

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Before;

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

C.P No.D- 988 of 2021: Imtiaz Ali Soomro & others v. Province of Sindh & others

C.P No.D- 1049 of 2021: Anwer Khan & another v. Province of Sindh & others

Date of hearing; 30-11-2021

Date of decision; 30-11-2021

Mr. Aamir Mustafa Kamario, Advocate for Petitioners
in both matters

Mr. Shafqat Ali Shah Masoomi, Advocate for Respondents 2, 3 & 5
in C.P No.D- 988/2021 and for Respondents 4 and 5 in C.P
No.D-1049/2021

Mr. Shahryar Imdad Awan, Assistant Advocate General

ORDER

Muhammad Junaid Ghaffar, J. – Through both these Petitions, the Petitioners have impugned orders dated 22-02-2021 and 20-04-2021, whereby the Promotions, Up-gradations and Cadre changes of the Petitioners to BPS-11 to BPS-16 have been withdrawn reverting them to BPS-04 / BPS-11 respectively, on the ground that they were made illegally and without following due process of law.

2. Learned Counsel for the Petitioners submits that initially Petitioner No.1 (in CP No.988/2021) was appointed as Octroi Superintendent in BPS-11 and later on upgraded to BPS-14 / 16, whereas Petitioner No.2 to 4 were appointed on daily wages as Computer Operators and later on regularized on 27-02-2012 in BPS-04 as Pump Operators, which according to him, did not commensurate with their qualification and experience; hence through Corrigendum dated 26-04-2016, the these Petitioners posts were incorporated in the Schedule of Establishment as Junior Clerk-cum-Computer Operator in BPS-07, and thereafter pursuant to Notification dated 10-01-2020, the post of Computer Operator was upgraded to Junior Computer Operator and Senior Computer Operator in BPS-11 and 16, respectively, whereas, the petitioner were working in BPS-11 and BPS-16, therefore, the impugned Office Orders are illegal

and not in accordance with the law, whereas, the Petitioners had already been regularized and upgraded; hence the Petitions be allowed.

3. On the other hand, Counsel for the Respondents submits that the entire process of their promotion and up-gradation is forged and manipulated as no record is available, whereas, within a short period of time they have managed their up-gradation from daily work basis to Grade-16, which is in violation of law and various judgments of the Courts. He has prayed for dismissal of the Petitions. In support of his contention, he has relied upon the case of ***Iftikhar Ahmad v. Member Board of Revenue/Secretary to Government of the Punjab Revenue Department (2016 P L C (C.S) 341.***

4. Learned Assistant Advocate General supports the arguments of Respondents Counsel.

5. We have heard both the learned Counsel, learned Assistant Advocate General and perused the record.

6. It appears that the initially Petitioner No.1 (in CP No.988/2021) was appointed as Octroi Superintendent vide order dated 7.4.2012 in BPS-11 and subsequently on his application was granted BPS-14 with effect from 27.5.2016 on the basis of some notification dated 17.8.2007 issued by the Government of Sindh. Insofar as Petitioner No.2 to 4 are concerned, they were appointed as Computer Operators (on daily wages at the rate of Rs.125/- per day) w.e.f 05-12-2008 and was done by the then Nazim, Taluka Municipal Administration, Rohri. It further appears that they continued to work in their respective departments and pursuant to decision of the Sindh Local Government vide letter dated 17-02-2012 an Office Order was issued, whereby, the services of the Petitioner No.2 to 4 were regularized as Pump Operators in BPS-04 w.e.f 01-03-2012. It further appears that subsequently on 26-04-2016, purportedly the Chief Municipal Officer, Municipal Committee, Rohri passed a Corrigendum, through which the posts of the said petitioners were upgrade to BPS-07 as junior Clerk-Computer Operator, which reads as under;-

"CORRIGENDUM

M/s Naveed Ahmed, Shahid Hussain and Syed Tauqeer Abbas Shah were appointed as Computer Operators (on daily wages) in the year 2008 & 2010 respectively, in the year 2012 their service were regularized as Pump Operators BPS-04, and while regularizing their services great injustice was

done with the applicants, they all are qualified & experience officials therefore their posts be incorporated in the Schedule of Establishment as Junior Clerk-cum Computer Operator BPS-07 from 01-05-2016.

Sd/-
Chief Municipal Officer
Municipal Committee, Rohri

7. Similarly the corrigendum order issued in favor of Petitioner No.1 reads as under;

Office of the Municipal Committee, Rohri

Read

- i) Application from Imtiaz Ali Soomro O/Superintendent for grant of BPS-14.
- ii) Office note & opinion of ADLFA thereon.

Phone No.071-5650634-5

No.GB/MCR/-164 of 2016

Dated:- 24-05-2016

Corrigendum

In the light of Government of Sindh Finance Departments notification No.FD(SR-IV) 2-70/2007, Karachi dated 17th August 2007 and notification No.FD (SR-I) 3-(17)/2013, Karachi dated 5th August 2014 BPS-14 is awarded to Mr. Imtiaz Ali Soomro Octroi Superintendent w.e.from 27-05-2016.

Sd/-
Chief Municipal Officer
Municipal Committee, Rohri

8. As to the Petitioners in CP No.1049 of 2021 is concerned their facts are identical to that of Petitioner No.2 to 4 in CP No.988 of 2021. Perusal of the aforesaid Corrigendum(s) reflects Chief Municipal Officer was of the view that great injustice was done with the Petitioners while regularizing their services as they all were qualified, experienced officials, therefore, he ordered that the posts of the Petitioners be incorporated in the Schedule of Establishment as Junior Clerk-cum-Computer Operator in BPS-07 from 01-05-2016. It further appears that thereafter the Petitioners were upgraded and were lastly working in BPS-11 and 16. It further appears that thereafter, the Government of Sindh through Finance Department issued Notification dated 10-01-2020, whereby the posts of Computer Operators were upgraded with certain qualifications to BPS-16. However, through impugned Office Orders after a detailed scrutiny it has come on record that the very promotion and up-gradation as well as cadre changes of the Petitioners who was by itself without following due process of law; hence all such promotions and up-gradations were recalled and the

employees were reverted to their original designations as Pump Operators (BPS-04) or Octroi Superintendent (BPS-11), as the case may be.

9. It is a matter of record that insofar as Petitioners (except Petitioner No.1 in CP 988/2021) are concerned, though they were regularized in 2012 to BPS-04 from daily wages workers, which by itself is not clear that how the same could have been done; but since that is not in dispute before us, we have refrained ourselves from making any comments on this aspect. However, insofar as the order of the Chief Municipal Officer dated 26-04-2016 and 24.5.2016 as reproduced herein above are concerned, they do not appear to be order(s) in accordance with law; nor any authority or jurisdiction vested in the Chief Municipal Officer to take such a sympathetic view in respect of the Petitioners by observing that while regularizing their services great injustice was done to them; hence they be upgraded to Junior Clerk-cum- Computer Operator in BPS-07; or Petitioner No.1 in CP No.988 of 2021 was entitled for being awarded BPS-14. The said orders as above are not within the authority of the Officer; nor the Petitioners Counsel has been able to justify as to how such an order could be obtained / passed without sanction and approval of the Government as well as procedure so laid-down for such purposes. As a consequence, thereof, any promotion or up-gradation after this order would also be illegal and unlawful until it has been so done by following a lawful procedure and that too by the competent authority i.e. the Government of Sindh through concerned Department.

10. Upgradation is carried out under a scheme and or a policy to incentivize and to encourage and to give financial benefits without creating additional vacancies of higher grade, upgradation by no standards could be treated and or considered as promotion to higher grade¹. The upgradation cannot be made to benefit a particular individual in term of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting². The upgradation cannot be claimed as a matter of right but it is in fact based on a policy decision of the competent authority for its implementation across the board for the particular categories of employees jot down in the scheme/notification who fulfilled the required qualification which is normally a particular length of

¹¹ Federal Public Service Commission v Anwar-UI-Haq (2017 SCMR 890)

² Regional Commissioner Income Tax v Syed Munawar Ali (2016 SCMR 859)

service in a particular pay scale. There is a meticulous differentiation stuck between upgradation and promotion. The promotion involves advancement in rank, grade or a footstep en-route for advancement to higher position whereas the facility or benefit of upgradation simply confers some monetary benefits by granting a higher pay scale to ventilate stagnation³.

11. By applying the above settled exposition of law, it appears that the entire exercise carried out in favor of the petitioners through Corrigendum(s) by the Chief Municipal Officer, are bereft of any valid reasons, or mandate of any law, whereas, by specific names of persons, their posts have been upgraded, as if, they were being promoted to a higher grade. Notwithstanding this, even otherwise respondents have also disputed the said orders as being forged, manipulated and bogus, and not supported by record; which then renders this a factual dispute beyond our Constitutional jurisdiction. This apparently cannot be sustained in any manner; hence, the impugned action appears to be fully justified and in accordance with law. Accordingly, no case for indulgence is made-out, and therefore, both these Petitions being misconceived are hereby dismissed with pending Applications. Office to place copy of this order in connected petition.

Judge

Judge

ARBROHI

³ Fida Muhammad v Government of Khyber Pakhtunkhwa (2021 SCMR 1895)