

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Irfan Saadat Khan**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No. D- 6611 of 2018**

Muhammad Ismail Shaikh & 116 others.....Petitioners

Versus

Province of Sindh & another.....Respondents

**Date of hearing: 11.12.2018**

M/s. Malik Naeem Iqbal, Faizan Hussain Memon and Khurram Memon, Advocates for the Petitioners.

M/s. Muhammad Arshad Khan Tanoli and Danish Rasheed, Advocates for interveners Sheeraz Hussain Jaffery and 22 others.

Mr. Shahriyar Mehar, AAG Sindh alongwith Engr. Abdul Samad Shaikh, Deputy Director, Agriculture, Supply & Prices Department of Respondent No.2 and Ms. Humaira Jatoi, internee of the office of Advocate General Sindh.

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** Through the instant petition, the Petitioners are seeking directions for their promotion to the post of Deputy Director in BPS-18, in the office of Agriculture, Supply & Prices Department, Government of Sindh.

2. Initially, the Petitioners were appointed on 25th April, 2005 as Water Management Officers in BPS-17, on contract basis, for a period of 3 years, in the project, established under the National Program for Improvement of 29000 water courses (NPIW) in Sindh. Petitioners have submitted that their services were regularized with effect from 25.03.2013, under section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. Petitioners have submitted that the Respondent No.2 vide order dated 24.11.2017, accorded sanction for re-organization / restructuring of 270, out of total 688 posts of Agriculture

Engineering & Water Management Wing of Agriculture, Supply & Prices Department. Per petitioners, the aforesaid sanction was accorded pursuant to adoption of 4-Tier formula. Petitioners have added that their seniority is to be reckoned from the date of their regular appointment in BPS-17 i.e. 25.3.2013, in light of the recruitment rules framed vide Notification dated 23.05.2005; that the method of appointment to the post of Deputy Director Agriculture in (BPS-18) would be made by way of 25% by initial appointment, 55% by promotion amongst the officers of BPS-17 possessing degree of Agriculture Engineering or Civil or Mechanical with length of service as prescribed for BPS-18 and lastly 20% by promotion amongst the Assistant Directors, BPS-17, possessing the qualification of B.Tech (Hons) with at-least ten years' experience. Petitioners have submitted that they are eligible and qualified to be considered for the post of Deputy Director in BS-18 as per ratio fixed under the recruitment rules as discussed supra; that the parent department of the petitioners has failed and neglected to prepare and issue provisional as well as final seniority list of the petitioners, as provided under the law, for promotion on the aforesaid posts as per recruitment rules. Petitioners have submitted that to their utter shock and dismay, all of sudden the Respondent No.2 issued the Notification dated 29<sup>th</sup> March, 2018, whereby Deputy Directors (Field) BPS-17 of On-Form Water Management Wing were promoted to the post of Deputy Director (Field) in BPS-18 in Agriculture, Supply and Prices Department on regular basis; that the petitioners were ignored as the case of the petitioners was at par with their colleagues. Per Petitioners, the aforesaid action of the Respondent-department is discriminatory as well as is in utter violation of the recruitment rules, notified on 23<sup>rd</sup> May, 2005. Petitioners have added that a number of officers

promoted on the aforesaid posts had short of length in the service, as they were promoted in BPS-17 on 15<sup>th</sup> February 2016. Petitioners claimed that all those officers were juniors to the Petitioners in the hierarchy of service; therefore, discriminatory attitude has been meted out with them. Per Petitioners, they repeatedly approached the Respondent No.2 for issuance of seniority list for consideration of their cases for promotion to the post of Deputy Director in BPS-18, but the Respondent No.2 has kept the Petitioners on false hopes and on the contrary has prepared working papers of the officers holding the post of Assistant Director in BPS-17 for their promotion to be tabled in the next Departmental Promotion Committee (DPC). Petitioners have submitted that the failure of the official Respondents to issue the seniority list of the Petitioners and non-consideration of their cases for promotion to the post of Deputy Director in BPS-18 in the ensuing DPC is unjust, unlawful, arbitrary, illegal, unconstitutional, discriminatory and irrational. Petitioners being aggrieved by and dissatisfied with the discriminatory attitude of the Respondents have approached this Court on 17.09.2018.

3. Upon notice, the Respondent No.2 has filed para-wise comments and controverted the allegations leveled against them. The Respondents have premised their case that the Petitioners are Water Management Officers in BPS-17, thus not eligible for promotion to the post of Deputy Director in BPS-18; that the recruitment rules for the post of Deputy Director have been amended vide Notification dated 12.10.2017 and the aforesaid post is meant to be filled amongst Assistant Directors in BPS-17, having requisite experience, therefore the petitioners are not eligible to be considered for promotion in the next rank.

4. Malik Naeem Iqbal, learned counsel for the Petitioners have argued that the Respondent No.2, instead of issuing Seniority List under Rule 9(2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules 1975, has merely issued a defective notification without supersession of the earlier notification issued in the year 2005; that being considered for promotion, subject to fulfilling the mandatory requirements, is a right of an employee, however, under the garb of non-issuance of seniority list the petitioners are being deprived of their rights, which action of the Respondents is arbitrary, illegal and unlawful; that the Petitioners have reasons to believe that the Respondents would fill all the posts by promoting ineligible and junior officers, since the Respondents are at the helm of affairs, therefore, they are not paying any heed to the laws in vogue; that the Respondents have adopted a discriminatory posture inasmuch as on one hand the petitioners, who otherwise are fully eligible, are being ignored and on the other hand the blue eyed officers, who otherwise are ineligible, are being considered for promotion in next DPC in violation of the appointment procedure; that the Respondents are under legal obligation to consider the cases of the petitioners for promotion; that the actions of the Respondents are violative of fundamental rights and principles of policy, enshrined in the Constitution of Pakistan, 1973, particularly under Article 25 thereof; that policy decisions should fulfill the requirement of due process, fairness and fair trial. He lastly prayed for allowing the instant Petition.

5. Mr. Shahriyar Mehar, learned Assistant Advocate General has argued that as per Recruitment Rules in vogue notified on 10.10.2009, the post of Water Management Officer is that of BS-16 in Water Management Wing of Agriculture, Supply & Prices

Department and the Water Management Officers are entitled for next promotion to the post of Assistant Director (BS-17); that the Petitioners were initially appointed on contract basis in BS-17, however, in pursuance of Sindh (Regularization of Adhoc and Contract Employees) Act 2013 their services were regularized in BS-17; that the Petitioners are posted as Water Management Officers (BS-17) in Water Management Wing of Agriculture, Supply & Prices Department, hence, they are performing their duties differently in the subordination of Assistant Director (BS-17) as per organogram of their respective wing; that as per Recruitment Rules in vogue vide notification dated 12.10.2017 for the post of Deputy Director (BS-18) only Assistant Director (BS-17) are eligible for promotion to the next higher post of Deputy Director (BS-18), whereas the Petitioners are Water Management Officers (BS-17), hence, they are not eligible to be promoted to the post of Deputy Director (BS-18); that it is settled law that equal protection of law did not envisage that in all circumstances all citizens were to be treated as equal as only those persons having been placed similarly in one class were to be treated alike. He further added that one who was seeking relief on the basis of discrimination in the first place had to establish similarity in the nature of work as being performed. He lastly prayed for dismissal of the instant Petition.

6. Mr. Muhammad Arshad Khan Tanoli, learned counsel for the interveners has sought permission to argue the case on their behalf and has submitted that they are necessary party in the present matter; therefore they may be impleaded as the Respondents in the present proceedings. Mr. Malik Naeem Iqbal learned counsel for the petitioners has objected to the request of Mr. Muhammad Arshad Khan Tanoli learned counsel for the interveners. Since the issue of seniority and promotion of the

petitioners is involved in the present matter, we intend to decide it on merits; therefore, we are not inclined to allow the application of the interveners.

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

8. The primordial question involved in the present proceedings is whether the post of Deputy Director in BPS-18 of Agriculture, Supply & Prices Department is a promotion post to be filled amongst Assistant Directors BPS-17, or amongst the officers of Water Management (Engg) in BPS-17?

9. We have noticed that the main grievance of the petitioners is that, firstly the Respondent-Department should issue seniority list of the petitioners under Rule 9(2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules 1975 and secondly their cases may be sent for consideration of promotion in the next rank i.e. for the post of Deputy Director in BS-18.

10. To appreciate the aforesaid factual position of the case, it is necessary to have a glance on the facts of the case to ascertain as to whether the petitioners are eligible and entitled to be considered for promotion in the next rank in a short span of time, as agitated by them.

11. Perusal of the record reflects that the Petitioners were appointed on contract basis for 03 years on the project under National Program of Improvement of Water Courses in Sindh in the year 2005 and in pursuance of the orders dated 12.2.2017 passed by this Court in C.Ps No.D-1899 & 1433 of 2012, their services were regularized with effect from 25.3.2013, vide Notification dated 16.01.2018.

12. For consideration of promotion in the next rank, the Petitioners have to show that they are eligible and fit for promotion in the next rank. The promotion of a civil servant depends upon eligibility, seniority cum-fitness and availability of vacancy. It is for the Competent Authority, who could make appointments, determine seniority, eligibility, fitness and promotion and other ancillary matters relating to the terms and conditions of the employees as prescribed under the Act and Rules framed there under. Now, let us see the issue of seniority of the Petitioners, record does not reflect that the seniority of the Petitioners was maintained by the Respondent-Department, after regularization of their services, as provided under Rule 9(2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules 1975. Here an important question arises that if the seniority of the civil servants is not maintained, whether the case of the Petitioners can be considered for promotion, the answer is that promotion cannot be considered, seniority list is to be prepared within stipulated period of time, which is prerequisite for the promotion. As per record, the services of the petitioners were regularized vide Notification dated 16.01.2018 and the period of preparing the seniority of the civil servants is provided under Rule 9(2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules 1975. And for the purpose of promotion, the Petitioners' seniority can be reckoned from the date of regular appointment i.e. 16.01.2018. Our view is supported by Sub-Section (4) of Section 8 of the Sindh Civil Servants Act, 1973, which provides that the Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment of such civil servant to that post i.e. service cadre. Prima-facie the Petitioners lack the eligibility to be promoted in the next rank for

the simple reason that they have no length of service in BPS-17 to go upwards in BPS-18. At this stage, learned AAG has pointed out that keeping in view the orders of this Court the services of these Petitioners have been regularized against newly created budgetary posts by the Finance Department in the year 2017-18, therefore the question of retrospective seniority cannot be granted to the Petitioners and their appointment can be considered from the date of notification of regularization, however the Petitioners' case can be considered for financial benefits, with effect from the date of promulgation of the Act, 2013, if they succeed to justify.

13. Having dilated upon the issue of seniority and promotion, we have noticed that much emphasis has been laid on the office order dated 24.11.2017, whereby the Competent Authority allowed restructuring and re-designation of certain posts of Agriculture Engineering and Water Management Wing of Agriculture, Supply & Prices Department for certain ratio for placement in BPS-20, 19, 18 & 17 respectively with immediate effect. However, it was made clear in the aforesaid Notification that promotion against re-designated posts shall be made in accordance with the relevant service rules after fulfillment of codal formalities. Petitioners have relied upon the post of Water Management Officer (Agri.) in BPS-17; the same has been re-designated as Deputy Director (Eng.) (WM) in BPS-18.

14. We have noticed that the services of the Petitioners were regularized vide Notification dated 16.1.2018 with retrospective effect. Question arises as to whether the case of the Petitioners falls within the ambit of Office Order dated 24.11.2017 to claim benefit of re-designation of the posts of Water Management Officer (Agri.) into Deputy Director (Eng.) (WM) in BPS-18, though the



Petitioners were appointed for the post of Water Management Officer (Eng.) in BPS-17?

15. To elaborate further on the aforesaid issue, it is expedient to have a look on the Notification dated 23.05.2005 issued by Agriculture Department, Government of Sindh in pursuance of Sub Rule (2) of Rule of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. An excerpt of the Notification is reproduced below:-

| SR. NO. | NAME OF THE POST WITH BPS  | METHOD OF APPOINTMENT   | QUALIFICATIONS AND EXPERIENCE FOR INITIAL APPOINTMENT  | AGE LIMIT |    |
|---------|--|---|--|-----------|----|
|         |  |   |  |           |    |
| 1.      | Deputy Director Agriculture Engineering and equivalent post in BPS-18 in On Farm Water Management, Agriculture Department. | (i) 25% by initial appointment.<br><br><u>AND</u>   | (i) Degree in Agriculture Engineering / Civil Engineering / Mechanical Engineering and registered with Pakistan Engineering Council with atleast five years experience in Engineering service in BPS-17 or on a comparable post in Government or Semi Government Organization or in Agriculture or Engineering Firm of repute. | 23        | 35 |
|         |  | ii) 55% by promotion from amongst the officers of BPS-17 possessing degree in Agriculture Engineering or Civil or Mechanical Engineering with length of service as prescribed for BPS-18 post and registered with the Pakistan Engineering Council.<br><br><u>AND</u><br><br>ii) 20% by promotion from amongst the Assistant Directors, BPS-17 possessing the qualification of B.Tech (Hons) with atleast ten years experience as such. |  |           |    |

**Sd/-**  
**SECRETARY TO GOVT. OF SINDH**

16. The aforesaid Recruitment Rules do not provide that the post of Water Management Officer in BPS-17 can be filled on contract basis. Record further reflects that the aforesaid Recruitment Rules were amended from time to time.

17. To elaborate further on the aforesaid issue, it is necessary to have a look on the Notifications dated 03<sup>rd</sup> April, 2007, 10<sup>th</sup> October, 2009 & 12<sup>th</sup> October, 2017 which are as under:-

**GOVERNMENT OF SINDH  
AGRICULTURE DEPARTMENT**  
Karachi, dated the 3<sup>rd</sup> April, 2007

| S. NO. | NAME OF THE POST WITH BPS   | METHOD OF APPOINTMENT  | QUALIFICATION/ EXPERIENCE FOR INITIAL APPOINTMENT   | AGE LIMIT |      |
|--------|---|--|---|-----------|------|
|        |   |  |   | Min       | Max: |
| 1      | 2   | 3  | 4   | 5         |      |
| 1.     | Assistant Director (Field)/Assistant Agriculture Engineer (BPS-17), Agriculture Department. | (i) 25% by initial appointment.<br><br><u>AND</u><br>ii) Remaining 75% are to be filled as follows:<br><br>a) 80% from amongst the Water Management Officers (Eng) having Degree in Civil, Mechanical or Agriculture Engineering and registered with the Pakistan Engineering Council with five years service.<br><br>OR<br><br>(b) 20% by promotion from amongst the Water Management Officer (Engg.) possessing Diploma in Civil or Mechanical Engineering with eight years service. | (i) Degree in Civil or Agriculture Engineering and registered as Professional Engineer with Pakistan Engineering Council<br><br>OR<br><br>ii) Diploma in Civil/Mechanical Engineering with 05 year service as Water Management Officer (Engg.) in the Agriculture Department. | 21        | 30   |

**MAHKUMDIN QADRI  
SECRETARY TO GOVT. OF SINDH**

**GOVERNMENT OF SINDH  
AGRICULTURE DEPARTMENT**  
Karachi, dated the 10<sup>th</sup> October, 2009

| S. NO. | NAME OF POST WITH BPS              | METHOD OF APPOINTMENT                        | QUALIFICATION  | AGE LIMIT |      |
|--------|------------------------------------|--|--|-----------|------|
|        |                                    |  |  | Min       | Max: |
| 1      | 2                                  | 3  | 4  | 5         |      |
| 1.     | Water Management Officer (BPS-16). | i) 35% by initial appointment.<br>ii) 50% by | Degree in Agriculture Engineering, Civil and Engineering | 21        | 30   |

|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  | <p>promotion from amongst the Sub-Engineers of BS-11 possessing degree in Civil Mechanical or Agriculture Engineering and registered with Pakistan Engineering Council having latest five years' service.</p> <p>iii) 15% from amongst the Sub-Engineers in BS-11 possessing Diploma in Civil, Mechanical Engineering from a recognized institution by the Sindh Board of Technical Education.</p> | <p>registered as Professional Engineer with Pakistan Engineering Council or B.Tech (Hons.) having at least .....years' experience in relevant field.</p> |  |  |
|--|--|--|--|--|--|

**AGHA JAN AKHTAR**  
**SECRETARY TO GOVT. OF SINDH**

**GOVERNMENT OF SINDH**  
**AGRICULTURE, SUPPLY & PRICES**  
**DEPARTMENT**  
**Karachi, dated the 12<sup>th</sup> October, 2017**

| SR . # | NAME OF POST WITH BPS  | METHOD OF APPOINTMENT  | QUALIFICATION & EXPERIENCE   | Age limit<br>Min<br>Max |    |
|--------|--|--|--|-------------------------|----|
| 1.     | 02   | 03.  | 04.  | 05                      |    |
| 1.     | Deputy Director Agriculture Engineering and equivalent post in BPS-18 in On Farm Water Management, Agriculture Department. | <p>(i) Ten (10%) by initial appointment through Sindh Public Service Commission.</p> <p>(ii) Seventy (70%) by promotion from amongst the Assistant Directors BPS-17, possessing degree in Agriculture Engineering or Civil or Mechanical Engineering with length of service as prescribed for BPS-18 post and registered with the Pakistan Engineering Council.</p> <p>(iii) Thirteen (13%) by promotion from amongst the Assistant Directors, BPS-17 possessing the degree of</p> | <p>(i) Degree in Agriculture Engineering OR Civil Engineering OR Mechanical Engineering and registered with the Pakistan Engineering Council with atleast Five (05) years experience in Engineering service in BPS-17 OR a comparable post in Government OR Semi Government Organization OR in Agriculture OR Engineering Firm of repute.</p> <p>(ii) Possessing degree in Agriculture Engineering of Civil or Mechanical Engineering.</p> <p>(iii) Possessing degree i.e. Diploma (Holder) in Civil Mechanical Engineering.</p> | 23                      | 35 |

|  |  |  |   |  |  |
|--|--|--|---|--|--|
|  |  | Diploma (Holder) with length of service as prescribed for BPS-18 post.<br><br><u>AND</u><br><br>iv) Seven (07%) by promotion from amongst the Assistant Directors, BPS-17 possessing the degree of B.Tech (Hons) with length of Service as prescribed for BPS-18 post. | iv) Possessing degree in B.Tech (Hons). |  |  |
|--|--|--|---|--|--|

**SAJID JAMAL ABRO**  
**SECRETARY TO GOVT. OF SINDH**

18. We have noticed that the petitioners have not called in question through the instant petition the vires of the aforesaid notification dated 12<sup>th</sup> October, 2017; therefore, we will not travel into the question of vires of the said notification as discussed supra.

19. Upon perusal of the aforesaid Notifications / Recruitment Rules which explicitly show that the post of Deputy Director, Agriculture Engineering in BPS-18 in On Form Water Management, Agriculture Department can be filled amongst the Assistant Directors in BPS-17, having requisite qualification and length of service as prescribed for BPS-18 post.

20. Record does not reflect that the Petitioners are Assistant Directors in BPS-17 to claim promotion in BPS-18 as Deputy Director. Record does not reflect that in absence of the seniority the promotion cannot take place as they were appointed in the year 2005 on contract basis and their notification for regularization was issued in the year 2018 with retrospective effect but it does not mean that they have the length of service to be eligible for the post of Deputy Director in BPS-18 as per Recruitment Rules. In absence of the requisite qualification and experience coupled with length of service we are not inclined to direct the department to

consider the cases of the Petitioners for further promotion in BPS-18.

21. At this stage, learned counsel for the Petitioners has drawn our attention to Section 3 of the Sindh (Regularization of Ad-hoc and Contract Employees) Act, 2013 which provides that employee appointed on ad-hoc and contract basis shall be deemed to have been validly appointed on regular basis immediately before the commencement of the Act, therefore the seniority of the Petitioners can be reckoned from the date of regularization i.e. 25.3.2013. The assertion of the Petitioners is wholly misconceived, in our view, no ambiguity is left that the services of the Petitioners have been regularized with effect from the promulgation of the Act, 2013, for the simple reason that regularization of the Petitioners has taken place on the orders of this court and the Respondent-Department issued the notification of regular appointment of the Petitioners by creating the posts as before that the Petitioners were not working against the sanctioned budgetary posts but on a fixed period project posts on contract basis. In our view no seniority can be awarded retrospectively.

22. Looking through the above perspective and keeping in view the position of the case, we refer to Section 2(b) (ii) of Sindh Civil Servants Act, 1973 which provides as under: -

**2.(b) "civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connect with defence, but does not include -**

**(ii) A person who is employed on contract, or on work-charged basis or who is paid from contingencies;**

23. In view of the above provision of law contract employees cannot be termed as civil servants. It is an admitted fact that the

Petitioners before regularization of their services were not Civil Servants, as they were working on particular project on contract basis. We are further fortified by Rule 10(1) and (2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, which provides as under: -

**“10 (1) subject to the provision of rule 11, the seniority of a civil servant shall be reckoned from the date of his regular appointment.**

**(2) No appointment made on adhoc basis shall be regularized retrospectively.”**

24. The above provision of law clarifies the legal proposition that the seniority of the civil servant shall be reckoned from the date of his regular appointment.

25. In the light of above provisions of law, we are of the considered view that no appointment made on contract/ad-hoc basis shall be regularized retrospectively and the contract/ad-hoc period of service cannot be counted as seniority of a Civil Servant since seniority can be reckoned only from the date of regular appointment. Thus, the question of counting seniority retrospectively is misconceived and not maintainable.

26. In the light of the above facts and circumstances of the case, we do not find any merit in the captioned Petition, which is dismissed along with all the pending application(s).

Karachi  
Dated: 17.12.2018

**JUDGE**

**JUDGE**