

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Constitutional Petition No. D – 5025 of 2016

Imdad Ali Abro & others

Versus

Federation of Pakistan & others

Date of hearing : 22.04.2021

Mr. Abdul Salam Memon, advocate for the petitioners.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioners are seeking the up-gradation of the post of Computer Operator/Assistant Computer Programmer BS-16 to 17.

2. Mr. Abdul Salam Memon, learned counsel for the petitioners, insisted that direction may be given to the respondents for the up-gradation of their post from BPS-16 to 17. Learned counsel asserted that the different departments of the Government of Pakistan had already upgraded the post of Computer Operator from BS-17 to BS-18; and, the case of petitioners is at par with those employees, thus they are entitled to be given the same benefit. He emphasized that due to limited seats of Computer Programmer in BPS-17, the petitioners could not be promoted who are still in BPS-16 for long. He pointed out that the Finance Division has upgraded the post of Computer Operator and the case of the petitioners is akin to their colleagues. The learned counsel pleaded discrimination in the matter and argued that the post of Assistant Computer Programmer in other departments is in BPS-17 as such their post needs to be upgraded which is primarily an isolated post. He averred that technicalities should not come in the way of substantial justice and even direction can be issued to respondents No.1, 2, 3, and 4 for the up-gradation of their post on the higher scale just for monetary benefit. He, therefore, prayed for allowing the instant petition.

3. We confronted him that up-gradation is distinct from the promotion; and, is restricted to the post and not with the person occupying it; that the

up-gradation cannot be made to benefit a particular individual in terms of promoting him to a higher post; and, to justify the up-gradation, the respondent department is required to establish that the department needs restructuring, reform or to meet the exigency of service in the public interest; and, in the absence of these pre-conditions, up-gradation is not permissible. He candidly conceded the legal position, however, averred that the respondent department is required to formulate the service structure of all the petitioners by creating vacancies of BS-17 at Sector level, BS-18 at Zone, BS-19 at Headquarter and BS-20 at Inspector General, National Highways, and Motorway Police office to avoid discrimination. We again confronted him with recruitment rules of the subject post which provides that the post of Computer Programmer (BPS-17) is a promotion post; and, a person eligible for such post, having a minimum of three years' service as Computer Operator in minimum B-Grade in two high-level programming languages. The said recruitment rules were notified on 6th June 2000; and, are still holding the field; and, on that account, two petitioners have already been promoted to next grade under the aforesaid recruitment rules. Learned counsel replied to the query and relied upon the policy decision of the Government of Pakistan for up-gradation / re-designation of post vide office memorandum dated 20.01.2001; and, requests for benefit of the aforesaid policy decision in their case. Learned counsel further claimed that the policy decision of the Government, regarding up-gradation of the post, is required to be implemented in its letter and spirit to rationalize the administrative structure of the respondent department to make it more effective or to bring about uniformity of pay scales of a similar post in different organizations. In support of his contentions, he relied upon the case of Muhammad Ali Javed and 3 others v. Province of Sindh through Secretary and 2 others, 2020 PLC (CS) 630, and argued that the case of the petitioners needs to be looked into in perspective of the decision as discussed supra. Learned counsel referred to various documents attached with the memo of the petition and extensively argued that the instant petition may be allowed as prayed.

4. Mr. Muhammad Nishat Warsi, learned DAG has resisted the request of the petitioners on the analogy that this writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is not maintainable. He urged that the controversy regarding up-gradation pertains to the terms and conditions of service, as the bar of jurisdiction of this Court under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 come in their way, thus they have no case to invoke the constitutional jurisdiction of this Court. On merit, he argued that in principle up-gradation is not a promotion, as generally

misunderstood. He emphasized that up-gradation is carried out without necessarily creating posts in the relevant scales of pay. It is carried out under a policy and specified scheme. It is reported 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 the incumbents of the isolated posts, to address sluggishness and frustration of the incumbent on a particular post for sufficient length of service on the particular post without any progression or avenue of promotion. Post of a computer operator is one of such kind of post, which has avenues or channel of promotion to higher grades. Primarily up-gradation is carried out under a scheme and or a policy to encourage and to give financial benefits without creating additional vacancies of higher grade, up-gradation by no standards could be treated and or considered as a promotion to the higher grade. Incumbents occupying ungraded posts retain their substantive grades; therefore, the case-law cited by learned counsel for the petitioners is of no help to the petitioners for the aforesaid reasons.

5. We have heard the learned counsel for the parties on the subject issue and have gone through the record of the case file and case law cited in this regard.

6. In view of the above discussion, we are clear that petitioners proceeded on erroneous premises. On the issue of up-gradation, we seek guidance from the decisions of the Honorable Supreme Court rendered in the cases of the Government of Pakistan M/o. Railways v. Jamshed Hussain Cheema and others, 2016 SCMR 442, Regional Commissioner Income Tax, Northern Region, Islamabad, and another Vs. Syed Munawar Ali and others (2017 PLC (C.S.) 1030) and Federal Public Service Commission v. Anwar-ul-Haq (2017 SCMR 890). Therefore, in our view, the petitioners have been unable to make out a case for the up-gradation/re-designation of their posts in BPS-17 with retrospective effect, based on discrimination under Article 25 of the Constitution.

7. This petition fails and is hereby dismissed with no order as to costs.

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