

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Zulfiqar Ahmad Khan

C.P. No. D-790 of 2019

Zafar Ali Palejo
Versus
Province of Sindh & others

Date of Hearing: 21.11.2019

Petitioner: Through Mr. Muhammad Arshad Khan Tanoli
Advocate.

Respondents: Through Mr. Ali Safdar Depar, Assistant
Advocate General.

Respondents No.3 &4: Through Mr. Sameer Ghazanfer Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner seeks implementation of recommendations of DPC in its meeting held on 23.2.2018, consequently approved by the Chairman. Counsel for petitioner submits that despite this recommendation and approval of the Chairman, the act of not issuing notification of promotion with regard to petitioner is illegal, unlawful, unconstitutional and mala fide.

2. Brief facts of the case, as summarized by the petitioner's counsel, are that a Departmental Promotion Committee consisting of a convener Syed Hashim Raza Zaidi, Managing Director KW&SB, Members namely Ghulam Qadir Abbas, Chief Engineer (BT/WTM), Merajuddin, Deputy Manager Director (Finance) and Pervaiz-ul-Haq, Director (Personnel) was formed under Rule 8 of KW&SB Employees (Appointment, Promotion and Transfer) Rules, 1987 vide office order dated 07.02.2018 to consider the cases of promotion of officers and engineers from BS-17 and above on seniority cum fitness basis.

3. The Agenda No.1 of the DPC meeting relates to promotion from the post of Superintending Engineer (BS-19) (Civil) to post of DMD/CE (BS-20). The sanctioned strength, as reflected in KW&S Budget 2017-18 reveals that there were eight posts of BS-20 for Civil Engineers, which include posts of MD, DMDs, Chief Engineers and Project Director. At the relevant time i.e. 23.02.2018 when the promotions of senior most engineers were considered there were four posts out of eight lying vacant. The fifth post was shown to have been made available w.e.f. 30.08.2018 on account of retirement of one Mr. Misbahuddin Farid, Chief Engineer/Ex-Managing Director on account of reaching age of superannuation i.e. 60 years. The petitioner was at Sr. No.6 of the seniority list.

4. In terms of the recommendation of DPC one of the officers at Sr. No.2 of the merit list was on deputation in Special Initiative Department GOS since May, 2012 and was to return to KW&SB in December, 2018 i.e. much after the date of DPC for fulfilling the vacant posts. This deputation of an officer thus brought the petitioner at Serial No.5 for his consideration. The petitioner was considered and recommended for promotion, which was not challenged by anyone. The fifth future post, as was shown to have made available after retirement of Misbahuddin Farid, Chief Engineer/ex-Managing Director, the notification of Zafar Ali Palejo (petitioner) was required to be issued since DPC has already recommended his promotion on the eve of retirement of Misbahuddin Farid.

5. A statement was filed by petitioner's counsel, which accompanied documents such as a letter of 13.03.2019 forwarded by the Section Officer, Local Government to the Managing Director KW&SB. In the letter it was apprehended that proceedings of this petition may affect decisions of DPC held on 23.02.2018 as case of Imtiazuddin on

deputation was deferred which could be taken up against the vacancy to be accrued after retirement of Mr. Wajid Iqbal Siddiqui w.e.f. 09.04.2019 and Mr. Muhammad Arif w.e.f. 13.07.2019 hence it was advised that the steps in relation to the promotion of the petitioner for the said post be taken up and that cases be forwarded which were taken up in DPC dated 23.02.2018 in one go rather than in piecemeal.

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

7. The only argument as forwarded by learned AAG was that Mr. Imtiazuddin who was placed at Sr. No.2 of the seniority list was on deputation and hence since his case was only deferred, therefore, notification as to promotion of petitioner was not justified.

8. We do not accept this excuse to be a lawful and legitimate since Imtiazuddin never returned to the department when the DPC convened on 23.02.2018. The post was vacant when DPC convened and the officer on deputation returned much after the Departmental Promotion Committee's meeting. The post got vacant on account of retirement of Misbahuddin Farid was available regarding which Departmental Promotion Committee had already taken a decision as petitioner's case was recommended and approved for promotion. Mr. Imtiazuddin returned to his department in December, 2018 as admitted and never challenged DPC's recommendation. Petitioner was recommended by the Departmental Promotion Committee to be promoted against the post of CE (BPS-20). By virtue of this recommendation, as made by the Departmental Promotion Committee, petitioner has acquired a right, which cannot be delayed on aforesaid count.

9. The respondents have made an attempt to justify defiance of the recommendation as one of the officers Imtiazuddin returned after completion of his deputation in December, 2018. This could hardly be a

defence as by the time the vacancy which was shown to be available on the eve of retirement of Misbahuddin Farid on 31.08.2018 was filled on 23.02.2018.

10. The Hon'ble Supreme Court in the case of Chairman Central Board of Revenue v. Muhammad Malook reported in 1999 SCMR 1540 while considering the recommendation of one of the officers by Departmental Promotion Committee laid down the principle as under:-

"We may observe that once respondent No.1 was recommended for promotion by the Departmental Promotion Committee after having found him fit, and the recommendation of the D.P.C. was accepted by the competent Authority, a right was created in favour of respondent No.1. "

11. Thus, in the absence of a challenge to the recommendation of DPC by any aggrieved person, we do not conceive it to be justified in withholding notification as to promotion of petitioner in pursuance of recommendation of the Departmental Promotion Committee. We, therefore, had allowed this petition vide short order dated 21.11.2019 on the strength of the recommendation of the Committee and subsequent approval by the Chairman. The respondents are thus directed to issue a notification in consequence of such recommendation.

12. Above are reasons of our short order dated 21.11.2019.

Dated:

Judge

Judge