

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-608 of 2015

Sajad Hussain & others Petitioners

Versus

Federation of Pakistan & others Respondents

Date of hearing: 14.02.2018

Mr. Abdul Salam Memon, Advocate for Petitioners.

Mr. Zubair Zia Siddiqui, Advocate for Respondents No. 2 & 3.

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition,

the Petitioners have prayed for the following relief(s).

- i. To declare the office order dated 11.02.2008 as inconsistent with the promotion policy and thus liable to be struck down by this Hon'ble Court.**
- ii. To declare that the Petitioners are entitled to be promoted to the post of Deputy Managers (I.A) BS-17 from the retrospective effect i.e. 17.01.2009, and also for further promotion to next higher grade as and when such promotions accrued to them.**
- iii. Declare that petitioners have been seriously discriminated by the respondents regarding their promotion, in comparison to other batch mates and juniors.**

2. Brief facts of the case are that Petitioners were appointed as Stock Auditors / Stock Verifier in Audit Department in Port Qasim

Authority (PQA), on different dates during 1989 to 1990. Petitioners have submitted that there was no venue for their promotion in their cadre, constraining them to move applications to the Director (HRM), Port Qasim Authority, Karachi through proper channel for up-gradation of their post or grant of promotion from BS-15 to BS-17. Petitioners have averred that the competent authority of PQA issued office order dated 17.01.2009, upgraded the post of Petitioners from BPS-15 to BPS-17 as Deputy Manager. Petitioners have voiced their grievance that all of sudden on 11.02.2008 PQA issued another office order dated 11.02.2009 by nullifying the effect of office order dated 17.01.2009. Petitioners have further submitted that the Respondent Authority has imposed certain condition by personifying the upgraded post of the Petitioners with a rider that the post will be reverted to its original position upon retirement of the Petitioners. Petitioners being aggrieved by and dissatisfied with the impugned condition imposed through the office order dated 11.02.2008 by the Respondent Authority (correct date is 11.02.2009) has filed the instant petition.

3. Upon notice Respondents No. 2 & 3 have filed para wise comments, controverted the stance taken by the Petitioners.

4. Mr. Abdul Salam Memon, learned counsel for the Petitioners has contended that the Petitioners have been serving in the Respondent- Authority for about more than 24 years without any promotion. Learned counsel has further contended that Petitioners deserves to be promoted substantively from that year when their posts were upgraded on 17.01.2009 which is in accordance with

the rules and policy and guideline provided by the Federal Government; that the impugned office order dated 11.02.2009 purportedly issued in supersession of the earlier office order dated 17.01.2009, which is a person specific up-gradation and other conditions imposed by the Respondent Authority are nullity in the eyes of law; that Petitioners are entitled for further promotion in next rank but due to issuance of office order dated 11.02.2009, the promotion of the Petitioners has been halted, which is against the basic principle of law and promotion policy framed by the Federal Government from time to time; that Petitioners cannot be deprived of their legitimate right to claim for promotion and seniority in the cadre. During the course of arguments learned counsel for the Petitioners emphasized that the Petitioners are confining their arguments to the extent of condition imposed by the Respondent Authority through office order dated 11.02.2009 and do not claim promotion through the instant petition. The proposal seems to be reasonable thus restricting us to dilate upon only the issue of propriety and legality of the office order dated 11.02.2009.

5. Mr. Zubair Zia Siddiqui, learned counsel for Respondents No. 2 & 3 has contended that the captioned petition is not maintainable under the law; that the Petitioners have no locus standi to file the present petition; that there are factual controversies involved in the matter which restricts the jurisdiction of this Court to adjudicate the matter; that the promotion cannot be claimed as a matter of right; that under the policy a number of employees of PQA have been allowed personal up-gradation in next

pay scale, thus Petitioners cannot claim different treatment than others employees; that Petitioners have come before this Court with unclean hands. Learned counsel emphasized that the Petitioners intend conversion of personal up-gradation into promotion; that personal up-gradation to various employees, including Petitioners was allowed on the basis of completion of 18 years' service in one scale without any promotion; that the impugned order dated 11.02.2009 was issued to rectify the previous order dated 17.01.2009, which was inadvertently issued to bring in conformity with the policy of up-gradation; that the Petitioners while enjoying the up-gradation in terms of said policy cannot impugn the same being illegal and thereby simultaneously seeking conversion of the same into promotion despite non availability of the requisite post, which is not permissible under the law. He lastly prayed for dismissal of the instant petition.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. First and foremost, we would address the question of the maintainability of the instant Petition.

8. Undoubtedly, the Port Qasim Authority Employees Service Regulations, 2011 are statutory Rules of Service and admittedly the same were framed by the Board of Directors of Port Qasim Authority with the prior approval of the Federal Government, pursuant to Section 51 of the Port Qasim Authority Act No. XLIII of 1973. In the given circumstances, we are fully fortified by the view enunciated by the Hon'ble Supreme Court in para 50 of the

judgment in the case of Pakistan Defence Housing Authority vs. Lt. Col. Syed Javed Ahmed (2013 SCMR 1707) that an aggrieved person can invoke the Constitutional Jurisdiction of this Court against a public authority. The same principle is also enunciated in the case of Muhammad Rafi and another vs. Federation of Pakistan and others (2016 SCMR 2146). Accordingly, we are of the view that this petition could be heard and decided on merits by this Court, while exercising its Constitutional jurisdiction.

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9. Now in our view, the Petitioners agitated for determination are as under:-

- i. **Whether up-gradation is distinct from the expression promotion?**
- ii) **Whether up-gradation is restricted to the post and not with the person occupying it?**

10. The basic grievance of the Petitioners is that the Petitioners' posts that is Stock Auditors / Stock Verifiers was upgraded as Deputy Manager on completion of 18 years' service in Finance Division and Internal Audit Department in one scale vide office order dated 17.01.2009 and the Petitioners are also entitled to be dealt with in accordance with the aforesaid office order rather than office order dated 11.02.2009.

11. We have noticed that the PQA has upgraded certain posts of Petitioners to benefit them. The expression upgradation is distinct from the expression promotion which has not been defined either PQA Act or the Rules framed thereunder, and is restricted to the

post and not with the person occupying it. The up-gradation cannot be made to benefit a particular and individual in terms of promoting him to a higher post are further providing him with the avenues of lateral appointment or transfers or posting. In order to justify up-gradation, PQA is required to establish that the Department needs restructuring, reform or to meet the exigency of service in public interest. In the absence of these pre-conditions, up-gradation is not permissible. We are fortified by the decision rendered by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch Vs.. Province of Sindh (2015 SCMR 456).

12. Perusal of the office order dated 11.02.2009 shows that the Petitioners post has been shown to have been upgraded as person specific and upon their retirement the post shall be reverted into its original position.

13. In view of the order dated 11.02.2009 discussed supra, which prima-facie shows that the Respondents have not considered up gradation/promotion of the Petitioners from the post of Stock Verifier / Stock Auditor from BPS-15 to BPS-17 but the conditions have been imposed which amounts denial of right of promotion in next rank when their posts were already upgraded vide office order dated 17.01.2009.

14. In view of office order dated 17.01.2009 we are not impressed and convinced with of the assertion of the learned counsel for the Respondent-Authority; that the person specific up-

gradation is permissible under the law and policy framed by the Federal Government.

15. Looking through the above perspective and keeping in view the factual position of the case, we firmly infer that the Petitioners post ought to have been upgraded on completion of 18 years of required service in the Respondent's Authority as decided by the competent Authority of PQA vide order dated 17.01.2009. The explanation offered by the Respondents is a clear negation of order dated 17.01.2009 and not acceptable.

16. In the light of above facts and circumstances of the case, the instant Petition is partly allowed in the terms, whereby the condition imposed by office order dated 11.02.2009 is declared to be without lawful justification.

17. The captioned Petition is disposed of in the above terms.

Karachi
Dated 14.02.018

JUDGE

JUDGE

Shafi Muhammad P.A