

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P No.D-526 of 2012

**BEFORE: Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry**

Petitioner(s) : *Through Mr. Ghulam Shabbir Pathan,
Advocate.*

Respondents : *Through Mr. Muhammad Arshad S.
Pathan, Advocate.*

Respondents : *Through Mr. Ashfaqe Nabi Qazi,
Asst. Attorney General for Pakistan.*

Date of Hearing : *26.10.2021*

Date of Order : *26.10.2021*

ORDER

ADNAN-UL-KARIM MEMON, J. - Petitioner seeks declaration to the effect that he is entitled to the same relief as given to those candidates who appeared in Departmental Examination in the year 2002 and failed to qualify in one paper but subsequently allowed to appear in that particular paper, and after qualifying promoted as commercial Assistant in respondent Hyderabad Electric Supply Company (HESCO).

2. Mr. Ghulam Shabbir Pathan learned counsel for the petitioner has argued that the petitioner was discriminated against as other candidates / employees who appeared along with him in written test were also failed and considering their past performance the result was condoned and they were considered for promotion in terms of Notification dated 23.6.2004.

3. Mr. Muhammad Arshad S. Pathan learned counsel for the respondents has submitted that they appeared in the supplementary examination and cleared the examination / written test whereas the departmental promotion committee considered their case for promotion and this is the classification and distinction between the two. He also pointed out that the petitioner has recently been

promoted in due course. To that learned counsel for the petitioner submitted that the petitioner is entitled to promotion w.e.f. 2002.

4. We have considered the submissions of the parties and perused the record.

5. Primarily, the fitness for promotion introduces an element of subjective evaluation based on objective criteria. It is in this background that the question of fitness or suitability for promotion has always been considered to be exclusively within the jurisdiction of competent authority not shared by the Court exercising supervisory jurisdiction in respect of eligibility and qualification. Prima-facie the petitioner failed in departmental examination long ago, and now claims immunity on the plea of discrimination on the premise that his colleagues were allowed the promotion though they failed in the departmental examination. Prima-facie such submission does not make any sense to remit the case of the petitioner to reconsider his candidature on the aforesaid analogy, especially when the other candidates were given promotion only after they passed the supplementary examination.

6. We have examined the exercise of powers of the competent Authority in disagreeing with the position of the petitioner for reconsideration and to that extent the order of the competent authority of respondents was justifiable and thus the constitutional Petition filed by the petitioner is not maintainable.

7. For the foregoing reasons, the instant petition is dismissed along with pending applications with no order as to costs.

JUDGE

JUDGE

Hafiz Fahad