and the date of encadrement of Provincial Police Officers into PSP cadre was also revised in accordance with the Judgment of the Hon'ble Supreme Court of Pakistan and the Petitioner's name in the seniority list was placed at Sr. No.6 and his date of encadrement in PSP cadre was revised from 01.07.1999 to 19.10.2010. He argued that junior of Petitioner namely Mr. Glulam Hyder Baloch was placed at Sr. No.21 of the seniority list, which was revised from 02.11.2005 to 10.02.2012 and his regular promotion to BPS-19 was also withdrawn by the Establishment Division vide Notification dated 08.07.2015; but he was allowed acting charge in BPS-19 by the Establishment Division vide Notification dated 16.9.2015 and pursuant to that he was allowed regular promotion vide Notification dated 14.02.2016. The Petitioner submitted representation dated 26.09.2016 followed by reminder dated 15.11.2016 for his regular promotion from the

date of regular promotion in BPS-19 as allowed to Mr. Ghulam Hyder Baloch, who was junior to him but, the Respondents did not consider his case for promotion to BPS-19; hence, he filed the instant Petition.

5. Mr. Sheikh Liaquat Hussain, Assistant Attorney General has argued that the Petitioner was encadred in PSP Cadre in BPS-18 with effect from 19.10.2010 vide Establishment Division Notification bearing No. 07.5.2007-E-3 (Police), dated 19.10.2010. The Petitioner challenged the said encadrement before Circuit Court at Hyderabad through C.P. No. D-198 of 2009 and prayed for his ante-dated encadrement; that pursuant to the Court's Judgment dated 09.05.2011 passed in C.P. No. D-198 of 2009, the date of encadrement of petitioner in PSP cadre was revised from 19.10.2010 to 01.07.1999 vide Establishment Division's Notification No. 07.5.2007-E.3 (Police) dated 07th September 2011. Subsequently, the Hon'ble Supreme Court pronounced a detailed Judgment dated 15.12.2014 in Criminal Appeal No. 422 and 436 of 2011 filed by one Asim Gulzar against petitioner holding therein that encadrement of Provincial Police Officers be reckoned from date of their encadrement in PSP cadre and is governed by PSP (composition, cadre and seniority) Rules, 1985. Accordingly, seniority of the Petitioner in PSP cadre was re-fixed w.e.f. 19.10.2010 instead of 01.07.1999 vide Notification dated 07.07.2015. He continued that the Petitioner was allowed BPS-19 on acting charge basis vide Establishment Division Notification dated 16.09.2016 after Departmental Selection Board (DSB) meetings held in the year 2012. The controversy of antedated

seniority between direct recruits and encadred Provincial Police Officers was followed by various Petitions filed by Sindh Police Officers before this Court for antedated seniority and promotion in PSP cadre. In C.P No.D-1085 of 2013 filed by Syed Abbas Rizvi and others, this Court passed ad-interim order dated 15.03.2013, as a result of which, the Departmental Selection Board meeting could not be held in the year 2013. The operative part of this Court's Judgment dated 03.10.2014 [para 16 (a) & (e)] passed in C.P. No.D-1085, 513, 1760, 2731, 3883, 4242 of 2013 and 4454 of 2012 respectively is reproduced below:-

“(a) In the present scenario, predominantly due to inordinate delay or inaction on the part of Province of Sindh in making the recommendations for the appointment under Rule 7 of the PSP Rules, 1985 on time, the petitioners are not entitled to claim antedated seniority. Consequently their claim of antedated seniority is rejected and their seniority will be reckoned in the present situation from the date of their Notification of encadrement in PSP and not from the date of arising of vacancy.

(e) All pending applications are disposed of in the above terms; the interim orders are also vacated.”

Learned Counsel further argued that Honorable Supreme Court of Pakistan passed Judgment dated 15.12.2014 in Criminal Appeal No. 436 and 422 of 2011 wherein held as under:-

“14....1- had the intention of the legislation been to make provision for retrospective appointment of such officers from the date of which the vacancy arose in a Province it would have been specifically mentioned in Rule 7. The use of the words “shall be appointed to the service” indicates that the appointment is to be with prospective effect and not retrospective effect. The settled principle is that appointments are always prospective in nature notwithstanding a vacancy occurring earlier. The appointment of the encadred police officers from the Provinces is to be made with prospective effect and retrospective effect can be given to such appointments only for the limited purpose of

determining their own inter se seniority in accordance with Rule I 1(2) (C) of the Rules 1985.”

He further argued that in view of the above Judgment, Establishment Division had withdrawn antedated encadrement/ appointment of 24 officers including Petitioner, encadred in PSP Cadre vide Establishment Division's Notification dated 07.07.2015. Consequently, the conditional promotion of Petitioner to BPS-19 was withdrawn vide Notification dated 08.07.2015 and his seniority in PSP cadre was re-fixed to be reckoned from 19.10.2010 instead of 01.07.1999. Learned Assistant Attorney General attempted to justify the promotion of Mr. Ghulam Hyder Baloch by giving brief history of the case and contended that the case of the Petitioner was once again placed before the Departmental Selection Board meeting held on 14.12.2011, which recommended encadrement of Petitioner vide Establishment Division Notification No. 7(1) 2009-E-3 (Police), dated 10.02.2012; that the Competent Authority i.e. Secretary Establishment was pleased to rectify his date of encadrement in PSP vide Division's Notification dated 30.04.2013 as 02.11.2005 instead of 10.02.2012 subject to final outcome of CPLAs Nos. Cr.1P. 442, 907 and 957 of 2011 respectively pending adjudication before the Hon'ble Supreme Court of Pakistan; that subsequently Mr. Ghulam Hyder Baloch made representation to the Secretary Establishment Division through Government of Baluchistan vide S&GAD Letter dated 05.04.2016 with request that his case does not fall within the category of antedated encadrement/seniority, therefore, the Judgment dated 15.12.2014 does not affect his case. He further

contended that his date of superannuation was 10.05.2016, his LPR period started from 10.05.2015 and re-shuffling of seniority would not affect seniority of any officer of PSP Cadre. He added that the Petitioner's case is totally different from the case of Mr. Ghulam Hyder Baloch, because the Petitioner was encadred in the year 2010 and later on pursuant to the Court's Order his date of encadrement in PSP was revised from the date of occurrence of vacancy in line with Rule 11 (2) of (Composition, Cadre and Seniority) Rules, 1985 and the Petitioner was promoted to BPS-19 conditionally subject to final outcome of above said CPLA No.442/2011; that the Hon'ble Supreme Court's Judgment dated 15.12.2014 is not relevant in the case of Mr. Ghulam Hyder Baloch, because his case is not for antedated encadrement. Having explained his case, he prayed for dismissal of the instant Petition.

6. We have heard the learned counsel for the parties, perused the material available on record and case laws cited at the bar.

7. The Honorable Supreme Court vide its Judgment dated 15th December, 2014 passed in the case of Asim Gulzar and others Vs. Attaullah Khan Chandio and others (2015 SCMR 365) allowed Criminal Appeal No.436 of 2011 and set aside the order dated 09.8.2011 passed by High Court of Sindh, Circuit Court Hyderabad in C. P. No.D-198 of 2009 filed by the Petitioner.

8. The issue before us is whether the Petitioner is entitled to be considered for promotion in BPS-19 in PSP cadre on regular basis?

9. The Respondent No.1 has resisted claim of the Petitioner in his para-wise comments and taken the stance that for promotion to PSP cadre in BPS-19 the requisite length of service is 12 years' in BPS-17 and above or 07 years in BPS-18 in case of direct recruits in that scale while relying upon Rule 8-B (1) of Civil Servants (Appointment Promotion & Transfer) Rules, 1973. Prima- facie petitioner lacks the minimum length of service of 12 years in BPS-17 for promotion in BPS-19 in PSP cadre, which is prerequisite, thus eligibility for promotion in BPS-19 cannot be overlooked/condoned.

10. On the other hand, the learned Counsel for the Petitioner has emphasized that the Respondent No.1 has neither specified any reason as to why the Petitioner was allowed BPS-19 post in PSP cadre on acting charge basis instead of regular promotion nor mentioned that Petitioner came into BPS-17 on regular basis and when 12 years length of qualifying service for promotion to BPS-19 was completed by the Petitioner. The learned Counsel for the Petitioner argued that in fact it was a regular promotion and stance of the acting charge is redundant. He placed reliance on the case of Secretary to Government of Punjab Communication and Works Department v. Muhammad Khalid Usmani (2017 PLC (CS) 373), which is distinguishable in the facts and circumstances of the case in hand. In the light of what has been stated above and Rule 8 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, acting charge is a stop gap arrangement

where post become available in circumstances specified in the Rules, 1973.

11. We have noticed that the learned Circuit Court at Hyderabad in C.P. No. D-198 of 2009 filed by the Petitioner passed an order dated 09.08.2011 with the following observation:-

“This contempt application is disposed of in the following terms:

That the D.A.G. will contact the Secretary Establishment and seek time within a period of seven days from today when the Petitioner will appear before the Secretary Establishment and will inform Mr. Noor ul Haq Qureshi learned counsel for the Petitioner within two days of the time when the Petitioner has to appear and the Petitioner will appear on the day and time and no appointment however important it may be, will be used as pretext by the Secretary Establishment for not entertaining the Petitioner on the date and time given by him. The Petitioner will present his case and if the Secretary Establishment is satisfied then he will alter the date of encadrement from 19.10.2010 to 01.07.1999 as claimed by the Petitioner but if he is not satisfied then within seven days of such interview, he will pass any order and within three days of passing of such order, he will pass any order and within three days of passing of such order, he will appear personally before this Court on 25.08.2011 and explain the reasons for such order.”

12. The aforesaid order was impugned before the Hon’ble Supreme Court of Pakistan in Criminal Appeal No. 436 of 2011 and order of this Court was set aside with the following observations:-

“For reasons to be recorded separately, Civil Appeals Nos. 1122 and 1123 of 2011 and Civil Appeal No. 1343 of 2014 are dismissed, whereas Criminal Appeal No. 436 of 2011 and Civil Appeal No. 431 of 2013 are allowed. The impugned judgments/orders are set aside.”

13. In the wake of above direction of the Hon’ble Supreme Court, the Respondents issued Notification dated 07.07.2015 by revising

date of encadrement of the Petitioner in PSP Cadre to be treated w.e.f. 19.10.2010; however Petitioner was granted conditional promotion to BPS-19 in PSP cadre on acting charge basis.

14. This Court vide Judgment dated 30.10.2014 in C.P No.D-1085/2013 and other connected Petitions reported in (2014 PLC (C.S) 1363) has already resolved the issue in paragraph No. 16 of the Judgment which reads as under:-

“16. In the wake of above discussion, the aforementioned constitutional petitions are admitted to regular hearing and are disposed of in the following terms along with pending applications:-

- (a) *In the present scenario, predominantly due to inordinate delay or inaction on the part of Province of Sindh in making the recommendations for the appointment under Rule 7 of the PSP Rules, 1985 on time, the petitioners are not entitled to claim antedated seniority. Consequently, their claim of antedated seniority is rejected and their seniority will be reckoned in the present situation from the date, of their Notification of encadrement in PSP and not from the date of arising of vacancy.*
- (b) *In future, the Province of Sindh shall send their recommendations immediately for appointment of members of police cadre of province of Sindh in accordance with Rule 7 of PSP rules, 1985 upon arising of vacancies against their share in PSP and they are also directed to send recommendations for remaining and or unfilled vacancies in PSP as specified in the Schedule.*
- (c) *The benefit of Rule 11(2) © of PSP Rules, 1985 shall be given in future to all those members of Police Cadre who are recommended for appointment in PSP by the province immediately and promptly upon occurrence of vacancy in PSP.*
- (d) *In order to avoid complications and combative repercussions in future, the Secretary Establishment division, Government of Pakistan, is also directed to issue Notification of encadrement immediately upon receiving the recommendations from the Province for appointment under Rule 7 of PSP Rules, 1985 so that retroactive or ex post facto seniority issue/dispute should not crop up or come into sight amongst the members of PSP, if the notification of encadrement shall be issued immediately by the Secretary, Establishment Division Government of Pakistan, Islamabad*
- (e) *All pending applications are disposed of in the above terms. The interim orders are also vacated.*

15. The aforesaid Judgment of this Court was assailed in Civil Appeal No. 1343 of 2014 before the Hon'ble Supreme Court of Pakistan, which was maintained vide Judgment dated 15.12.2014 with the following observations:-

“In view of the above the notification dated 11.12.2007 appointing the police officers from the Province of K.P.K. w.e.f 21.10.1997 retrospectively was in violation of Rule 7 of the Rules, 1985. Similarly, the High Court of Sindh had erred in directing retrospective encadrement of Provincial Police officers in PSP. These are the reasons for our short order of the same date which reads:-

“For reasons to be recorded separately, civil Appeals Nos. 1122 and 1123 of 2011 and civil Appeal No. 1343 of 2014 are dismissed, whereas Criminal Appeal No. 436 of 2011 and civil Appeal No. 431 of 2013 are allowed. The impugned judgments/orders are set aside.”

16. Admittedly, the Petitioner was encadred in Police Service of Pakistan on 19.10.2010 and his seniority reckoned from that date. We are mindful of the fact that acting charge promotion is virtually a stopgap arrangement, where selection is made pending regular promotion of an officer not available at the relevant time of selection and creates no vested right for promotion against the post held. It is also an established principle of law that length of service in provincial police cadre does not carry any weight or vested right to be reckoned for the purpose of seniority and promotion in PSP Cadre. The case of Nadir Shah, Sub Divisional Officer Minor Canal Cell Irrigation Sub-Division, Dera Murad Jamali and 2 others vs. Secretary, Irrigation and Power Department Balouchistan, Quetta and 7 others (2003 PLC (C.S) 961), is referred.

17. The acting or look-after charge could neither be construed to be an appointment by promotion on regular basis for any purpose including seniority, nor did it confer any vested right for regular

promotion from the date of such appointment. Our view is further cemented by the Judgment delivered in the case of Province of Sindh and others vs. Ghulam Farid and others (2014 SCMR 1189) and Secretary to Government of Punjab and others vs. Muhammad Khalid Usmani and others (2016 SCMR 2125).

18. The contention of the Petitioner with respect to being eligible for promotion to BPS-19 in PSP cadre from the date when the vacancy occurred as provided under Rule (11)(2)(c) of Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985 is also devoid of substance and merits no consideration. This principle has also been settled by the Honorable Supreme Court through a plethora of Judgments. Hence, the petitioner's claim is untenable and the petition is devoid of merit.

19. In the light of above discussion, we are clear in our mind that Petitioner is in Police Service of Pakistan cadre and his service is governed by the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985 and not under the Civil Servants (Seniority) Rules 1993 as held by the Hon'ble Supreme Court in the case of Asim Gulzar (Supra) at Paragraph 12.

20. We have also noted that the Petitioner was appointed on acting charge of BPS-19 officer in PSP cadre vide Notification dated 16.09.2015, which is temporary appointment in nature, thus, the Petitioner cannot claim to be promoted on regular basis in PSP Cadre, when he took acting charge in BPS-19. This view finds support from the case of Secretary, Government of Punjab and other vs. Dr. Abida Iqbal and others (2009 PLC C.S. 431) and Government of Khyber

Pakhtunkhawa and others vs. Hayat Hussain and others (2016 SCMR 1021). Record further reveals that in pursuance of the Hon'ble Supreme Court's Judgment in case of Asim Gulzar cited supra, the Respondent No.1 vide Notification dated 07th July 2015 revised date of appointment of the Petitioner in Police Service of Pakistan in BPS-18 to be reckoned from 19.10.2010 and not from 01.07.1999.

22. In view of the above discussion, we are of the considered view that seniority of the Petitioner in PSP service/cadre is to be reckoned from the date of encadrement that is, 19.10.2010 as clearly held by the Hon'ble Supreme Court in its Judgment discussed supra. Hence, the Petitioner at this stage is not eligible for regular promotion to BPS-19 post in PSP cadre. Hence, the Petitioner's claim is untenable and the Petition is devoid of merit.

23. The Petition is accordingly dismissed along with all the listed application(s).

JUDGE

JUDGE

Shafi Muhammad P.A