

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P. No.D-2707 of 2019

Shah Muhammad

Versus

Province of Sindh & 03 others

Date of hearing : 31.03.2021

Date of announcement : 02.04.2021

Mr. Abdul Salam Memon and Mrs. Sofia Saeed Shah, advocates for the petitioner.

Mr. Sibtain Mehmood, Addl. A.G.

JUDGMENT

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner is seeking direction to the respondents to award him incentive of timescale i.e. BPS-17 to BPS-19, from the date of his entitlement; and, other ancillary benefits, to bring him at par with the employees of other departments of Government of Sindh.

2. We intend to consider this aspect of the matter, whether the petitioner is entitled to the incentive of the timescale from BPS-17 to BPS-19 under the law or otherwise.

3. At the outset, learned counsel for the petitioner submits that he will be satisfied if the case of the petitioner is transmitted to respondents No.1 to 3 for grant of service incentive in the shape of timescale in BPS-18. Learned Addl. AG has accepted the proposal of the petitioner, subject to all just exceptions, as provided under the law.

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

5. As per record, the petitioner was appointed as Assistant in BPS-11 in the office of Official Assignee (Administrator General of Sindh Official Liquidator) in the year 1984. Subsequently, in the year 1990, he was allowed Selection Grade in BPS-15, with retrospective effect; and, then

promoted to the post of Superintendent (BPS-16) against the existing vacancy, in the office of Official Assignee at Karachi. Per learned counsel for the petitioner, vide notification dated 01.03.2012, he was awarded Selection Grade (BPS-17); and, meanwhile, he stood retired from service in the year 2020, as such he is still entitled to pay scale in BPS-18/19 based on timescale up-gradation.

6. Admittedly, the petitioner had been serving in the office of Official Assignee, for about 35 years, which is a sufficient length of service. There is no denial of the fact that he was qualified and eligible for the further promotion if he would have been in service since the post was isolated and he reached the ceiling of the post in BPS-17 and there was no further avenue for his promotion in BPS-18 due to the reasons as discussed supra, however, the only provision is available is timescale up-gradation.

7. Prima facie, the petitioner approached the Law Department, Government of Sindh, for awarding Selection Grade from BPS-17 to BPS-18 vide letter dated 10.12.2015; and, his matter was forwarded to the Secretary Finance Department Government of Sindh vide letter dated 21.01.2016 and the same was regretted vide letter dated 07.03.2016 on the premise that there was/is no provision available in the rule to grant him double benefit in next high grade i.e. BPS-18. At this stage, learned counsel for the petitioner intervened and refuted the stance of the Finance Department on the ground that the post of Superintendent from BPS-16 to BPS-17 was upgraded vide letter dated 06.01.2015, and the same was implemented however, he has the requisite length of service and experience to claim the benefit of BPS-18 as he had been working in BPS-17 since 22.01.2000 but could not avail the benefits of BPS-18, thus the stance of the respondent Finance Department is based on erroneous premises.

8. At this stage, learned Addl. AG pointed out that the post of Office Superintendent in the office of Official Assignee is isolated, having no promotion avenue, as such his case falls within the scope of those categories of Civil Servants, who are eligible and entitled to the time scale for the next grade in service i.e. BPS-18, after completion of the

requisite length of service i.e. five years. He further pointed out that the scheme of time scale is permissible to those qualifying employees who may complete their minimum length of service as per the Finance Department's letter dated 29.11.2017; and, therefore such employees are entitled to the benefits of timescale if they qualify for such benefits under the law.

9. Per learned counsel for the petitioner, 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 vide letter dated 07.06.2010; and, the case of the petitioner is akin to the policy decision of the Government of Sindh as discussed supra. Finally, after arguing at considerable length, learned Addl. AG has considered this proposal and prayed for the direction to the Law Department, Government of Sindh, to deliberate on the subject issue in consultation with the Finance Department, Government of Sindh, so that the subject issue may be set at naught once for all.

10. Prima facie, the proposal seems to be justifiable and because of the consensus reached between the parties, this matter is remitted to the Secretary Law Department, Government of Sindh, to consider the request of the petitioner for grant of incentive of a higher grade based on the timescale in BPS-18, strictly under the law and 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."

11. In view of the above, this petition stands disposed of, in the terms of preceding paragraphs, along with pending applications with no order as to costs. The said exercise shall be undertaken within one month from the date of receipt of this order.

JUDGE

JUDGE

*Nadir**