

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -1018 of 2021

Riaz Hussain

Versus

Province of Sindh and 07 others

Date of hearing

& order : 10.02.2021

Mr. Ghulam Hyder Shaikh, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Petitioner, who is serving at present as Project Director SCARP North Nohri and is aggrieved by the decision of the Provincial Selection Board No.II dated 07.01.2021 (PSB), whereby the promotion of respondent No.8 to the post of Superintending Engineer (Civil) (BS-19) was allowed in absence of his Annual Confidential Reports (`ACRs`) for a certain period.

2. Mr. Ghulam Hyder Shaikh, learned counsel for the petitioner, has mainly contended that the decision of PSB-II for promoting the private respondent No.8 in BPS-19 against future vacancy in absence of ACRs is/was an erroneous decision. Per learned counsel, the private respondent is not fit for promotion as per the working paper prepared by the respondent-department. Learned counsel asserted that under the Promotion Policy and Decisions of the Hon'ble Supreme Court of Pakistan on the subject issue the private respondent was unfit for further promotion on the premise that he failed to earn the ACRs during his tenure of service. He prayed for the direction to the respondents 1 to 7 to maintain criteria for determination of inter-se-seniority on merit as per promotion policy.

3. We asked the learned counsel as to how he is an aggrieved person to call in question the promotion of private respondent as the burden of proof is upon the Petitioner to demonstrate as to which of his fundamental rights had been infringed upon. Learned counsel failed to point out an infraction of any of his fundamental rights to claim issuance of the Writ of Mandamus and Writ of Quo warranto. Prima facie, the entire case of the Petitioner is based on factual controversy and has no locus standi to file this Petition because he is not an

aggrieved person. The subject matter of the writ petition pertains to the terms and conditions of service; therefore, the jurisdiction of this Court is barred under Article 212 of the Constitution, read with section 4 of Service Tribunal Act. Prima facie, the petitioner has failed to point out any inherent defect in promotion of the respondent No.8 for the simple reason that the respondent-department while issuing working paper for PSB-I observed at paragraph 6 that the respondent No.8 was also assigned inter-se-seniority at Sr. No.2 below Mr. Muhammad Ismail Daudpoto and above Mr. Imran Shaikh by the SGA&CD vide notification dated 11.1.2021. Quantification of entire service record, synopsis of ACRs for the last five years of each officer, which factum prima facie suggest that the PSB was well aware of the factum of the ACRs of private respondent and accorded approval of his promotion in next grade.

4. Before parting with this order, it may be observed that preparation of ACR / PER relates to the Efficiency and Discipline of a civil / Government servant, which is the function of the reporting officer. *Prima-facie* the evaluation reports play a vital role in considering the case of promotion. However, the promotion depends upon eligibility, fitness, and availability of vacancy. It is essential for the competent authority to take prompt disciplinary action against the civil / Government servant under The Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, ('Rules') if he/she is found persistently corrupt; and/or is possessing pecuniary resources and/or property, etc. disproportionate to his/her known sources of income; and/or, remains frequently on unauthorized absent from duty. Furthermore, if two or more penalties under the Rules have been imposed on him/her; and, his / her overall grading of the ACRs was/is average, and/or adverse remarks regarding the acceptance of responsibility, integrity, reliability, the output of work and behavior with the public were recorded in the ACRs duly conveyed to the concerned civil servant and his representation against it finalized, as per rules; and, if he/she was/is recommended twice for supersession by the Provincial Selection Board PSB/DPC and the recommendation of the PSB/DPC was/is approved by the competent authority.

5. In our view, to qualify for the promotion, the least that is expected of an employee is to have an unblemished record. This is the minimum expectation to ensure a clean and efficient administration and to protect the public interest. An employee found guilty of misconduct cannot be placed at par with the other employees, and his / her case has to be treated differently. While

considering an employee for promotion his / her entire service record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him / her promotion, such denial would not be illegal or unjustified under the service jurisprudence.

6. The prime object of maintaining ACR/PER is to assess whether the officer under consideration is entitled to promotion or not, and such assessment, in addition to his / her performance and eligibility, would also include whether or not he/she has been awarded any major or minor penalty. The DPC, which is held to finalize the decision about promotion based on the above assessment, is required to make an overall assessment of the performance of the civil servant based on a working paper prepared by the department concerned. Therefore, preparation and presentation of ACRs is the duty of the department concerned and not of the civil / Government servant for the simple reason that ACRs are confidential documents to which the officer concerned cannot have any access. The law only requires that if any adverse remarks are made in ACRs, the officer concerned should be informed so that he/she may be able to improve his / her performance to make up for the deficiency.

7. Primarily the evaluation made by an Expert Committee should not be easily interfered with by the Court which does not have the necessary expertise to undertake such exercise that is necessary for such purpose. It is a settled proposition of law that subject to its powers and authority, the DPC has to assess every proposal for promotion on case to case basis under the law. In cases where the disciplinary case / criminal prosecution against the civil / Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC which kept its findings pending in respect of the civil / Government servant, the appointing authority may consider his / her ad-hoc promotion under law.

8. In view of the above discussion, it is directed that the Government of Sindh shall ensure that in future before convening the meeting of PSB and/or DPC for considering the cases for promotion of civil / Government servants, the department concerned shall provide the complete set of ACRs / PERs of the concerned officer to PSB / DPC well in advance so that the cases for promotion should be decided without any delay. It may be observed that if the promotion of any civil / Government servant is deferred or delayed after passing of this order for want of ACR / PER, the Secretary of the department concerned, the competent authority, and all officials responsible for deferring or delaying the

promotion shall be held personally responsible for defiance of the above direction of this Court.

9. With the above observations and direction, the petition stands dismissed in limine along with pending application(s) with no order as to costs.