

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C.P. No. D-89 of 2022

Date

Order with signature of Judge

1. For hearing of CMA No.396/2022
2. For hearing of main case.

14.04.2022

Mr. Sohail Ahmed Khoso, Advocate for the Petitioners
Mr. Ali Raza Balouch, AAG

Through this petition, the petitioners have sought the following reliefs: -

- a. To direct the respondent No. 1 to implement the Para No. 12 of the notification dated: 15-01-2021, without any delay.
- b. To pass ad interim order thereby the respondents may be restrained from appointment 50% to post of JESTs reserved for promotion of PSTs-09 to Post of JESTs-BPS-14 and no any adverse decision may be taken prejudice/ discriminatory to notification dated:15.01.2021 till final disposal of this petition.
- c. To direct the respondents to immediately call the meeting for Department Promotion Committee for the Post of JEST and PST”.

2. Learned Counsel for the Petitioners has contended that all petitioners are presently employed as Primary School Teachers (BPS-09), whereas, through Notification dated 15.01.2021, at Serial No.12, a promotion policy was promulgated for the post of Junior Elementary School Teacher (BPS-14) and the method of appointment was provided in the ratio of 50% by initial appointment subject to certain conditions; and the remaining 50% by promotion from amongst Primary School Teacher (BPS-09). According to him the present petitioners qualify for such promotion under the 50% quota. He submits that at the time of filing of this petition, petitioners had learned that 50% quota of promotion which was available to the petitioners is being abolished, whereas, no Departmental Promotion Committee was being convened for deciding the promotion of the petitioners despite repeated requests. According to him, this change in the Policy had effected the vested rights of the petitioners, whereas, after filing of comments it has transpired that Notification dated 8.03.2022, has been issued, whereby the 50% quota by promotion available to the petitioners

was abolished. Per learned Counsel, such notification is based on mala fide; is going to affect the vested right of the Petitioners; hence, this petition. In support he has relied upon the cases reported as Government of NWFP v Buner Khan (1985 SCMR 1158); Izhar Hussain v Secretary Ministry of Industries (1993 SCMR 2258); Tariq Ahmed Pathan v FBR [2020 PLC (CS) 1041]; WAPDA v Haji Abdul Aziz (2012 SCMR 965); Dr. Muhammad Amjad v Dr. Israr Ahmed (2010 SCMR 1466) and Indus Music Group SMC (Pvt) Limited v Federation of Pakistan (PLD 2011 Karachi 494).

3. On the other hand, learned AAG has opposed this petition including an objection regarding maintainability of the same on the ground that a policy decision has been taken by the Government, whereas, the minimum qualification for appointment as a Junior School Teacher has now been enhanced from Intermediate to Graduate and therefore, employment in (BPS-14) is now only available by way of 100% fresh appointments from amongst the qualified persons. According to him, necessary tests have been conducted and the process has been halted due to ad-interim orders passed by this Court. He submits that the grievance of the petitioners has also been redressed by the Government and today he has filed a statement along with a Summary placed before the Chief Minister for approval with detailed working and submits that insofar as petitioners and similarly placed persons are concerned, their posts are being up-graded with appropriate time scale promotion, and therefore, even otherwise no case is made out on their behalf. He has prayed for dismissal of this petition with permission to finalize the appointment process. In support he has relied upon the cases reported as C.E.O Multan Electric Power Company Limited v Muhammad Ilyas (2021 SCMR 775); Khalilullah Kakar v Provincial Police Officer, Baluchistan (2021 SCMR 1168); unreported judgment dated 9.2.2022 in CP No.D-6221-2021 by Sindh High Court, at Karachi in the case of Asif Ali Memon v Province of Sindh; unreported judgment dated 1.7.2021 in C.P.No.1097-L of 2020 by the Honorable Supreme Court in the case of Chief Secretary Government of Punjab v Ms. Shamim Usman; unreported judgment date 20.01.2014 in C.P.No.D-5463 of 2013 by Sindh High Court, at Karachi, in the case of Zamir Iqbal Khan v Province of Sindh; Muhammad Sammi Abro v Province of Sindh [2017 PLC (CS) 419]; and Government of Khyber Pakhtunkhwa v Saeed-ul-Hasan [2022 PLC (CS) 164].

4. We have heard learned Counsel for the Petitioners as well as learned AAG and have perused the material available on record.

5. Insofar as the objection regarding maintainability of this petition is concerned, though learned AAG has raised an objection to this effect on the ground that the same is hit by Article 212 of the Constitution and the petitioners being Civil Servants are required to approach the Sindh Service Tribunal, and secondly; it is a matter of Policy, whereas, Courts are not required to interfere in such policies as held by the Apex Court in a number of cases; however, as to the bar contained under Article 212 *ibid*, we may observe that it is not a question of their eligibility which is under dispute at the moment; nor in fact, it is even a case of fitness or otherwise of the petitioners; therefore, in all fairness this objection does not appear to be valid. The petitioners, at this stage cannot approach the Service Tribunal for redressal of their grievance. In our considered view since the petitioners' case is premised on an abrupt change in the promotion policy by way of a Notification which according to them is being applied retrospectively, therefore, we deem it appropriate to decide the petition on its merits and will hold that for the present purposes the petition is maintainable; however, the question of interference in promotion policy will deal with by us later in this opinion.

6. Insofar as merits of the case are concerned, it would be advantageous to refer to the Notification dated 15.01.2021 and Serial No.12 thereof, which reads as under:-

GOVERNMENT OF SINDH
SCHOOL EDUCATION & LITERACY DEPARTMENT
Karachi dated the 15th January, 2021

NOTIFICATION

NO. SO(S-1)10-274/20141P-1):- In pursuance of sub-rule (2) of rule 3 of the Sindh Civil Servants {Appointment, Promotion and Transfer) Rules, 1974, and in consultation with the Regulation Wing of the Services, General Administration & Coordination Department Govt. of Sindh and in partial modification of this department Notification No. SO(B&F)E&L/RE-DESIG-POSTS/2014-15 (DISIRICT)/2014 dated 14.10.2014 and in suppression of all notifications issued in this behalf the method, qualification, experience and other conditions for appointment in respect of the posts in the School Education & Literacy Department Government of Sindh, mentioned in column-2 of the table below shall be as laid down in column 3, 4 and 5 thereof:-

12.	(i) Fifty percent by initial appointment and subject to completion of	Graduate or equivalent degree (fourteen years education), having	21-30
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	mandatory training as approved by Administrative Department; and (ii) Fifty percent by promotion from amongst Primacy School Teachers (PST) (BS-09) having CT/B.Ed (Hon)/B.Ed on seniority-cum-fitness basis.	atleast fifty percent marks or equivalent from an HEC recognized University.	Years
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As to the change of policy is concerned along with comments, Notification dated 08.03.2022 has been annexed which reads as under:-

“NO. SO(S-I)10-270/2022(P-1)
GOVERNMENT OF SINDH
SCHOOL EDUCATION & LITERACY DEPARTMENT
Karachi, dated 08th March, 2022

NOTIFICATION

NOSO(S-I)10-270/2022(P):- In pursuance of sub-rule (2) of rule 3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and in consultation with the Services, General Administration and Coordination Department, Government of Sindh, and in partial modification of this Departments Notification No. SO(S-H10-274/2014(P-1) dated the 15th January, 2021, the method, qualifications and other conditions for appointment in respect of the posts of Junior Elementary School Teacher (BFS-14) (Teaching Service), School Education & Literacy Department, Government of Sindh, mentioned in column 1 of the table below, shall be as laid down in column No. 2,3 and 4 thereof-

TABLE

NAME OF POST WITH BS	METHOD OF APPOINTMENT	QUALIFICATION AND EXPERIENCE FOR INITIAL APPOINTMENT	AGE LIMIT MIN-MAX
1	2	3	4
Junior Elementary School Graduate or equivalent degree Teacher (JEST) (BPS-14).	By initial appointment subject to completion of mandatory training as approved by the administrative department	Graduate or equivalent degree (14 years education) having atleast 50% marks or equivalent from a University recognized by HEC.	21-30 Years

(GHULAM AKBAR LAGHARI)
SECRETARY TO GOVERNMENT OF SINDH”

7. Perusal of the aforesaid Notifications reflect that though earlier for the post of Junior School Teachers (BPS-14) 50% quota was reserved by promotion from amongst Primary School Teachers (BPS-09) having other qualifications including seniority-cum-fitness; however, now the policy has been changed by the Government through approval from the Cabinet,

whereby, it is now available only through initial appointment subject to various other conditions. The same perhaps has been done for the reason that now the minimum qualification for a JST is Graduation. The petitioners' case is only premised on the proposition that a vested right had accrued to them prior to the change in policy and such right cannot be taken away by retrospective application of the Notification dated 08.03.2022. However, with respect, we are not inclined to agree with the contention so raised by the learned Counsel for the petitioners inasmuch as promotion by itself is not a right, and therefore, concept of having a vested right in such circumstances does not arise. Time and again it has been held by the Apex Court that there is no concept of denial of a vested right in promotion and change of policy, if any, for the reason that the Government is well within its rights to alter the same in the interest and efficiency of the same. The Hon'ble Supreme Court in the case reported as The Central Board of Revenue v. Mr. Asad Ahmed Khan (PLD 1960 SC 81), has been please to hold as under;

In our opinion the High Court made the above order without taking into consideration all the factors relevant to the case, namely, in the first place the taking out of the post of Deputy Superintendent of the category of class III, to which the petitioners belong amounted to abolition of the post and its upgrading on a higher scale of pay to a creation of the new post; appointment to which required a stricter test of efficiency by a competitive examination. Besides, all the Inspectors were given the right to sit in the examination for any number of times to qualify themselves for promotion. At the same time, the pay scale of those, who could not succeed, was raised to the limit of Rs. 350, namely, the same pay as that of a Deputy Superintendent when it was a class III post. In the circumstances, it cannot be said that any rights of the petitioners were infringed, which they could enforce by a writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ. (emphasis supplied)

8. In the case reported Government of Khyber Pakhtunkhwa v Hayat Hussain (2016 SCMR 1021), the Hon'ble Supreme Court has dealt with somewhat identical facts as are present in the instant petition, wherein the policy of promotion and 10% quota reserved for certain category of staff was altered and done away with by way of a subsequent Notification. Being aggrieved the employees approached the Peshawar High Court and contended that through amendment they have been deprived of their right which had already accrued to them. The learned Peshawar High Court was pleased to allow their petition on this very ground that a vested right had accrued to them. However, the said judgment was impugned by the Government of KPK and the Hon'ble Supreme Court by also relying upon

the case of Central Board of Revenue (Supra) has come to the following conclusion: -

“8. It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially and administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted and that no vested right of a Government employee is involved in the matter of promotion or the rules determining their eligibility or fitness, and the High Court has no jurisdiction by means of writ to strike it down as held by this Court in the case of The Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan (PLD 1960 SC 81)..”

As far as the contention of the respondents that the rules could not be changed to affect them adversely is concerned, the said proposition has also been settled by this Court in the case of Muhammad Umar Malik and others v. Federal Service Tribunal and others (PLD 1987 SC 172), wherein the proposition that the rules of promotion could not have been changed so as to affect adversely those already on the eligibility list i.e., combined list of U.D.Cs and S.G.Cs, was repelled by observing that, **"No such vested right in promotion or rules determining eligibility for promotion exists"**, and held as under:-

Mr. Abid Hasan Minto, Advocate, when called upon to address arguments on merits, urged that the rules of promotion should not have been changed so as to affect adversely those already on the eligibilities list i.e. the combined list of the U.D.Cs. and S.G.Cs. In other words, he was claiming a vested right in promotion for all the U.D.Cs. borne on the joint cadre on the date of its separation. The position of law on the subject is clear in view of numerous decisions of this Court, e.g. Government of West Pakistan v. Fida Muhammad Khan (1) Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan (2), Province of West Pakistan v. Muhammad Akhtar (3), Manzur Ahmad v. Muhammad Ishaq (4). No such vested right in promotion or rules determining eligibility for promotion exists.

9. In the facts and circumstances of the case and in the light of the case law cited above, it is quite apparent that the advertisement earlier made had subsequently been withdrawn and thereafter an amendment was made in the Rules and as yet the respondents have not appeared either in the examination or in any interview or selection, therefore, there appears to be no vested right created in their favour, and accordingly any change made in the Rules cannot furnish a cause to the respondents. Moreover, the amendment was made in the Rules in order to clarify certain anomalies, which had duly been taken care of, as such no mala fide can be attributed to the Government and as per the settled principle the determination of eligibility of the respondents through amendment fully falls within the domain and policy decision of the Government which does not warrant interference by the Courts. Resultantly, these appeals are allowed and the impugned judgment of the High Court is set aside. Appeal allowed”.

It has been clearly held by the Hon'ble Supreme Court in the aforesaid judgment that promotion is neither a right nor there is any concept

of vested right in the promotion policy and therefore, the employees cannot seek a writ in their favour for such purposes.

9. In the case of Zafar Iqbal v Director Secondary Education (2006 SCMR 1427), the case of the employees was that before an amendment in the rules pertaining to promotion they possessed required qualification and experience for promotion; but the process was delayed and an amendment was brought, whereby, they stood disqualified; hence, vested right had accrued to them. However, this contention was repelled by the Hon'ble Supreme Court and has been pleased to hold as under:-

The Government is always empowered to change the promotion policy and the domain of the Government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable. This is also a settled law that notwithstanding fulfilment of the requirement qualification and other conditions contained in the rules, the promotion cannot be claimed as a vested right.

The contention of the learned counsel that appellants would be deemed to be qualified for promotion as SS Teachers (Tech.) on the basis of their, teaching experience in the relevant subjects has no substance. The appellants were never considered for promotion on the basis of their teaching experience or eligibility as claimed by them at any stage prior to the amendment in the rules in question and further the teaching experience could not be treated as an equivalent qualification under the amended rules because the experience in a particular field cannot be considered as substitute for the basic qualification prescribed under the rules to hold a post. The teaching experience in the relevant field without the basic qualification, would not be sufficient to declare the appellants eligible to hold the post of SS Teachers under the rules and C in view thereof, we may observe that without fulfilment of the requirement of the qualification prescribed under the rules for the post of SST (Technical), the appellants could not claim promotion on the basis of their experience as of right.

The upshot of above discussion is that unless the qualification of Diploma of Associate Engineers (Electrical) held by the appellants is declared equivalent qualification for promotion as SS Teachers (Tech.), the appellants cannot merely' on the basis of their experience in the relevant subjects, claim promotion and consequently this appeal is dismissed. There will be no order as to costs.

10. In the case reported as (Ahmed Ali and another v. Secretary, Establishment Division, Government of Pakistan, Islamabad and others) (1999 SCMR 1947), the Hon'ble Supreme Court has been pleased to hold as under;

6. The promotion policy and the fixation of quota between the direct recruits and the promotees is to be regulated by the competent Authority on the basis of rules to be framed by it. It may be reiterated here that none has a vested right to claim promotion. In the present case, as stated hereinbefore, the 1980 rules were amended in accordance with law and by the competent

Authority. Therefore, the policy of promotion is to be regulated by the new rules and the appellant and the petitioner cannot claim a right, which has been taken away by the amended rules.

11. A learned Division Bench of this Court in the case reported as (Akhtar Khan Khattak and 3 others v. Province of Sindh through Chief Secretary and others) [2013 PLC (C.S.) 440] has been pleased to hold in somewhat similar facts as under;

20. A perusal of above case-law indicates that the position in law in this regard is as under:---

(i) No one has right to be considered in accordance with rule, applicable at the time when rules are brought into existence but are amended subsequently. Material time will be the time at which decision is being made.

(ii) No doubt change in the rules or notification is always prospective but it is prospective qua the time of consideration and not qua the time regarding employee who was earlier inducted.

(iii) Classification based on different categories of qualifications cannot be said to be arbitrary or unreasonable.

(iv) Therefore, it is within domain of departmental authority and rule making authority to prescribe quota for person coming out of different streams of qualifications.

(v) Government can always change promotion policy.

(vi) It is within domain of government to prescribe qualification for particular post through amendment in the relevant rules.

(vii) Since three classifications are not recognized to be equal by the apex body for regularizing and recognizing qualifications for engineering discipline it cannot be said that qualification should not be form basis for laying down quota for consideration of promotion.

(viii) It is for the departmental authority to decide and rule making authority to lay down as to till what level qualification should be given what importance. Fact that qualification has been laid down for promotion to BS-17 would not mean that a quota must be laid down for promotion to BS-18. Vice versa if no quota is laid down for promotion to BS-19 it cannot be said that laying down quota to BS-18 is violative of equality or is discriminatory. Mujeeb Ahmed's case (supra) is distinguishable because there was 20 years backlog when no promotion for Bachelor degree of Technology holders had taken place.

21. Next contention of Malik Naeem Iqbal that since all employees in BS-17 perform the same job, therefore, there should not be any classification for promotion to BS-18 is also without substance. When a person is sought to be promoted the competent authority is required not only to look at past conduct of the employee or past performance of employee but also assess competence in respect of his ability to shoulder higher responsibility, if he is promoted. Merely looking at past conduct of an employee would amount

to driving a car blindfolded being guided by a person who is looking out of back window. Even if two employees are doing the same job, and let us say with equal efficiency, it is for DPC/CSB/PSB to assess as to which one would be more suitable for next higher responsibilities. Similar would be the position in respect of qualifications: the rule making body may prescribe quotas based on qualifications.

12. Another learned Division Bench of this Court in the case reported as (Ahsan Ali Shah and 10 others v. Province of Sindh through Chief Secretary and 3 others) [2019 PLC (C.S.) 1050] has been pleased to hold as under;

11. We are of the view that the matter pertains to promotion policy. Recruitment Rules have been amended to confer right of promotion to Diploma and B-Tech Degree Holders in BS-18. Therefore, it cannot be said that any right of the Petitioners is infringed, which could be enforced by a Writ Petition.

12. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a Writ. Rule 3(2) of Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974 provides the method of appointment, qualifications and other conditions applicable to the posts, which are laid down by the Department concerned in consultation with the Services and General Administration Department.

13. As per Section 7(ii)(a) of Sindh Public Service Commission Act, 1989 the Commission advises the Government on the matters relating to qualification and recruitment to the posts connected with the affairs of the Province of Sindh.

14. The impugned recruitment rules have been framed in pursuance of Sub-Rule (2) of Rule 3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 in consultation with the Services General Administration and Coordination Department and Commission.

15. We are of the view that Rules have been framed under the statutory power within the ambit of the relevant statute, therefore, we cannot sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the Regulations making body merely because the impugned Recruitment Rules will not serve the object of the Pakistan Engineering Council Act, 1976 as contended by the learned counsel for the Petitioners.

16. It is well settled law that the Government is empowered to change the promotion policy and prescribe the qualification for a particular post through amendment in the relevant Rules. Secondly, the responsibility deciding suitability of an appointment, posting or transfer fell primarily on the Executive branch of the State which is a policy matter.

13. In the case reported as (Ahmed Ali and another v. Secretary, Establishment Davison, Government of Pakistan and others) [2000 PLC (C.S.) 328] it has been held as under;

6. The promotion policy and the fixation of quota between the direct recruits and the promotees is to be regulated by the competent Authority on the basis of rules to be framed by it. It may be reiterated here that none has a vested right to claim promotion. In the present case, as stated hereinbefore, the 1980 Rules were amended in accordance with law and by the competent Authority. Therefore, the policy of promotion is to be regulated by the new rules and the appellant and the petitioner cannot claim a right, which has been taken away by the amended rules.

14. Notwithstanding the above dicta laid down by Hon'ble Supreme Court in a number of cases, we are of the view that in this case, during hearing of this petition Government has also come up with an alternative solution in favour of petitioners. Today we have been assisted by the learned AAG that pursuant to a Cabinet decision a Committee was constituted to examine and review the proposal for up-gradation of post of PST from BPS-09 to BS-14 and its financial implication. He has further informed that after threadbare discussion in the said Committee now a Summary dated 18.3.2022 has been placed before the Chief Minister for his approval, wherein it is provided that all existing PST's who possess a minimum qualification of graduation and are currently working below BPS-14 may be up-graded to BPS-14; and at least 25% of sanctioned strength may be converted to Senior PST (BPS-16), which may be filled by promotion on seniority-cum fitness basis and at least 10% of sanctioned strength may be converted to Chief PST (BPS-17) to be filled by promotion; and all PSTs who are presently working in BPS-14 may be declared senior to newly recruited PSTs (BPS-14). After going through this proposal and before dictating the order in Court, we had given an option to the petitioners Counsel to withdraw the petition and approach the Respondents by accepting such proposal; however, petitioners' Counsel, under instructions, has refused to accept such proposal.

15. As to the objection of learned AAG regarding interference in policy matters by the High Court and his reliance on the case reported as *Government of Khyber Pakhtunkhwa v Saeed-ul-Hasan [2022 PLC (CS) 164]* also appears to be justified as the Hon'ble Supreme Court has observed in that case that executive policy making was not the domain of the Court in the scheme of the Constitution; rather, was the prerogative of the executive to ascertain it on the basis of its need, requirement, available resources and fiscal space.

16. Lastly, as to judgments relied upon by the petitioners Counsel is concerned, except one in the case of *WAPDA (Supra)* all other do not seem to be of any relevance. Insofar as the case of *WAPDA (Supra)* is concerned, it may be observed that this is a two-member bench judgment, whereas, the other judgments relied upon in this opinion as above are of three members bench; hence, the said judgment relied upon on behalf of the petitioners cannot be considered.

17. In view of hereinabove facts and circumstances and the dicta so laid down by Hon'ble Supreme Court, we are of the considered view that no case for indulgence is made out; nor any vested right has accrued in favour of petitioners, so as to seek promotion under the old rules; hence, the petition in hand is misconceived and is accordingly dismissed.

JUDGE

JUDGE