

IN THE HIGH COURT OF SINDH, KARACHI

CP. No. D- 258 of 2022

Date Order with Signature(s) of Judge(s)

Fresh Case

- 1.For order on Misc No.1236/2022
- 2.For order on office objection no.04,07,18 & 24
- 3.For order on Misc No.1237/2022
- 4.For order on Misc No.1238/2022
- 5.For hearing of main case

18.01.2022

Malik Altaf Javed, advocate for the petitioners.

1. Urgent application is allowed.
2. To be complied with within seven days.
3. Granted subject to all just legal exceptions.
- 4-5. It is inter-alia contended by the learned counsel for the petitioners that the petitioners are working as Assistant Executive Engineers (Mechanical) in Irrigation Department for the last 28 years in (BPS-17) and due to their slow promotion to a higher post, they are suffering from a sense of deprivation, although the career progression was earlier relatively slower due to availability of fewer vacancies in promotional share. Learned counsel submits that it further increased decline due to shifting of higher posts from their cadre to the civil cadre of Engineering Branch some time ago; that rendering 28 years' service since 1990 as Graduate Executive Engineers (Mechanical), they are still serving in BPS-17. He further submits that the petitioners have been seriously discriminated against since time scale promotion has been granted not only by respondent No.3 but also the same benefit has been extended by the other junction department under the control and management of Respondent No.2. In support of his contentions, he relied upon the case of Regional Commissioner Income Tax, Northern Region, Islamabad and another v. Syed Munawar Ali and others, **2017 PLC (CS) 1030**.

In principle, the issue is about the grant of time-scale incentives. Prima facie, the time-scale is not a promotion under the Service Jurisprudence rather this is an incentive granted to the officer due to the non-availability of their promotion avenue in their cadre. Learned counsel for the petitioners has relied upon the summary for Chief Minister Sindh for grant of time scale incentive to a higher grade in relaxation of rules. The Administrative Department has opposed their request on the premise that grant of a higher grade based on time-scale to Assistant Executive Engineer (Mechanical) BPS-17 lacks justification as there is already an existing line of promotion of these posts. If the ladder of promotion is with the administrative Department may restructure the service structure of these posts so that employees for further elevation may be created and they suggested that their cases for promotion as per existing recruitment rules be placed in DPC for consideration, the competent authority approved the summary as suggested by the Finance Department. They

approached the learned SST by filing Service Appeal No.450 and 641 of 2019 which were disposed of/dismissed they also approached the Hon'ble Supreme Court of Pakistan which met with the same fate vide order dated 20.10.2021. An excerpt of the Hon'ble Supreme Court of Pakistan is reproduced as under:

“Counsel for the Appellants at the very outset submits that Appellants do not intend to press these Appeals and would pursue their remedy for up-gradation in accordance with law. Both Appeals accordingly are dismissed. The Appellants may pursue their remedy if any in accordance with law.”

Per learned counsel for the petitioners, the issue of grant of incentive of higher scale grade based on timescale has already been granted to the teaching staff (School side) of Education and Literacy Department, Government of Sindh, subject to the qualification provided therein; and, the case of the petitioners is akin to the policy decision of the Government of Sindh. Prima facie, the request of the petitioners for grant of incentive of a higher grade based on the timescale in BPS-18 cannot be acceded to for the simple reason that the competent authority has already declined their request vide summary dated 25.02.2019 on the premise that for the subject post there is the avenue of promotion in next grade, however, they have raised their voice of concern that the petitioners have requisite qualification and length of service to claim benefit of either time-scale/up gradation and/or promotion in higher grade.

To appreciate whether the petitioners have the requisite length of service in their cadre and their promotion could not take place for the last 28 years, in violation of dicta laid down by the Hon'ble Supreme Court of Pakistan vide judgment dated 12.09.2017 passed in the case of *Kaneez Zehra Kazmi v. Syed Hassan Naqvi* (Crl. Org. Petition No.97/2017 in Crl. Org. Petition No.89/2011). Paragraphs 9 & 11 are reproduced as under:

“9. The upgradation granted to the petitioner from BPS-16 to BPS-17 and from BPS-17 to BPS-18 appears to have been to incentive encourage 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. Therefore, for the reasons stated above the impugned notification is hereby struck down as its issuance was not necessitated by any judgment/order of this Court. This petition stands disposed off in such terms.”

In view of the above, let notice be issued to the respondents as well as learned AAG for **31.01.2022**.

JUDGE

JUDGE