

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon
Justice Mrs. Kausar Sultana Hussain

Constitutional Petition No.D-5282 of 2021

(Maqsood Ahmed v. the Secretary and 02 others)

Malik Altaf Hussain, advocate for the petitioner
Mr. Ali Safdar Depar, AAG

Date of hearing &
Order : **18.04.2022**

ORDER

Adnan-ul-Karim Memon, J. Petitioner seeks proforma promotion to the post of Assistant Director (BPS-17) in terms of minutes of Departmental Promotion Committee (DPC), inter-alia on the ground that the issue of promotion of the Petitioner falls within the purview of fundamental rights and that the same cannot be denied as provided under the Constitution. Petitioner has also cited various reasons whereby his case for promotion was not presented for consideration in DPC and he stood retired in February 2021. Petitioner has asserted that despite several representations made to the Respondents to consider his case for promotion during his tenure of the service as done with the junior officers who were already considered; the representations of the Petitioner were ignored in violation of the Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975. Per petitioner, the respondent vide letter dated 11.8.2021 corrected his seniority and placed him at Sr. No.1 on the Seniority List. Per petitioner, the respondent vide letter dated 11.8.2021, informed the Secretary College Education Department, Government of Sindh, about the representation/appeal regarding the seniority issue of the petitioner and stoppage of DPC, however, the respondents vide letter dated 13.8.2021 convened the DPC to consider promotion cases of Superintendents (BPS-17) to the post of Assistant Directors (BPS-17) College Education Department and the case of the petitioner was ignored; that there was nothing adverse against the Petitioner during his tenure of service, as neither he was facing any disciplinary proceedings nor any departmental inquiry was pending against him. Petitioner lastly submitted that his case for proforma promotion to the next rank with his batchmates, after he retires from service, is his service right under the law.

2. We have heard learned counsel for the parties and perused the material available on record.

3. It is settled law that where the law requires an act to be done in a particular manner, it ought to be done in that manner alone, and such a dictate of law cannot be termed as a technicality. Reliance has been placed on *Muhammad Anwar and others v. Mst. Ilyas Begum and others* (PLD 2013 SC 255). The record reflects that the petitioner was appointed as Junior Clerk in Education and Literacy Department in

1983 and subsequently, he earned promotion as Office Assistant in 1995 and lastly he was promoted to the post of Office Superintendent at Government Degree College, Sakrand in the year 2005. The record further reflects that due to certain changes in School and College hierarchy the seniority issue of the petitioner remained under dispute and finally that issue was resolved, however, much water in the intervening period had flowed under the bridge and the petitioner retired from service and thereafter the respondent convened the meeting of DPC in 2021, however, failed to consider the case of the petitioner for promotion to the post of Assistant Director (BS-17) being senior-most officers in the seniority list of Office Superintendents. If this is the position of the case, on the subject issue, the Honorable Supreme Court of Pakistan in the case of Secretary Schools of Education and others v. Rana Arshad Khan and others (2012 SCMR 126) while granting Proforma promotion to retired public servant held as under:-

“Much before the retirement of the respondents, a working paper was prepared by the department with regard to their promotion but the matter was delayed without any justifiable reason and in the meanwhile, respondents attained the age of superannuation. They cannot be made to suffer on account of the departmental lapse.”

4. It is a settled principle of law that if service, benefits have accrued to an employee but for one reason or the other such benefits could not be awarded to such an employee, then, irrespective of the fact of his/her having retired from service, the department concerned shall still have to further consider her/his case for such a promotion and to allow him/her benefits of such a promotion, even after retirement from service.

5. Promotion is generally an advancement in rank, which is granted based on acquiring extra qualifications or enhancement of skills or awarded in lieu of longstanding services of the employee as a token of satisfaction and appreciation over services rendered by him. The concept of Proforma Promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his right for such promotion or a legal restraint was posed against his claim owing to any departmental proceedings inquiry etc. against him and the said obstacle is done away with ultimately then in such a situation, his monetary loss and loss of rank is remedied through proforma promotion.

6. The Honorable Supreme Court in the case of Regarding Putting of Two Government Officers Namely Hasan Waseem Afzal and his Wife Farkhanda Waseem Afzal as OSD (2013 SCMR 1150), also held that the public/civil servants who were not promoted for want of required PERs because of their posting as OSD was not an act of their own doing and thus could not be left to suffer for the very reason. It was observed that:

“Their promotion to the next higher, the scale has been denied for want of PERs and PERs have not been complied on account of their posting as OSDs which is not an act of their own doing. “Let them suffer” may be a command of expediency but we cannot approve it when, “give them their due” is a command of justice, which prima

facie appears to have been denied to them out of indignation and ill will of the high ups."

7. No doubt promotion is not the vested right of a civil/public servant but where he is fully qualified for the promotion and there is no tangible clog in his service record, he has a right to expect that his case will be considered for promotion under law, rules, regulations and eligibility criteria/policy formulated for regulating promotion by the Government. Any breach or deviation therefrom for mala fide reasons or due to arbitrary act of his superiors or peers or the competent authority is not warranted in law.

8. In view of the position explained above it is to conclude that a civil servant has a fundamental right to be promoted even after his retirement through awarding pro forma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own and he is retired on attaining the age of superannuation without any shortcoming on his part pertaining to deficiency in the length of service or in the form of inquiry and departmental action was so taken against his right of promotion.

9. In view of what has been discussed above, the instant petition is disposed of with a direction to the competent authority of Respondents to consider the case of the petitioner for proforma promotion to the post of Assistant Director (BS-17), if the petitioner is at all entitled to proforma promotion under the law and if he meets the criteria, his proforma promotion shall be made by way of Circulation within one week.

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