

# IN THE HIGH COURT OF SINDH, KARACHI

## Before

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No. D –8065 of 2019**

Abdul Latif Narejo and others

*Versus*

Employees' Old Age Benefits Institution and 03 others

Date of hearing

& order : 08.04.2021

Mr. Abdul Salam Memon advocate for the petitioners.

Mr. Ali Asadullah Bullo advocate for EOBI.

Mr. Qadeer Ahmed Chaudhry, Assistant Director (Law) EOBI.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through the instant petition, the petitioners are seeking following relief(s):

- a) Declare and direct the Impugned BOT Agenda Item NO:02 of 21<sup>st</sup> Meeting held on 16-05-2019, and Office Order NO: 1 01/2019, dated: 22-05-2019, are illegal, unlawful, in violation of long held policy, and the Judgments of the superior Courts including the Judgment dated:18-12-2017, hence of no legal consequence, hence set aside the same Impugned BOT Agenda Item NO:2 of 21<sup>st</sup> Meeting held on 16-05-2019, and Office Order NO:1 01/2019, dated: 22-05-2019.
- b) Direct the respondents that the BOT 118, after setting aside the Impugned BOT Agenda Item NO:02 of 21<sup>st</sup> Meeting held on 16-05-2019, and Office Order NO:1 01/2019, dated: 22-05-2019, may be implemented immediately and Office Order may also be issued in terms of the BOT 118.

2. The prime question involved in this petition is whether the Board of Trustees (BOT) Agenda Item No.2 of the 21<sup>st</sup> meeting held on 16.05.2019 and office order No.101/2019 dated 22.05.2019 is in direct conflict with the judgment dated 18.12.2017 passed by this Court in C.P No.D-3525/2016, upheld by the Hon'ble Supreme Court vide order dated 29.09.2020 passed in Civil Petition No.431/2018, whereby the respondent EOBI withdrew the aforesaid Civil Petition.

3. At the outset, we asked the learned counsel for respondent-Institution under what law and authority they attempted to nullify the effect of the judgment passed by this Court, maintained by the Hon'ble Supreme Court as discussed supra.

4. Mr. Ali Asadullah Bullo, learned counsel representing the respondent-Institution, has heavily relied upon the Office Memorandum (OM) dated 14.10.2002 issued by the Government of Pakistan Finance Division (Regulation Wing) about the revision of pay scales of the officers of Employees Old-Age Benefits Institution and

submitted that since the scheme of move over / selection grade was discontinued, with effect from 01.12.2001, as such the respondents decided to review the decision of up-gradation of the petitioners as Assistant Director in the light of 48<sup>th</sup> BOT meeting and move over in Grade-07 in the light of 33<sup>rd</sup> BOT meeting vide minutes of the meeting of Board of Trustee, EOBI held on 16.05.2019. In support of his contention, he relied upon GOVERNMENT OF PAKISTAN M/o RAILWAYS Versus JAMSHED HUSSAIN CHEEMA, 2016 SCMR 442, FEDERAL PUBLIC SERVICE COMMISSION Versus ANWAR-UL-HAQ (PRIVATE SECRETARY) ISLAMABAD, 2017 SCMR 890, REGIONAL COMMISSIONER INCOME TAX, NORTHERN REGION, ISLAMABAD VS Syed MUNAWAR ALI, 2016 SCMR 859, GOVERNMENT OF PAKISTAN M/o RAILWAYS VS JAMSHED HUSSAIN CHEEMA, 2016 SCMR 442 & 2013 PLC (CS) 20.

5. We have heard the learned counsel for the parties on the subject issue and perused the material available on record and case-law cited at the bar.

6. We have noticed that the Board of Trustees of the respondent- Institution in its meeting decided to upgrade the post of petitioners as Assistant Director with effect from the date of their completion of 15 years' service as Executive officer (E.O.), as they had already been given next higher pay scale on completion of their 10 years' service as Executive officer. The counsel for the petitioners contended that before this petition, they filed C.P. No. D-764/2014 in this Court with the prayer that they should be given seniority according to the decision taken by the Board of Trustees in its meeting held on 15.12.1998 as discussed supra. He relied upon the letter dated 25.3.2015 written by the Deputy Director-General HR Department to Secretary BOT for upgradation of Assistant Director on completion of 15 years' service as Executive Officer as per the decision of 48<sup>th</sup> BOT meeting held on 15.12.1998, which was duly approved by the Chairman BOT for further necessary action. He further argued that the Counsel for the respondent-Institution in the earlier round of litigation conceded the legal as well factual aspect of the matter and requested the Court for 45 days for convening a meeting of the BOT for deciding the issue and further requested that the aforesaid petition be disposed of in these terms.

7. Mr. Ali Asadullah Bullo, learned counsel rebutted the submission of the learned counsel for the petitioners and submitted that principally such matters of up-gradation and/or move-over are taken in the policy perspective and they are not person-specific; he further pointed out that Service Regulations of the respondent-institution do not provide any provision of up-gradation and the Institution has been taking up-gradation as promotions and as a result, upgraded officers had further been promoted to next higher grades. He further added that in absence of Service Regulations and under the practice of up-gradation, the respondent-institution was required to change the Policy and Regulations. At this stage, we confronted him with the statement dated 22.03.2018 filed on behalf of the alleged contemnor in C.P

No.3525/2015 (Page-447), which prima-facie shows that the up-gradation of the petitioners was allowed and their review application was disposed of vide order dated 22.03.2018 on the same analogy. He candidly concedes the legal position, however, insisted that the person-specific up-gradation could not be allowed as directed by the Hon'ble Supreme Court in the cases referred hereinabove. We again confronted him with the decision of the Board of Trustee dated 21.03.2018 whereby the petitioners were allowed up-gradation subject to the final decision of the Hon'ble Supreme Court, and the decision of the Hon'ble Supreme Court is available on record as discussed supra. He reluctantly accepted the factual position of the case but submitted that there will be chaos if the petitioners are allowed such up-gradation and benefits in their favor. We do not agree with his proposition on the aforesaid parity, for the simple reason that this Court vide order dated 04.11.2015 disposed of the subject petition with certain directions; however the same was not implemented, compelling the petitioners to institute C.P No.D-3525 of 2016, before this court, which was allowed vide judgment dated 18.12.017, with following direction(s):

“14. Looking through the above perspective and keeping in view the factual position of the case, we firmly infer that the Petitioners ought to have been considered for up-gradation/promotion of the Petitioners on completion of 15 years of required service in the Respondent's Institution as decided by the BOT in its 48th meeting held 15.12.1998. The explanation offered by the Respondents is a clear negation of the order dated 04.11.2015 passed by this Court and not acceptable.

15. In the light of the above facts and circumstances of the case, the instant Petition is hereby disposed of in the terms, whereby the Competent Authority of Respondent-Institution (EOBI) is directed to implement the Order dated 4.11.2015 passed by this court in C.P. No. D- 764/2014 within a period of one month from the date of receipt of this judgment.”

8. Perusal of record reflects that in pursuance of the 118<sup>th</sup> meeting of Board of Trustees of EOBI held on 16.3.2018, the subject item of up-gradation of Assistant Director on completion of 15 years was kept as “Agenda No.2”. The decision as taken is disclosed in para-29 of such minutes that the services of Executive Directors who completed 15 years were promoted subject to the decision of the Hon'ble Supreme Court, subsequently, the Hon'ble Supreme Court dismissed the aforesaid petition as withdrawn vide order dated 29.09.2020.

9. Prima-facie the Minutes of 21<sup>st</sup> Emergent meeting held on 16.5.2018, explicitly show that the Committee approved the decision of withdrawal regarding up-gradation / promotion of the Assistant Director to Executive Directors taken in 118<sup>th</sup> Board of Trustees meeting, it seems that the up-gradation was allowed based on the statement of the learned Counsel representing the respondent-institution, however, the respondents vide minutes of 118<sup>th</sup> meeting of Board of Trustees held on 16.03.2018 decided that for the time being petitioners in this matter may be upgraded as a result of having completed 15 years services as Executive Officers, and the

same pattern as the previous four batches during the period 1999 to 2003 were promoted, however, subject to the decision of the Hon'ble Supreme Court as discussed supra. Since the Hon'ble Supreme Court vide order dated 29.09.2020 dismissed their petition as withdrawn thus it is not open for the respondent-Institution to rescind from their earlier decision which has virtually been acted upon.

10. Prima-facie respondents in their abortive attempt, tried to circumvent the orders passed by this court and the Honorable Supreme Court as discussed supra by reviewing the decision of up-gradation of the post of Assistant Director vide 33<sup>rd</sup> BOT meeting of Board of Trustee, EOBI held on 16.05.2019, for the simple reason that their post was upgraded long ago, thus they were precluded from withdrawing the up-gradation, after the passage of considerable period as the up-gradation order of the petitioners had already been acted upon as such the respondent-Institution had no occasion to withdraw/review it at the belated stage.

11. In our view the explanation offered by the respondents on the aforesaid analogy is a clear negation of orders passed by this Court and Honorable Supreme Court, and are not acceptable, thus the Competent Authority of respondent-Institution (EOBI) is directed to implement the judgment 18.12.017 passed by this court in C.P. No. D- 3525 of 2016 within two weeks from today. Consequently, this petition is allowed along with the pending application(s) with no order as to costs, in the terms that 21<sup>st</sup> meeting of Board of Trustee, EOBI held on 16.05.2019 to the extent of withdrawing the up-gradation order of the petitioners; and, subsequent steps thereof are declared to be illegal, void ab initio and without lawful justification.

12. These are the reasons for our short order dated 08.04.2021, whereby we have allowed this petition.

**JUDGE**

**JUDGE**