

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-8518 of 2017

Muneer Ahmed & another Petitioners

Versus

Province of Sindh & others Respondents

Date of hearing: 04.10.2018

Mr. Abdul Salam Memon, Advocate for Petitioners.

Mr. Shehryar Mehar, AAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through the captioned Petition, Petitioners are seeking declaration for up-gradation of the post of Excise & Taxation Inspectors from BPS-14 to BPS-16 in Excise & Taxation, Narcotics department, Government of Sindh.

2. Brief facts of the case are that Petitioners are serving as Excise & Taxation Inspector in BPS-14 in Excise, Taxation and Narcotics department, Government of Sindh. Petitioners have averred that the Respondent department floated a summary to the Competent Authority for restructuring of the Directorate General of Excise, Taxation and Narcotics department, Government of Sindh but no fate of the aforesaid summary has been disclosed to the Petitioners in this regard. They have added that the post of Excise & Taxation Inspector ought to be up-graded from BPS-14 to BPS-

16, in line with the department of the Government of Punjab, Excise, Taxation and Narcotics Control Department and the Excise department of Khyber Pakhtunkhwa, Provinces.

3. Upon notice, the Respondents have filed para-wise comments and controverted the allegations leveled against them with the assertion that in pursuance of sub-Rule (2) of Rule 3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974, the Competent Authority framed the Recruitment Rules for the post of Assistant Excise and Taxation Officer and Excise & Taxation Inspector vide Notification dated 24.04.2008 and in the light of aforesaid Recruitment Rules, an officer holding the post of Excise and Taxation Inspector in BPS-14 can be promoted to the post of Assistant Excise & Taxation Officer in BPS-16, therefore the request of the Petitioners merits no consideration, since they would be promoted on their turn in accordance with law.

4. Mr. Abdul Salam Memon, learned counsel for the Petitioners has contended that the Petitioners have been serving in the Respondent-department for a long time on the same pay & scale. Learned counsel has contended that the post of the Petitioners deserves to be up-graded in BPS-16. Learned counsel in support of his contention has relied upon the Notification/ order dated 25.05.2018 issued by the Government of Punjab, Excise & Taxation Narcotics Control department with regard to the up-gradation / conversion of all posts of Excise and Taxation Inspectors from BPS-14 to BPS-16. He further relied upon the

letter dated 20.11.2017 issued by the Government of Khyber Pakhtunkhwa, Finance Department on the aforesaid issue of up-gradation of the posts in Excise & Taxation and Narcotics Control Department. Learned counsel has added that on the post of Inspector BPS-14 in different departments, Government of Sindh they are functioning in BPS-16 and it is only the Excise and Taxation department which is left out for up-gradation of the post of Inspector in BPS-16. He has further argued that the issue of up-gradation is not part of terms of condition of service of Civil Servants, which is distinct from promotion; therefore the Respondent-department is required to restructure the Excise and Taxation department by up-grading the post of Excise and Taxation Inspector from BPS-14 to BPS-16.

5. Upon query by this Court as to how the instant petition is maintainable, in view of Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973. He replied to the query argued that the issue relating to up-gradation of Civil Servants can be decided by this Court in its Constitutional jurisdiction and the bar contained under Article 212(3) of the Constitution would not be attracted, therefore this Court can hear and decide the matter on merits. In support of his contention, he relied upon the cases of Chief Commissioner Inland Revenue and another Vs. Muhammad Afzal Khan and others (2014 PLC (C.S) 829, Regional Commissioner Income Tax Northern Region, Islamabad and another Vs. Syed Munawar Ali and others (2016 SCMR 859) and unreported order dated 21.05.2018 passed by this Court in

C.P. No. D-7015 of 2016 and argued that the present case of the Petitioners is akin of the aforesaid case, as such the similar relief can be given to the Petitioners.

6. So far as the issue of maintainability of the instant petition is concerned, we are of the considered view that this Court can entertain the aforesaid petition under Article 199 of the Constitution. We are fortified by the decision rendered by the five Member Bench of the Hon'ble Supreme Court of Pakistan in the case of Regional Commissioner Income Tax, Northern Region, Islamabad and another Vs. Syed Munawar Ali & others (2016 SCMR 859).

7. Mr. Shehryar Mehar, learned AAG has opposed the stance taken by the learned counsel for the Petitioners and argued that in presence of the aforesaid Recruitment Rules, the post of Excise Inspector in BPS-14 is not required to be up-graded as the venue of promotion of the Petitioners is available under the law. He lastly prayed for dismissal of the instant Petition.

8. We have heard the learned counsel for the parties and perused the material available on record and the case law cited at the bar.

9. The question which requires our decision is whether up-gradation is distinct from the expression promotion and whether the venue of promotion for the post of Excise & Taxation Inspector in BPS-14 to BPS-16 is available to the Petitioners under Recruitment Rules dated 24.04.2008?

10. We are of the considered view that for up-gradation of the post, the following conditions are pre-requisite:-

- i) Firstly up gradation is restricted to the post and not with the person occupying it.**
- ii) Secondly up gradation of posts does not mean automatic up gradation of the incumbents of these posts as well, in fact the appointment against the up graded post is required to be made in the manner prescribed in the Recruitment Rules for that particular post.**
- iii) Thirdly up-gradation cannot be made to benefit a particular and individual.**

11. To justify up-gradation, Excise & Taxation department, Government of Sindh is required to establish that the Department needs restructuring, reform or to meet the exigency of service in public interest, in the absence of the aforesaid pre-conditions, up-gradation is not permissible under the law. Our view is supported by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456).

12. On merit, perusal of the Recruitment Rules explicitly show that the post of Assistant Excise & Taxation Officer in BPS-16 is to be filled in the manner as follows:-

- (i) 92% by promotion from amongst Excise & Taxation Inspectors in BPS14 having at least 5 years' experience.
- (ii) 5 % promotion from amongst Assistants in BPS-14 having 5 years' experience.
- (iii) 3% from amongst Senior/Junior Stenographers in BS-12 to 15 having 5 years' experience on seniority cum fitness basis.

13. In view of this aspect of the case, we are of the opinion that the post of Excise & Taxation Inspector in BPS-14 can only be up-graded if the Department needs restructuring, reform or to meet

the exigency of service in public interest. At this juncture the learned counsel for the Petitioners has raised the issue of discrimination and argued that the other provinces of this Country have already allowed up-gradation of the post of Excise & Taxation Inspector from BPS-14 to BPS-16 and in this regard while placing reliance on the dicta laid down by the Honorable Supreme Court in the case of Chief Commissioner, Inland Revenue and another Vs. Muhammad Afzal Khan (2014 PLC C.S 829) he argued that the Petitioners have been given highly discriminatory treatment by not upgrading the aforesaid post in BPS-16.

14. To appreciate the above factum of the case, we are of the considered view that the principle of law enunciated in the case of Chief Commissioner, Inland Revenue and another (ibid), are quite different and in view of the peculiar facts and circumstances of the present case while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we do not agree with the submissions of the learned counsel for the Petitioners for the simple reason that Petitioners have the chance of promotion under the Recruitment Rules as discussed supra, therefore the plea of discrimination is of no avail to them. It is well settled now that policy decisions of the Government regarding up-gradation of post or otherwise could not be challenged in a writ jurisdiction of this Court on the purported plea of discrimination, when Article 25 of the Constitution itself provided a provision for such discrimination on the principle of reasonable classification. In the present case, the Respondents had not up-graded the post of Excise & Taxation Inspector in BPS-14 in the line with other provinces of the country

as they have their own financial implication issues. Additionally Petitioners have failed to show that due to non-up-gradation of the post of Excise & Taxation Inspector any fundamental right of the Petitioners had been violated/ infringed or they had any vested for such up-gradation as per their choice.

15. The case law cited by the learned counsel for the Petitioners are distinguishable from the facts and circumstances of the present case, more particularly the unreported order dated 21.05.2018 passed by this Court in C.P. No. D-7015 of 2016 as the Petitioners in the aforesaid petition were appointed as law officers in BPS-17 in the law department, Government of Sindh, whereas the law officers working under the same cadre in different department of Government of Sindh had been given BPS-18, therefore we reached to the conclusion that since the posts of law officer in the law department were isolated with no venue of promotion, so the aforesaid petition was disposed of accordingly, whereas in the present case there is a venue of promotion of the Petitioners, therefore the facts obtained in the aforesaid case are quite distinguishable.

16. Looking through the above perspective and keeping in view the factual position of the case, the instant Petition is found to be meritless thus is dismissed along with the listed application(s).

Karachi
Dated 8.10.018

JUDGE

JUDGE