

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. D-4666 of 2013

Present: -

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner : Present in person.

For Respondents : Mr. Shehryar Mehar, Assistant
Advocate General a/w
Mr. Imran Qureshi, internee

Date of hearing : 23.10.2018
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JUDGMENT

ADNAN-UL-KARIM MEMON, J: - Through the instant petition, Petitioner has impugned the action of the Respondents whereby his seniority could not be determined in any department of Government of Sindh, consequently his promotion could not take place, being declared a Surplus employee for 13 years and his service was placed in Services, General Administration & Coordination Department's Surplus Pool (SGA&CD) vide Notification dated 22.6.2000 issued by the Industries, Commerce & Mineral Development Department Government of Sindh. Petitioner has asserted that, in the meanwhile he stood retired from Government's service on attaining the age of superannuation on 10.4.2014 vide Notification dated 27.8.2014 issued by the Respondent/SGA&CD. As per Petitioner, now he has received his pensionary benefits including arrears of pay and allowances in BPS-18 vide letter dated 11.1.2017 and not in accordance with his entitlement. The only grievance of the Petitioner is now with regard

to fixation of his salary, during the period he remained in surplus pool of SGA&CD, his proforma promotion, after his retirement as per seniority to be determined by the SGA&CD and benefits accrued thereon to be included in his pensionary benefits.

2. To elaborate on the aforesaid proposition, it is expedient to have a glance on the relevant facts as narrated in the pleadings of the parties. We have been informed by the Petitioner, who is present in person that in response to the Public Notice dated 17.11.1982, he was initially appointed in Sindh Small Industries Corporation (SSIC) as Chief Designer in BPS-17, thereafter he was promoted to BPS-18 and served in SSIC as a Joint Director. Petitioner has averred that vide Office Order dated 30th June, 2000, he was relived from SSIC and his service was placed in Surplus Pool of SGA&CD in the month of June 2000 for 13 years. Petitioner has added that Respondents No.1 & 2 deliberately deprived the Petitioner from posting in any Department of the Government of Sindh in term of Rule-9A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, therefore, his right of seniority and promotion was seriously jeopardized and he made request to the Respondents No.1 & 2 for his posting, however briefly the Petitioner was posted in P&D Department, Women Division, which was later on cancelled vide Notifications dated 17.1.2002 and 4.2.2002 respectively, with direction to report to the Section officer (LR), SGA&CD and thereafter sent back to surplus pool in the month of November, 2012. Petitioner being aggrieved by and dissatisfied with the aforesaid actions of the Respondents,

whereby he was not absorbed in any department of the Government of Sindh, filed the instant petition on 8.11.2013, on the ground that his service was liable to be absorbed in accordance with Rule 9-A of the Civil Servants (APT) Rules, 1974.

3. Petitioner's further assertion is that the Respondents have miserably failed to implement the aforesaid law in letter and spirit in time, thus grave loss to his career was caused by the Respondents, for no fault on his part. Petitioner added that he being eligible was allowed move over from BPS-18 to BPS-19 with effect from 1.2.1996 vide office order dated 26.8.2003 issued by SSIC, which was withdrawn unilaterally, and thus he was reverted back in BPS-18, in violation of law available on the subject. Per Petitioner the aforesaid act of the Respondents was also illegal and he remained more than 13 year in the surplus pool without posting till his retirement in BPS-18 (2000 to 2014); that discriminatory treatment was meted out with him, when 11 employees of SSIC, who were declared surplus employees along with the Petitioner or even after him had been posted/absorbed in different departments of the Government of Sindh, whereas the Petitioner was singled out. At this stage Petitioner referred para 4 of the ground of Memo of Petition to substantiate his claim of discrimination; that during his service tenure, he was deprived of seniority and promotion, which caused colossal loss to his career and huge financial loss to him and this discriminatory attitude of the Respondents is against basic sprit of Article 4, 25, 37 and 38 of the Constitution of the

Islamic Republic of Pakistan, 1973. In support of his contention he has placed reliance on the cases reported as Mst. Ghousia Naz Vs. Deputy Education Officer (1997 PLC (C.S) 666), Zahida Bano Vs. Government of Punjab and others (1997 PLC (CS) 662), Muhammad Ismail Solangi Vs. Deputy Inspector General, Pakistan Railways and another (2002 PLC (C.S) 255), Ahmed Ali Vs. District Education Officer (EEM) Okara (PLJ 2002 Lah 2011) and Sughra Begum Vs. Metropolitan Corporation of Lahore, etc. (NLR 1995 SC 186). Petitioner further submitted that the seniority and promotion of the Petitioner had been blocked, due to remaining in surplus pool for 13 years, which act of the Respondents is against the principles of natural justice.

4. Mr. Shehryar Mehar, learned Assistant Advocate General representing on behalf of Respondents has argued that in view of the right sizing the policy of Government of Sindh the Petitioner was declared surplus employee of (SSIC) with effect from 01.07.2000 and his service was placed at the disposal of SGA&CD (Surplus Pool) Government of Sindh Karachi for his adjustment / absorption in government department. Learned AAG contended that the service of the Petitioner could not be absorbed in any department of the Government of Sindh under Rule-9-A of Sindh Civil Servant (APT) Rules 1974 as he was not qualified to hold another post in BPS-18, commensurate with his qualifications. Learned AAG pointed out that Petitioner stood retired from Government service on attaining the age of superannuation on 10.04.2014 and his arrears w.e.f July 2000 to April 2014

amounting to Rs. 14, 97,300/- (Rupees fourteen lacs ninety seven thousand three hundred only) have already been paid to the Petitioner besides, pension and gratuity /G.P. Fund, 365 leave encashment in lieu of LPR have also been granted and paid to the Petitioner. Learned AAG on the point of discrimination, contended that no discrimination had been meted out to the Petitioner; that so far as determination of his seniority and promotion is concerned, he argued that the seniority can only be assigned to a civil servant under Rule 10 (I) of Sindh Civil Servant (Probation, Confirmation and Seniority) Rules 1975, and since Petitioner was declared surplus employee therefore he was not assigned the seniority until and unless he was posted on regular basis in any department; that Petitioner was not only being paid salaries regularly but all his dues i.e. pensionary benefits have also been paid to him by the Government. He lastly prayed for dismissal of the instant Petition.

5. We have considered the submissions of the parties and perused the material available on record and case law cited.

6. The pivotal question before us is as to whether the Petitioner's post, as Chief Designer, Designer Centre Karachi, in Sindh Small Industries Corporation was declared surplus, in view of Rightsizing Policy of the Government of Sindh and his case falls within the ambit of Rule-9A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1974.

7. To address this question, we seek guidance from Judgments of the Honorable Supreme Court, reported as Contempt proceedings against the Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456). The basic concept of Rule 9-A of APT Rules, 1974, is that a person, who has been rendered surplus on account of abolition of a post of the Government or any autonomous body or on account of permanently taking over the administration of such autonomous body wholly or partially by the Government may be appointed to any post in any Department of the Government with the following conditions:

(i) Such persons possess each qualification as are laid down under rule 3(2), for appointment to such post;

(ii) Such person shall be appointed to a post of equivalent or comparable Basic Scale and if such post is not available, then to a post of lower Basic Scale;

(iii) Seniority of such person in the new cadre shall be reckoned from the date of appointment in that cadre; and

(iv) Previous service, if not pensionable, shall not count for pension and gratuity unless Government directs otherwise].”

8. It is a matter of record that the Petitioner was performing his duty in Sindh Small Industries Corporation. Record reflects that the services of 229 officers of SSIC were declared surplus by the Corporation w.e.f. 01.07.2000, keeping in view the Rightsizing policy of the Sindh Government including the Petitioner, and their services were placed at the disposal of SGA&CD, Government of Sindh for their adjustment and absorption in Government departments in accordance with Rule 9-A of the APT, Rules 1974. We have conscientiously delved into para 126 of the Judgment

passed by the Hon'ble Supreme Court of Pakistan in the case of Contempt proceedings against the Chief Secretary, Sindh supra. On the aforesaid question, the Hon'ble Supreme Court has held in paragraph No.139 in the case of Ali Azhar Khan Baloch (Supra) that:

“A department can only abolish a post with the concurrence of the S&GAD. Abolition of a post is permissible in case, if the department requires restructuring, reform or to meet exigency of services in public interest. The department can abolish a post for justiciable reason. Therefore, in future if a post has to be abolished within the Department and/or within the statutory body or organization controlled by the Sindh Government, the Department shall seek concurrence from the S&GAD coupled with the reasons justifying abolition”.(Emphasis Added)

09. The Petitioner claims that on account of abolition of his post as Chief Designer, Designer Centre Karachi, in SSIC in view of the Notification dated 22.6.2000 issued by the Industries, Commerce & Mineral Development Department Government of Sindh and the Office Order dated 30.6.2000, he should have been absorbed in any Department of the Government of Sindh.

10. On perusal of the Notification dated 22.6.2000 and Office Order (supra), we are of the view that Rule 9-A of APT Rules, 1974 ought to have been resorted to by the Respondents in time to save the petitioner from the rigors of 13 years being kept in surplus pool. It was totally unjustified on the part of the Respondents to keep the Petitioner in surplus pool and to allow his colleagues to be adjusted / absorbed in different departments of Government of Sindh, in view of rightsizing Policy decision of the Government of Sindh as discussed supra. The aforesaid discriminatory treatment is against the basic spirit of law and Constitution, therefore in our

view this aspect of the matter needs to be looked into by the Respondent No.1.

11. In the wake of above discussion, we are not satisfied with the reasoning of SGA&CD that Petitioner was not qualified to hold any other post of BPS-18 in the Government; therefore he was not absorbed in any other department of Government of Sindh. This assertion is unjustified. Record reflects that the Petitioner's post was abolished in the light of decision of Rightsizing policy of the Government of Sindh and he was declared surplus employee. His brief absorption in planning and Development Department Government of Sindh, vide Notification dated 10.10.2001 was cancelled on 17.6.2002 without assigning any reason. Prima-facie the aforesaid act of the SGA&CD is highly deplorable. Apparently the Petitioner has succeeded to demonstrate his case on the aforesaid pleas.

12. In the result of above discussion, the case of the Petitioner falls within the ambit/ criteria and test laid down by the Hon'ble Supreme Court in CrI. Original Petition No.89/2011 in Paragraph 126 (Supra).

13. The fundamental query is with regard to the seniority of the Petitioner. Admittedly he was initially appointed in Sindh Small Industries Corporation (SSIC) as Chief Designer in BPS-17, on regular basis, thereafter he was promoted to BPS-18 and served in SSIC as a Joint Director. In our view the seniority of the Petitioner can be reckoned from the date of his induction in regular service of

(SSIC). It is well settled proposition of law that Seniority in a post, service or cadre to which a Civil Servant/Government Servant is promoted shall take effect from the date of regular appointment of such Civil Servant/Government Servant to that post, service cadre. Provided that civil servants, who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter seniority as in the lower post.

14. Now the second point of promotion of the Petitioner raised in the present matter. In our view in service cases there exists a two pronged criteria. One being eligibility for promotion and the other being fitness for promotion. While the former relates to the terms and conditions of service, the latter is a subjective evaluation made on the basis of objective criteria. No doubt in service matters, the promotion depends upon eligibility, fitness and availability of vacancy and no one including the Petitioner can claim promotion as matter of right. 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.

15. We are cognizant of the fact that the Petitioner could not meet the aforesaid criteria for the simple reason that he remained almost 13 years in surplus pool i.e. from 2000 to 2014, without any department to claim seniority and promotion. In this regard we leave it for Chief Secretary, Government of Sindh to look

into the matter of the Petitioner and decide the same in accordance with law.

16. Record reflects that the Petitioner has received his pensionary dues, as he has served the Respondent department in the days of his ability and capacity and during the formers debility; the latter compensates him for the services so rendered.

17. In the foregoing legal position of the case, we are not convinced with contention of the learned AAG representing the Respondents that the Petitioner is not entitled to the relief claimed by the Petitioner in prayer clause (b) of the petition. We are of the view that the Petitioner cannot be held responsible to remain in surplus pool of the SGA&CD for the period with effect from 2000 to 2014, thus is entitled to claim seniority and promotion in the intervening period, without discrimination.

18. In the wake of above discussion, the aforementioned Constitution Petition is disposed of in the terms whereby the Chief Secretary, Sindh/Competent Authority is directed to pass an appropriate order, in the case of the Petitioner, without discrimination, in the light of observation made by this Court, in the preceding paragraphs as provided under Rule 9-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974, and the dicta laid down by the Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch & others vs. Province of Sindh & others [2015 SCMR 456], after granting

Petitioner a meaningful hearing within a period of two months from the date of receipt of the Judgment of this Court.

19. This Petition is disposed of in the above terms along with the listed application(s)

JUDGE

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