

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –7077 of 2015

Amanullah & 03 others

Versus

Province of Sindh and 04 others

Constitutional Petition No. D –2157 of 2019

Kashmir Ahmed

Versus

Province of Sindh and 03 others

Date of hearing & order : 26.10.2020

M/S Mukesh Kumar G. Karara and Javed Ali Sangi, advocates for the petitioners.

Mr. Hakim Ali Shaikh, Addl. A.G. for the respondents along with Qazi Shahid Pervaiz, Senior Member, Board of Revenue, Sindh, Dr. Manzoor Abbas Rizvi, Secretary, Law, Law Department, Government of Sindh, Umar Farooq, Additional Secretary (Services), SGA&CD, Ahmed Ali Shah, I.G. Registration, Mr. Liaquat Ali Abro, Law Officer, Law Department, Nadeem Ahmed Qureshi, Law Officer, Law Department and Muhammad Saleem Soomro, Law Officer, Law Department, Government of Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. The petitioners, who are serving at present as Senior Clerks and Sub-Registrars in the Registration Wing of the Government of Sindh, are seeking upgradation of their post from BPS-11 to BPS-15 in terms of the Recruitment Rules notified on 20.05.1991.

2. The main controversy involved in the instant petitions is that petitioners, presently working either as Senior Clerks or as Sub-registrars in Registration Wing of the Government of Sindh, want their due promotion as Sub-Registrar in BPS-11 or upgradation of their post of Sub-Registrar in BPS-15/16 on the analogy that the posts of Sub-Registrar and Senior Clerks / Junior Clerks are under the administrative control of Sub-Registrar (BPS-11). Nonetheless, due to up-gradation of the post of Senior Clerk from BPS-09 to BPS-14 and that of Junior Clerk from BPS-07 to 11, it has become practically difficult for Sub-Registrar BPS-11 to work under his sub-ordinate official i.e. Senior Clerk who is now in

BPS-14. Principally, the next promotion of Senior Clerk in registration wing under the Recruitment Rules notified in the year 1991 is Sub-Registrar, but the same cannot be practiced because the position of Sub-Registrar still exists in lower grade i.e. in BPS-11.

3. Learned AAG, at the outset submitted that the Administrative Department i.e. Board of Revenue Sindh (RS&EP) Wing had floated a Summary for the Chief Minister Sindh for removing the aforesaid anomaly, which summary has been approved by worthy Chief Minister Sindh on 25.10.2020. Qazi Shahid Pervaiz, Senior Member Board of Revenue Sindh, present in Court, has assured us that the entire exercise mentioned in the approved summary shall be completed by all concerned on priority basis within six (06) months. For the purposes of these petitions, paragraphs 12, 13 & 14 of the summary are relevant and important, which read as under :

“12. All Sub-Registrars are doing identical work; similarly, there appears no consideration of grade / pay scale while their transfer / posting proposals are contemplated by the Board of Revenue. Having three types of grades for Sub-Registrars apparently looks quite illogical and irrational. Present ages old system or Sub-Registrars needs complete transposition and substitution; merely upgradation of some posts shall not transform any change in the present system and would tantamount to wasteful expenditure especially when financial position of provincial exchequer is heavily under stress on account of

- i) COVID19 influenced decreased provincial receipts*
- ii) Funds required for relief and rehabilitation work for damages caused due to recent torrential rains and*
- iii) Decreased receipts from Federal Government*

13. Reasoning that clerks having higher pay scales are working under Sub-Registrars who possess lower pay scale also exhibit no strong rationale as in many departments sub-ordinate officers are having higher pay scale in comparison to their administrative head Viz Health Department, Local Government Institutions (KMC, DMCs etc.), Education Department and many other.

14. In view of foregoing, it is necessitated that the department of registration be revamped in a manner that it should completely transform to service-oriented entity with increased service delivery staffed with resilient, efficient and committed officials. It is accordingly proposed that for a complete revamping of registration hierarchy in the province, a committee may be constituted under Provincial Minister for Law having members from Civil Society, Tax consultancy firms, IBA / IoBM, ABAD, Income Tax bar and one representative each from Board of Revenue and Finance department. Proposed committee may give specific recommendations for revamping and complete overhauling of registration hierarchy and tax collection mechanism under Registration Act, Transfer of Property Act and Income Tax Act for consideration by the Sindh government.”

4. Mr. Mukesh Kumar G. Karara, learned counsel for the petitioners, is satisfied with the above contents of the summary and the assurance given by the above named Senior Member Board of Revenue Sindh. He, however, states that

this Court may ensure that the entire said exercise is completed within the period undertaken before this Court and in the meantime, no direct recruitment for the post of Sub-Registrar should be made by the Administrative Department. He also emphasized that the Recruitment Rules notified in the year 1991 for the post of Sub Registrars explicitly provide a complete mechanism for the promotion of Senior Clerk to the post of Sub-Registrar, and argued that in the first instance the present petitioners are required to be promoted to the post of Sub-Registrar. He next pointed out that the reasoning of restructuring the aforesaid posts put forward by the Administrative Department is that the Government of Sindh upgraded the posts of Junior Clerk, Senior Clerk, Assistant / Head Clerk, and Assistant Superintendent vide Notification No.FD(SR-IV)2-35/2014 dated 04.08.2016, but the post of Sub-Registrar remained in the same position as per Recruitment Rules framed in the year 1991. Therefore, this post needs to be upgraded accordingly.

5. After hearing learned counsel for the parties, perusing the material available on record and the summary approved by the Chief Minister Sindh for revamping registration hierarchy in the Province of Sindh, we are of the view that prima-facie the proposed exercise of restructuring the registration hierarchy is viable and beneficial, and the parties have agreed for disposal of these petitions in terms thereof, however, subject to fixing a specified time frame for completion of said exercise.

6. With regard to up-gradation, the Honorable Supreme Court of Pakistan in *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456) laid down a complete mechanism on the subject. The concept and modalities of up-gradation again came under discussion before the Honorable Supreme Court of Pakistan in the cases of *Regional Commissioner Income Tax v. Munawar Ali* (2017 PLC (C.S.) 1030) and *Federal Public Service Commission v. Anwar-ul-Haq* (2017 SCMR 890). The general principles of up-gradation from the aforesaid three judgments of the Honorable Supreme Court can be elucidated as follows :

- “(i) „Up-gradation“ is not the same as promotion, the latter being a term specifically defined in civil service statutes;*
- (ii) Up-gradation is essentially an upgrade of the post to a higher, pay-scale“ and not a promotion to a higher grade. Hence, the incumbent of the upgraded post retains his substantive grade;*
- (iii) Up-gradation is meant for isolated posts, where the service structure does not provide avenues for promotion to a higher pay-scale thus putting the incumbent at a disadvantage as compared to other employees, its purpose being to address the stagnation and frustration of the employee of such post so that he/she remains productive;*

(iv) To justify up-gradation, the Government will have to demonstrate that it is required for restructuring or reforming the department or to meet exigencies of service in the public interest. In other words, up-gradation should be according to a scheme or a policy;
(v) Up-gradation should not be to the prejudice of other employees and should not be used to by-pass prescribed rules of promotion.”

7. In the light of the above discussion, we hereby dispose of these petitions in the terms of the Summary approved by the worthy Chief Minister Sindh on 25.10.2020 with direction to include the learned Advocate General Sindh in the committee proposed in the Summary as a member, with further direction to the said committee to complete the entire above-said exercise **WITHIN SIX (06) MONTHS** in consonance with the dictum laid down by the Hon’ble Supreme Court of Pakistan and the relevant provisions of law ; and, if the committee finds it necessary to propose amendment(s) in the relevant laws and/or rules, it may do so, and the amendments, if any, shall also be made within the period stipulated above. Till the completion of the aforesaid exercise, no fresh recruitment shall be made against the post of Sub-Registrar.

8. By consent, both these petitions and all applications pending therein stand disposed of in the above terms with no order as to costs.

J U D G E

J U D G E

Shahzad*

-