

IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 8251 of 2019

Jamal Nasir vs. Government of Sindh and 04 others.

Date of hearing
& decision : 10.01.2020.

Syed Abdul Waheed, advocate for the petitioner.
Mr. Hakim Ali Shaikh, AAG a/w Imdad Hussain Ujjan, Assistant Director, Regional Directorate, STEVTA.

ORDER

ADNAN-UL-KARIM MEMON, J. : Through the captioned constitutional petition, petitioner has invoked the Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and has sought direction to the Managing Director of Sindh Technical Education and Vocational Training Authority (STEVTA) to place his case for promotion in BPS-19 as Associate Professor before the Provincial Selection Board-II, on the premise that he is fit and eligible to be promoted in next rank, though he is at the verge of retirement i.e. on 13.01.2020.

2. Mr. Hakim Ali Shaikh, learned AAG along with Imdad Hussain Ujjan, Assistant Director, Regional Directorate STEVTA has consented for disposal of this petition to consider his case for the promotion from Assistant Professor (BPS-18) to the post of Associate Professor (BPS-19) in STEVTA under Rule 7-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, subject to the condition that if he is at all found fit to be promoted in the next rank.

3. Syed Abdul Waheed learned counsel for the petitioner is satisfied with the statement of learned AAG as well as Assistant Director, Regional Directorate, STEVTA and seeks disposal of the petition in terms thereof.

4. Before disposing of this petition in view of the consent of the parties, we deem it necessary to observe that *prima facie*, the petitioner was inducted as Assistant Professor in Government service in the year 1994 through competitive process i.e. Sindh Public Service Commission. The name of petitioner appears at Sr. No.04 of the Seniority List of Assistant Professors BPS-18 (Auto and Diesel) having bachelor's degree in the Mechanical Discipline. As per record, petitioner has 26 years' service in his credit, his request for promotion in BPS-19 in STEVTA was found to be genuine by the respondent department and duly forwarded his case to the Secretary, Universities and Boards Department, Government of Sindh

vide letter dated 27th November, 2019 but on account of some lethargic attitude of the respondent-department his case was not placed before the PSB-II for consideration. Record further reflects that Services, General Administration & Coordination Department, Government of Sindh vide notification dated 2nd October, 2019 approved the recommendation of the PSB-II and promoted 05 Assistant Professors to the post of Associate Professor in BPS-19 (Electronics /Technical Side) STEVTA on regular basis, whereas the case of petitioner was not at all placed for consideration for the reasons discussed *supra*. Now, the petitioner is attaining the age of superannuation on 13.01.2020 and still the respondent-department is reluctant to either reject or accept his request for promotion under Rule 7-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. Petitioner has pointed out malice on the part of respondent department on the premise that his immediate junior Zulfiqar Ali Sand has been recommended for promotion under Rule 7-A *supra* vide notification dated 2nd October, 2019 available at page-27 and 29 of the memo of petition whereas petitioner has been ignored without valid reason.

5. We have also noted that the respondents have not assigned any valid reason for not considering the case of petitioner for promotion in next rank. However, his case for proforma promotion after his retirement, i.e. on 13.1.2020 can still be considered by the competent authority.

6. In view of the above circumstances, we may observe that discriminatory treatment has been meted out with the petitioner by the respondents, which attitude on their part needs to be curbed.

7. In view of the above legal position, a civil/government servant is entitled for proforma promotion, once during his service his promotion is approved by the Competent Authority and in the meanwhile if he superannuates, he is entitled for all benefits as admissible under the law. We are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of *Iftikharullah Malih Vs. Chief Secretary and others* (1998 SCMR 736) and *Askari Hasnain Vs. Secretary Establishment & others* (2016 SCMR 871).

8. In the present case, there is no recommendation for promotion of the petitioner in next rank and he is now at the verge of retirement from government service on 13.01.2020, therefore, by consent of the parties, we deem it appropriate to send the matter of the petitioner for the promotion from Assistant Professor (BPS-18) to the post of Associate Professor (BPS-19) in STEVTA to the Competent Authority of Sindh Government for consideration in accordance with

law, within a period of one month, from the date of receipt of the order of this Court.

Let notice be issued to the Chief Secretary, Government of Sindh for compliance.

Petition stands disposed of in the above terms with no order as to costs.

JUDGE

Nadir/-

JUDGE