

# IN THE HIGH COURT OF SINDH KARACHI

## **Before:**

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

## **C.P. No. D-214 of 2018**

Mateenuddin Ahmed

& Nasir Matin

Petitioners through : In person.

Respondents 1 & 2

through: : Mr. Muhammad Naishat Warsi, DAG

Respondents 3 to 15

through: : Mr. Ali Asadullah Bullo, advocate  
Muhammad Asif Khan, Assistant Director (Incharge  
Admn), Pakistan Cotton Standards Institute.

Date of hearing

& order : **24.02.2022**

## **ORDER**

Through this petition, the petitioners seek setting aside of the order dated 13.12.2016 issued by Pakistan Cotton Standards Institute (**PCSI**), Ministry of Textile Industry, Government of Pakistan, inter alia, on the ground that the same is against the law and policy; however, they prayed that the case of petitioners needs to be looked into on the same analogy against the upgraded post of Assistant Director (BPS-17) from the date when private respondents No. 3 to 15 were awarded the benefit of up-gradation.

2. The petitioners have averred that they have been performing their duties since their initial appointment on 01.10.1989 as Cotton field officer (BPS-16) in the Pakistan Cotton Standards Institute. It is urged that vide office order dated 10.04.2007, the PCSI Board of Directors in its 6th Meeting held on 27.12.2006, regularized the Services of their employees with effect from the date of their initial appointment in PCSI; that the employees of PCSI serving in the same Grade since its inception and struck up due to non-existence of systemic chain in the organizational setup; and, lack of career planning. Considering this issue, the Ministry of Textile Industry, Islamabad, (MINTEX) initiated a proposal for reorganization/restructuring of PCSI to ensure the effective and smooth working of the respondent institute. Petitioners have averred that in the light of that proposal, Establishment Division carried out a comprehensive study and recommended the up-gradation / re-designation for the employees serving in PCSI; that on the recommendations, the Establishment Division with the concurrence of the Finance Division, conveyed the sanction of the President of Pakistan for upgradation / re-designation of posts in PCSI vide letter dated 29.10.2015; that considering the sanction of Posts, MINTEX constituted Departmental Promotion Committee for upgradation / re-designation of PCSI employees vide letter dated 12.04.2016; that the working paper for the DPC was prepared with malafide intentions, neglecting the policy guidelines and refused to consider requisite criteria and procedure and focused on the particular subject of upgradation of posts issued by the competent forum, Cabinet Secretariat,

Establishment Division Islamabad; that the DPC Meeting was held on 18.04.2016 and the minutes approved and issued vide letter dated 29.11.2016. The selection process for a particular subject based on the malafide or colorable exercise of power offends the principles of law. Petitioners further averred that the committee included the requisite criteria for the upgradation of posts in their minutes but considered it not necessary to follow the authentic policy guidelines recommended for the particular subject for making the task more credible and transparent; that DPC recommended 35 senior-most CFOs (BPS-16) who automatically upgraded as Assistant Director (BPS-17) without fulfilling the requisite criteria i.e. qualification/experience for the upgraded posts.

3. Petitioner present in person has submitted that an action which is tainted with malafide exercise of power offends the principles of law; that the respondents No. 1 and 2 did not consider the merit and this act of making exercise based on malicious, as such explicitly tantamount to malafide in law and fact, hence liable to be set aside.

4. Mr. Ali Asadullah Bullo, learned counsel for the respondents 3 to 15, has raised the question of maintainability of the petition, inter alia, on the ground that petitioners are regular employees of PCSI have no cause of action to call in question the decision of the competent authority; that upgradation of 35 Assistant Directors in BPS-17 is not the case of initial appointment, therefore, seniority, qualification advertised at the time of initial appointment for upgradation/redesignation has been considered and benefit of two advanced increments has already been paid to the employees who qualified Master degree, however, he suggested that almost all the batches including the petitioners after serving the institute for over 29-30 years are still deprived of any upgradation and they are at the verge of retirement in the year 2023-2024, therefore, upgradation may be allowed to continue.

5. Learned DAG is of the same view and referred to the statement dated 30.04.2018 whereby respondents prayed for the same relief.

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

7. The question involved in the present proceedings is whether a constitutional petition under Article 199 of the Constitution of Pakistan is maintainable where a policy decision of upgradation of post of CFO (BPS-16) has been made as Assistant Director (BPS-17)?

8. It is well settled that the Courts, in the exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness, etc. Indeed, arbitrariness, irrationality, perversity, and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt the interests of a party does not justify invalidating the policy.

9. In principle, the Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the Government and it is not for the Court to decide on the good or bad points of the policy for the reason that the Court has limited jurisdiction to intervene in the implementation of a policy. Broadly, a policy decision is subject to judicial review on the following grounds :

- (a) if it is unconstitutional;
- (b) if it is de hors the provisions of the Act and the Regulations;
- (c) if the delegatee has acted beyond its power of delegation;
- (d) if the executive policy is contrary to the statutory or a larger policy;

10. From the above extract, it is clear that an executive order termed as a policy decision is not beyond the pale of judicial review. In the present case, we have noticed that under the recruitment, rules notified on 24 June 1995, the post of Assistant Director (BPS-17) is the initial appointment, whereas the respondent vide office order dated 13.12.2016 upgraded/redesignated the post of Cotton Field Officer from BPS-16 to Assistant Director (BPS-17). However, respondents have taken the policy decision of upgradation of the subject posts, therefore, this court has limited jurisdiction to scrutinize such policy decision at this stage, however, we are making it very clear and loud that to justify upgradation, the department needs restructuring, reform, or to meet the exigency of service in the public interest, in the absence of the aforesaid pre-conditions, up-gradation is not permissible under the law. Our view is supported by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch & others v. Province of Sindh & others, **2015 SCMR 456**.

11. It is further clarified that upgradation cannot be construed to be promotion. 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) has held in Paragraphs 9 & 11 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 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 of in such terms.”

12. Further, the Hon'ble Supreme Court of Pakistan vide **judgment dated 30.09.2016** in Civil Petition No.1424/2016 has held in Paragraph No.9 that upgradation is not a promotion as generally misunderstood. Up-gradation is carried out without necessarily creating a post in the relevant scale of pay it is carried out under a policy and

specified scheme. It resorts only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Up-gradation under the scheme is personal to incumbents of the isolated posts to address stagnation and frustration of incumbents on a particular post for sufficient length of service on the particular post without any progression or avenue in the service.

13. In the light of the above facts and circumstances of the case, we are of the considered opinion that since the respondents have taken the policy decision vide revised office order dated 13.12.2016; and, we have no option but to direct the competent authority of respondents to assign the same benefit of the office order dated 13.12.2016 to the petitioners on the same analogy, within two weeks.

14. This petition stands disposed of in the above terms, with no order as to costs. Let a copy of this order be transmitted to the competent authority of the respondents for compliance.

**J U D G E**

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