

# IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No. D -5978 of 2017**

Mustafa Ali & 13 others

*Versus*

The Government of Sindh and 13 others

Date of hearing  
& order : 12.01.2021

Mr. Abdul Salam Memon, advocate for the petitioners.

Malik Naeem Iqbal, advocate for respondents No.4 to 14.

Mr. Ali Safdar Depar, Assistant Advocate General along with Muhammad Khalid Qureshi, Director of Social Welfare and Focal Person.

### **ORDER**

**ADNAN-UL-KARIM MEMON, J.** - In pith and substance, the petitioners have called in question the out of turn promotions made in favour of the private respondents, in violation of the dictum laid down by the Honorable Supreme Court in its various pronouncements and recruitment rules notified for the subject posts i.e. Social Welfare Officer/Deputy District Officer(SW)(BPS-17).

2. Essentially in service matters, more particularly in the seniority/promotion case no vested right/fundamental right can be claimed as the promotion depends upon the various factors, which require consideration for the promotion of the employees. In service cases there exist two-pronged criteria for the promotion. One being eligibility and the other being fitness, while the former relates to the terms and conditions of service, the latter is a subjective evaluation made based on objective criteria. No doubt, the promotion depends upon eligibility, fitness, and availability of vacancy, length of service and no one including the Petitioners as well as private respondents can claim promotion as a 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 thereunder.

3. After arguing the matter at some length, both the parties agreed for disposal of this petition, so far as prayer clauses A and B are concerned, in the terms of recruitment rules notified vide notification dated 6.1.2009 (page 43). So far as the contention of the Petitioners with respect to the eligibility of the private respondents for promotion in the next rank is concerned, they contested the matter on merit.

4. We have heard learned counsel for the parties on the subject issue and perused the material available on record.

5. In the above circumstances, we are of the view that the claim and counterclaims of the Parties cannot be adjudicated by this Court under Constitutional jurisdiction.

6. During the course of arguments, it has been urged that in presence of prescribed rules notified on 06.01.2009, the promotion case of private respondents cannot be adjudged to be unlawful for the reason that seniority is not the sole criteria for the promotion; and none of the senior employees have raised any grievance against them; that the petitioners were appointed in the year 2016 as Assistant Directors in Social Welfare Department, whereas the private respondents were promoted in the year 2012 in the light of recruitment rules notified on 06.01.2009. Be that as it may, we direct the competent authority to probe whether while granting promotion to the private respondents, the senior employees were considered for promotion or otherwise and submit the compliance report through MIT-II of this Court, within two (02) months. Let notice be issued to the Chief Secretary and Secretary Social Welfare Department, Government of Sindh, for compliance.

7. In light of the above facts and circumstances, this petition is disposed of along with the pending application(s) in the above terms, with no order as to costs.

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