

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-3024 of 2019

Dr. Qararo Shah,
Petitioner through : Syed Amir Ali Shah Jeelani, advocate

Respondents
through : Mr. Muhammad Nishat Warsi, DAG

Respondent No.4
through : Mst. Shagufta Burney, advocate

Date of hearing
& order : **13.01.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. In the above-referred petition, the petitioner is seeking a declaration to the effect that the act of respondents promoting non-cadre official to the service cadre of the petitioner, ignoring the decision of the Hon'ble Supreme Court of Pakistan, is illegal, discriminatory, in violation of the rules and provisions of the Constitution of the Islamic Republic of Pakistan, 1973, and the petitioner is fit and eligible may be promoted to the post of Director (BPS-19) in National Research Institute of Fertility Care (NRIFC) Karachi being eligible in the cadre as he is senior-most official, however that promotion may take place from the date when it was due.

2. Background of the case, as narrated in the memo of petition, is that the petitioner who is holding two degrees equivalent to M.Phil in Medicine and Public Health (MCPS MPH) and Ph.D Scholar, was appointed through Federal Public Service Commission as Deputy Director/Senior Scientific Officer (BPS-18) in 2010 and he is presently working in NRIFC on the same position; that there are four posts of Director Technical (BPS-19) are lying vacant out of which three at NRIFC; that respondent No.4 Intesar Ahmed, an officer of Non-Medical cadre was promoted as Director (BS-19) with effect from 14.03.2019, but his name was not included in any final seniority list of medical cadre officer ever in more than 30 years; that the name of petitioner was deliberately dropped though he fulfilled all requirements and eligible for promotion from April, 2017; that the petitioner preferred departmental appeal to the respondent No.1 but was ignored; that the petitioner was also deprived of health professional allowance being a medical officer from March 2012, while other non-technical officials were drawing such allowance. He prayed for allowing the instant petition.

3. Mr. Muhammad Nishat Warsi, learned DAG, assisted by Mst. Shagufta Burney, advocate representing respondent No.4, has argued that the petitioner is

neither a senior Deputy Director in the department nor there is any post of Senior Deputy Director BS-18 available at NRIFC, Karachi; that respondent No.4 was appointed based on recruitment rules of Ministry of Population Welfare (Defunct), Islamabad for the technical post. He was kept on the seniority list of technical personnel throughout his career. He was senior most Deputy Director BS-18) w.e.f. 16.08.2002. As per the seniority list, his promotion case was considered by the Departmental Selection Board (DSB) on humanitarian grounds before his retirement as he was retired from Government Service with effect from 22.3.2019; the case of the petitioner was included in the DSB held on 14.3.2019 but was not considered by the DSB; that the proposal for promotion against three vacant posts was submitted before the DSB; there is no any seniority list issued except original seniority list issued by the Ministry of NHS, R&C; that the health allowance was stopped by the Finance Division vide their letter dated 27.10.2014 and the same was withdrawn in the year 2014 and the case regarding grant of health allowance to the NRIFC and CW&S is in progress with the administration of Ministry of NHS, R&C. He has prayed for dismissal of the instant petition.

4. We have heard learned counsel for the parties and perused the material available on record.

5. In principle, the Petitioner has called in question the promotion of the private respondent as Director (BPS-19) NRIFC under Ministry of National Health Services, Regulations & Coordination with effect from 14.3.2019 vide notification dated 22.3.2019, on the premise that he was/is a non-cadre officer and was promoted to the cadre of the petitioner ignoring the decision of the Hon'ble Supreme Court of Pakistan, rules, and regulations. In alternate, he seeks his promotion in BPS-19 under law.

6. Mst. Shagufta Burney, learned counsel for the respondent, has briefed us on the subject and submitted that respondent No.4 was appointed on adhoc basis in the year 1986 for six months or till the availability of the Federal Public Service Commission nominee, subsequently, he appeared in the Competitive Examination of FPSC held for the post of Research Assistant, and after selection, he was regularized as Research Assistant (BPS-17) with effect from 15.11.1986 vide notification dated 5.3.1987; that to improve his qualification and quick advancement in service, he did his Ph.D. in the year 2003 from Karachi University. Subsequently, his name was inducted in the seniority list of BPS-17 officers (Technical); and, on 2.10.1993 a provisional seniority list of BPS-17 officers(Technical) was issued by the respondent department and his name was placed at Sr. No. 04, however, in the year 1998 another seniority list was issued and he was shown junior to other colleagues; and, they were promoted in BPS-18. He being aggrieved by and dissatisfied with the non-inclusion of his name in the seniority of BPS-18 officers and promotion of his juniors, preferred Service Appeal No.88(K)(CS)/2006 before the learned Federal Service Tribunal Islamabad Karachi Bench, which was

dismissed vide order judgment dated 18.10.2009 on the premise that he was assigned seniority in the cadre of Deputy Director / Senior Scientific Officer BPS-18 along with other BPS-18 (Technical) Officers being feeding post for promotion to BPS-19 (Technical) as after his promotion from Research Associate to Senior Scientific Officer was not included in the combined seniority list of BPS-18 which was a separate cadre, having a non-medical degree and working against the technical post. Per learned counsel, he preferred Civil Appeal No.15-K/2010 before the Hon'ble Supreme Court of Pakistan which too was dismissed vide order dated 10.11.2011 with the following observation:

“4. We have heard both the Appellants, who appears in person, as well as learned D.A.G. From the record it would be seen that in the year 1998, two seniority-lists were prepared in the department of Officers in BS-16 to BS-20, i.e. Technical and Non-Technical Cadres and intimation was issued to all concerned to file any objections, if necessary. The Appellant was placed in one of these lists being Technical, i.e. not-qualified MBBS Doctor, but he never raised any objection. He was then promoted from BS-17 to BS-18 on 16.08.2002 on the basis of separate seniority list of Scientific Officers and was assigned the seniority from the date of his promotion. Then, he was promoted in his turn and no junior officers have been promoted thereafter and the Appellant has never been superseded, the juniors, consequently we are of the opinion that at this belated stage he cannot claim such seniority and that too retrospectively. Hence, we find no merits in this appeal, which is accordingly dismissed.”

Learned counsel further pointed out that respondent No.4 was promoted as Director (BPS-19) on 22.3.2019 and stood retired from Government Service on 22.3.2019, thus his seniority and promotion cannot be called into question. Learned counsel referred to para-wise comments filed on behalf of respondent No.4 and prayed for dismissal of the instant petition.

7. We have noticed that respondent No.4 was promoted as Director (BPS-19) in NRIFC on humanitarian grounds just before his retirement on 22.3.2019. Since the Hon'ble Supreme Court of Pakistan has dismissed the plea of the private respondent with the above strong observation, however, in the intervening period he stood retired from service, thus, in our view, no action could be taken against him at this stage and point in time being a retired officer. However, in the interest of justice, we deem it appropriate to direct the competent authority of the respondent- NRIFC to consider the case of the petitioner for promotion to next rank on regular basis, if he is found fit and has a requisite length of service, under the law without discrimination. The aforesaid exercise shall be undertaken within 01 month and a compliance report be submitted through MIT-II of this Court.

8. This petition stands disposed of in the above terms.

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