

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-5282 of 2016

Mst. Rashida Syed
Petitioner through : Kazi Abdul Hameed Siddiqui, advocate.

Respondents
Through : Mr. Ali Safdar Depar, AAG

Date of hearing
& order : **20.01.2022**

ORDER

Through the captioned petition, the petitioner is seeking the declaration to the effect that she is/was entitled to proforma promotion against the post in BS-20 and respondents may be directed to issue a fresh notification for the retirement of the petitioner with retrospective promotion and benefits thereof strictly in light of the judgment dated 22.2.1999 passed in Appeal No.77 of 1987 by the Sindh Service Tribunal Karachi and order dated 14.01.1992 passed by the Hon'ble Supreme Court of Pakistan in Civil Appeal No.432-K of 1990. An excerpt of the judgment dated 22.2.1999 passed in *Appeal No.77 of 1987 by the Sindh Service Tribunal Karachi* and **order dated 14.01.1992** passed by the Hon'ble Supreme Court of Pakistan in *Civil Appeal No.432-K of 1990* are reproduced as under.

2. Kazi Abdul Hameed Siddiqui, learned counsel for the petitioner, on the question of maintainability, argued that since petitioner stood retired from Civil Service; and, he is no more a civil servant, this constitutional petition is maintainable. He prayed for a direction to the competent authority of respondents to grant her proforma promotion in the light of the beneficial provision of law contained in rule 13(iv) of the Seniority Rules, 1973 and **judgment dated 22.2.1999** passed in *Appeal No.77 of 1987 by the Sindh Service Tribunal Karachi and Civil Appeal No.432-K of 1990 dated 14.01.1992* passed by the Hon'ble Supreme Court of Pakistan. He asserted that the denial of the aforesaid financial benefits by the respondents was unjust, mala fide, discriminatory, unfair, and unlawful, and liable to be discarded. In support of his contention, he relied upon the cases reported as **2016 PLC (CS) 621, 2014 PLC (CS) 288, PLD 2010 SC 483, 2009 YLR 2096, PLD 2013 SC 829, 1996 SCMR 1185, PLD 1992 SC 184, 2005 PLC (CS) 671** and **PLD 1987 SC 145** and argued that it was the mandatory duty of the respondents for promoting the petitioner at the space and time dimensions the petitioner was ripe for; that since her retirement she has been agitating her right by moving various applications; that the principle of laches also do not attract the instant petition as the

petitioner has not been sleeping over her rights. He lastly argued that proforma promotion after retirement is permissible under the law.

3. Learned AAG has opposed this petition with vehemence on account of laches that the petitioner stood retired from service on 12.01.2003 and now she has filed the petition in the year 2016, thus this petition is suffering from laches, and liable to be dismissed.

4. We have heard learned counsel for the parties on the subject issue, perused the material available on record.

5. The concept of Proforma Promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own.

6. In principle a civil servant is entitled to proforma promotion, once during his/her service, his promotion was/is approved by the Competent Authority and in the meanwhile, if he/she superannuates, he/she is entitled to all benefits as admissible under the law. On the aforesaid proposition, we are fortified by the decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of *Iftikharullah Malih Vs. Chief Secretary and others* (1998 **SCMR 736**) and *Askari Hasnain Vs. Secretary Establishment & others* (2016 **SCMR 871**). Here the case in hand is quite different as explained by the learned counsel for the petitioner that the petitioner was initially appointed as Senior English Teacher in the year 1968 in the Education Department of Government of Sindh, thereafter promoted to the post of Head Mistress in BPS-17 on 08.10.1990 and was awarded BS-18 vide notification dated January 5, 1998; that as per seniority, the petitioner was promoted in BPS-19 vide notification dated 2.12.2002 as Head Mistress; that her seniority in Grade-17 (gazetted) (government cadre) (female) would have been awarded from 30.08.1968 i.e. the first date of her appointment in HST non-gazetted cadre; that necessary notification for the insertion of her name in the seniority list of Grade-18 officers at Sr. No.1(a) i.e. the below the name of Mst. Jameela Abbasi and above the name of Mrs. Amat-ul-Basit would have been issued; that she was due for promotion in Grade-17 gazetted with effect from 07.06.1980 but inadvertently was promoted from 24.12.1987; that in the seniority list of BPS-19 male officers of school General Cadre as stood on 01.1.1997, petitioner's name ought to be at Sr. No.43(a) below the Mst. Shahnaz Mushtari and above the name of Mst. Shah Begum Khawaja at Sr. No.44; that the petitioner was entitled to be promoted in BS-20 after determining her seniority under the decision of aforesaid decisions of superior courts for which she moved various applications to the competent authority for redressal of her grievance but all in vain; that the petitioner retired from her service on 12.01.2003, without seeking her due service right, which is protected under the Constitution.

7. It is well-settled that proforma promotion cannot be awarded to a retired government servant with retrospective effect as per dicta laid down by the Hon'ble Supreme Court in the case of *Government of Pakistan and others vs. Hameed Akhtar Niazi and others*, **PLD 2003 SC 110**.

8. We, for the aforesaid reasons, and in the given circumstances hold that this petition is not maintainable, which is accordingly dismissed along with pending applications with no order as to costs.

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