

# IN THE HIGH COURT OF SINDH KARACHI

## **Before:**

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

## **C.P. No. D- 2795 of 2021**

### **Shahana Bano**

Petitioner

Through : Mr. Abdul Salam Memon and Ms. Rabya Javed , advocates.

Respondents No.1 & 2

Through : Mr. Ali Safdar Depar, AAG.

Respondents No.3 & 4

Through : Mr. Muhammad Wasiq Mirza, advocate a/w Dr. Azhar Afaq Registrar DUHS

Dates of hearing :

**06.10.2021, 07.10.2021 & 08.10.2021**

Date of Order :

**08.10.2021**

## **ORDER**

**ADNAN-UL-KARIM MEMON,J:-** Through the instant petition, the petitioner is seeking direction to the respondents to upgrade/re-designate the post of Senior Librarian BPS-18 to BPS-19 in Dow University of Health Sciences (DUHS), in terms of the policy decision of the Government of Sindh.

2. Facts, in brief, appear to be that the petitioner was originally appointed on 2.2.1988 in Department of Archaeology Southern Circle, Government of Pakistan, as Librarian BPS-14. In the meanwhile petitioner applied, through proper channels, for the post of Librarian BPS-17, Health Department Government of Sindh; and, was selected through Sindh Public Service Commission (SPSC) vide letter dated 7.11.1990. Petitioner was subsequently appointed as Librarian BPS-17, Health Department Government of Sindh vide appointment letter dated 22.1.1991. During her service tenure, initially, she was posted in Chandka Medical College Larkana (CMC), on the subject post, however, in the year 1995, the post of Librarian BPS-17 was shifted from CMC to

Dow Medical College Karachi (DMC) where the competent authority allowed the petitioner to continue in (DUHS) against newly created /shifted post as Librarian BPS-17. After 18 years, on the recommendation of Syndicate of (DUHS) vide Office Memorandum (OM) dated 5.12.2008, the post of Librarian BPS-17 was upgraded/re-designated, as Senior Librarian BPS-18. Petitioner continued to serve in DUHS on the same post without further promotion. She raised her voice of concern by writing many letters to the competent authority for her promotion in BPS-19 as Chief Librarian. Per learned counsel, the genuine request of the petitioner has been ignored constantly by the respondent- DUHS, on the ground inter-alia that the post of Chief Librarian is not vacant; that pursuant to OM dated 2.2.1988 her total length of service comes to approximately 33 years, thus entitled her for the grant of BPS-19. Petitioner has placed his claim of either promotion or up-gradation to BPS-19 on the strength of her length of service.

3. Mr. Muhammad Wasiq Mirza learned counsel for the respondent- DUHS has opposed the prayers of the petitioner, inter-alia on the ground that the post of Chief Librarian is not vacant; that promotion could only be granted subject to availability of post; that neither promotion nor up-gradation is the vested right of the petitioner.

4. We have heard the arguments of learned counsel for the parties and perused the record. To appreciate whether the petitioner has the requisite length of service to claim promotion in BPS-19. It would be beneficial to glance through the policy decision of the Government of Finance Division (Regulation Wing) vide Office Memorandum dated 02.06.1983, which reads the minimum length of service for promotion to various grades shall be as follows:-

For Grade-18 (5 years in grade 17)  
For Grade-19 (12 years in grade 17) and above  
For Grade-20 (17 years in grade 17) and above  
For Grade-21 22 years in grade 17 and above.

5. From bare perusal of the above criteria, it could be seen that same is applicable for promotion only. Admittedly, the case of the petitioner is of two folds i.e. now proforma promotion in BPS-19 and up-gradation of her post in BPS-19.

6. The Honorable Supreme Court in the case of Ali Azhar Khan Baloch and others versus Province of Sindh and others (2015 SCMR

456) has dealt with implication and purport of up-gradation, as reiterated in the case of Regional Commissioner Income Tax, Northern Region, Islamabad and another versus Syed Munawar Ali and others (2016 SCMR 859).

7. Principally, up-gradation is not a promotion, as generally misunderstood. Up-gradation is carried out without necessarily creating posts in the relevant scales of pay it is carried out under a policy decision. It resorts only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Up-gradation under the scheme is personal to the incumbents of the isolated posts, to address stagnation and frustration of incumbent on a particular post for sufficient length of service on a particular post without any progression or avenue of promotion.

8. We have noticed that the Post of Chief Librarian BPS-19 is a promotion post to be filled amongst Senior Librarian BPS-18. During the hearing of the case, we have been informed that the incumbent of the subject post is absent, for a long time, and as per the report of Registrar DUHS; he is indulged in subversive activities. We are shocked to know this fact that the competent authority of DUHS is still keeping the post of Chief Librarian vacant without taking any disciplinary proceedings under the DUHS disciplinary rules; and due to that reason, the promotion of the petitioner could not take place and stuck up. And in the meanwhile, she reached the age of superannuation on 02.10.2021.

9. At this stage, learned counsel for the petitioner submits that he will be satisfied if the case of the petitioner is transmitted to the competent authority of respondent-university for grant her either proforma promotion or proforma up-gradation of the subject post in BPS-19 on the premise that during the pendency of this petition, the petitioner stood retired from the service of the respondent-university without her fault.

10. It is germane to mention that the Hon'ble Supreme Court vide judgment dated 12.09.2017 in Crl. Original Petition No.97/2017 in Crl. Original Petition No.89/2011 (Kaneez Zehra Kazmi v. Syed Hussain Naqvi) has already dealt with the issue of up-gradation of Librarian and prima-facie,

the case of the petitioner is akin to the case decided supra. An excerpt of the order is reproduced as under:-

*“9. The up-gradation granted to the petitioner from BPS-16 to BPS-17 and from BPS 17 to BPS-18 appears to have been to incentive encouraged and to grant financial benefits without creating additional vacancies. The petitioner did not have any prospect of promotion, there was no other librarian and that the petitioner did not affect the right of any other person when she was granted the upgradation. It will also be a case of extreme hardship if the benefits that the petitioner has earned/accumulated over the years are retrospectively undone for no fault of her own when she has retired from service.”*

11. The Registrar of respondent-university is present concedes the legal position of the case and submits that the case of the petitioner shall as well as one Shahzad who is alleged absconder since many years be placed before the syndicate and the competent authority shall decide their fate within a reasonable time.

12. In view of the above, the competent authority of respondent-university is directed to consider the case of the petitioner for either proforma up-gradation or proforma promotion in BPS-19 within 60 days.

13. The petition stands disposed of in the above terms.

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Shahzad Soomro