

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Irfan Saadat Khan, J.**  
**Agha Faisal, J.**

CP D 5491 of 2020 : Makhdoom Toufiq Ahmed Qureshi  
vs. Province of Sindh & Others

For the Petitioner : Mr. M.M. Aqil Awan, Advocate  
Mr. Danish Rashid Khan, Advocate

For the Respondents : Mr. Ali Safdar Depar  
Assistant Advocate General Sindh

Date/s of hearing : 12.11.2021

Date of announcement : 17.11.2021

## ORDER

**Agha Faisal, J.** The petitioner, appointed initially on an ad-hoc basis in BPS-17 in the Directorate of Labour and subsequently regularized per the Sindh Civil Servant (Regularization of ad-hoc appointment) Act 1989, is aggrieved that he has remained in BPS-19 while posts of his contemporaries have been upgraded to Grade 20. Through this petition he seeks the creation of a post of BPS-20 in the technical cadre of the Labour Directorate, with the nomenclature Director General Labour, and prays that the Provincial Selection Board be convened within 30 days to consider the petitioner for the said post.

2. Petitioner's learned counsel graciously brought to our attention that the petitioner had earlier filed a petition, being CP D 2291 of 2019 ("Earlier Petitioner"), which had been withdrawn on 09.04.2019 so as to enable the petitioner to seek "*appropriate remedy before the appropriate forum in accordance with the law*".

3. We were also appraised that thereafter the petitioner filed an appeal before the learned Sindh Service Tribunal, being Appeal 387 of 2019 ("Service Appeal"), which was dismissed by the learned Tribunal vide judgment dated 12.10.2020, after considering the controversy agitated before us herein<sup>1</sup>.

4. Notwithstanding the foregoing, it was the crux of the petitioner's case that it was discriminatory for the petitioner to remain in his grade while his

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<sup>1</sup> Paragraph 10 of the judgment in the Service Appeal.

contemporaries were enjoying a higher grade, by virtue of their posts having been upgraded, hence, the petition ought to be allowed.

5. The learned Assistant Advocate General Sindh stated at the very onset that the petition was misconceived as the grievance of the petitioner had already been agitated vide the Earlier Petition, since withdrawn, and the Service Appeal, since dismissed. Without prejudice to the foregoing, it was submitted that the summary in respect of up-gradation of the post held by the petitioner had admittedly been dismissed and adjudication of such a policy decision was unmerited<sup>2</sup>. It was further added that any personal expectation of a petitioner could not be made the basis to impose fiscal liability upon the Government.

6. We have appreciated the arguments of the respective learned counsel and have considered the record before us. In our considered opinion the primary question to consider is that of our jurisdiction, in view of the import of the withdrawal of the Earlier Petition and the dismissal of the Service Appeal.

7. While the withdrawal / dismissal order of the Earlier Petition had been placed before us, there was no document to ascertain the precise nature of the Earlier Petition. In this regard we summoned the file of the Earlier Petition from the record room and perused the same. Comparison of the text of the Earlier Petition and the present petition demonstrated that the grievance remained essentially the same and the arguments advanced by the petitioner's learned counsel were also identical in essence to the facts and grounds pleaded in the Earlier Petition.

Respectfully, we are of the view that since the same controversy had been the subject of the Earlier Petition, which had been withdrawn, by the petitioner of his own volition, to seek the appropriate remedy, then no case stood made out before us to entertain this subsequent petition.

8. This leads us to the *appropriate remedy and forum*, as deemed proper by the petitioner, being the Service Appeal before the learned Service Tribunal. While the memorandum of appeal was not placed before us by the petitioner, it was appended to a note submitted by the petitioner post the final hearing. While submission of documents post final hearing cannot be appreciated, it was seen that the content of the memorandum of appeal was essentially the same as the Earlier Petition (and the present petition) and that the prayer clause was identical to that of the Earlier Petition. While consideration of the document may

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<sup>2</sup> Reliance was placed on a recent, yet unreported, judgment of the august Supreme Court dated 04.03.2021 in *Government of KPK vs. Syed Sadiq Shah & Others (Civil Appeal No. 827 of 2020)*.

only bulwark our view, however, propriety demands that we eschew predicating our findings there upon and rest our conclusion of the valid record before us.

9. *Prima facie* perusal of the judgment in the Service Appeal demonstrated that paragraph 10 thereof meticulously details that the present grievance<sup>3</sup> was agitated there before. The learned Tribunal meticulously recorded the controversy, including without limitation the rejection of the summary to upgrade the petitioner's post while the posts of the contemporaries had earlier been upgraded, however, remained impervious and was pleased to dismiss the Service Appeal.

While the petitioner had every right to assail the findings of the learned Service Tribunal before the august Supreme Court, the same was *admittedly* abjured in favor of institution of the present petition. The hierarchy of appeal from judgments of the learned Service Tribunal is clear and no rationale for avoiding the hierarchy was pleaded in the memorandum of petition and no cogent justification was articulated before us.

10. Article 199 of the Constitution contemplates the discretionary<sup>4</sup> writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter *admittedly* there existed an adequate remedy, however, the same was voluntarily repudiated, therefore, no case has been set forth before us for invocation of the writ jurisdiction.

11. In view hereof, we are of the considered opinion that no case has been set forth before us to merit the exercise of writ jurisdiction of this Court, therefore, the listed petition, and accompanying application/s, is hereby dismissed.

JUDGE

JUDGE

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<sup>3</sup> Common to the Earlier Petition and the present petition.

<sup>4</sup> Per *Ijaz Ul Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.