

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 5387 of 2019

Zulfiqar Ali,

Petitioner through:

Syed Abdul Waheed advocate

Date of hearing:

28.08.2019

Date of order:

28.08.2019

ORDER

ADNAN-UL-KARIM MEMON, J:- The petitioner, through the captioned Petition, has sought the following relief(s):

- a. To declare in action on the part of competent authority in the promotion case of petitioner and keeping it pending, mala fide, illegal, unfair, in violation of fundamental right of petitioner, discriminatory and against principles of natural justice.
- b. To direct the respondents to dispose of promotion cases submitted by the STEVTA on the basis of seniority list before the petitioner is retired.

2. Basically, the Petitioner has prayed for early decision on his promotion case as Principal/Associate Professor (Electrical) in BPS-19 on the premise that initially he was inducted in the service of Respondent-Sindh Technical Education and Vocational Training Authority (STEVTA) in the year 1986 and his last promotion took place on 19.5.2008 and is now fit and eligible for consideration of promotion in the next Rank. The Petitioner being aggrieved and dissatisfied with the inaction, they approached the Respondents for promotion as per seniority rules as Principal/Associate Professor (BPS-619, which is the legal right of the Petitioner and the Petitioner is seeking promotion in accordance with his seniority, but the Respondents did not entertain genuine grievances of the Petitioner.

3. We have asked the learned Counsel to satisfy this Court as to how the promotion of the Petitioner can be considered, when no Departmental Promotion Committee has been convened by the competent authority, besides that he is at the verge of retirement i.e. in the Month of September 2019.

4. Syed Abdul Waheed, learned Counsel for the Petitioner has replied that Petitioner's name is appearing at Sr. No.2 of the Seniority list dated 05.6.2018 and

in this regard the Respondent-STEVTa has already submitted cases of different categories to the office of the Secretary, Universities and Boards Department, Government of Sindh, Karachi for their promotion in the next rank; that the Petitioner fulfills the promotion criteria and has requisite length of service and qualification to be considered for promotion as Principal/Associate Professor (Electrical) in BPS-19. Learned Counsel for the Petitioner further submitted that in spite of completion of all legal, procedural and codal formalities the Respondents are plying delaying tactics and reluctant to take decision on his promotion case and in this regard he has moved various applications to the competent authority for redressal of his grievances, but his all efforts went in vein. Per learned Counsel, the Petitioner is at the verge of retirement from service on 15.9.2019 and if he is not promoted as per his seniority, he shall not only suffer the monetary loss, but will lose the dignity and self-respect amongst the juniors officers. He prays for directions to the Respondent-STEVTa to consider the case of the Petitioner for promotion without discrimination.

5. We are not satisfied with the reasoning of the learned Counsel as put forwarded by him on the ground that DPC cannot be ordered to be convened at the whims of a Public servant and it is for the competent authority to see the working papers of promotion of all the officials and after proper scrutiny of their antecedents can hold DPC, even otherwise the promotion is based upon seniority-cum-fitness and subject to availability of post and again it is for the competent authority to check their suitability for the post.

6. The matter of seniority and eligibility for promotion squarely fall within the expression the "terms and conditions" of service, which includes seniority and eligibility to the promotion and as such this Court has no jurisdiction to entertain the Constitutional Petition. We are of the view that under Article 199 of the Constitution Public Servant cannot claim vested right for promotion and in seniority and this Court has no jurisdiction to entertain Constitutional Petition pertaining to Seniority and Promotion matters. However, in the Constitution, the Superior Courts have been mandated to ascertain either any Fundamental Right of the Public Servant is violated. In this case, the learned Counsel has failed to

demonstrate malafide on the part of Respondents, just to discriminate him from his due promotion. The record does not reflect a copy of working paper was prepared in this regard which may show that the petitioner fulfills all the prerequisites for his further promotion, but he has just emphasized that he is striving for preparation of his final seniority list. This is hardly a ground to take into consideration the case of the Petitioner for promotion in the next rank i.e. BPS-19. However, the competent authority of respondents is well within his right to consider his case for promotion as and when the DPC is convened, strictly in accordance with law, irrespective of his attaining the age of superannuation i.e. 60 years in the month of September, 2019. On the aforesaid proposition, we are also fortified with the principle enunciated by the Honorable Apex Court in the case of Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others vs. Hayat Hussain and others (2016 SCMR 1021).

7. In the light of the above facts and circumstances of the case, this Petition is premature, thus cannot be entertained by this Court under Article 199 of the Constitution.

8. This Petition being misconceived is dismissed in limine along with listed applications.

9. These are the reasons of our short order dated 28.8.2019, whereby we have dismissed the captioned petition in limine.

JUDGE

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