

IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-2527 /2022

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Petitioner:

Gulzar Ahmed Soomro, in person.

Respondents:

Federation of Pakistan & Others.
Through Mr. Syed Yasir Shah, Assistant
Attorney General.

Date of hearing:

03.11.2022.

Date of Order:

03.11.2022.

ORDER

Muhammad Junaid Ghaffar, J: Through this petition, the Petitioner has sought the following reliefs:-

- I.* declare that recruitment rules of Directorates of Hajj notified under S.R.O. 83(1)/89 dated 25 January, 1989 and Civil Servant (APT) Rules, 1973 provides for promotion of civil servant in higher pay scale post. Hence, act of Respondent No. 1 for promoting to the Respondent No. 3 in same substantive pay scale post of Deputy Assistant Director (BS-16) is in flagrant disregard to these rules and moreover amalgamating of seniority of APS & Stenographer with the cadre of Assistants for onward promotion in other occupation group/cadre by Respondent No. 1 is contrary to the Section 8 & 9 Civil Servants Rules, 1973 and in sheer violation of Civil Servants (Seniority) Rules, 1993 Accordingly;
- II.* bound within statutory period to the respondent No. 1 to segregate the seniority of those officers who are initially promoted as Deputy Assistant Director and onward in administrative cadre from different cadre i.e. Stenographers / Assistant Private Secretaries and after segregating of seniority:
- III.* direct that according to para 3(b) (bb) of Civil Servants (Seniority) Rules, 1993, Respondent No. 3 being employee of other occupational group / different cadre who opt for promotion in other cadre will, on his promotion as such in one batch, have to be placed junior to the petitioner being employees of respective cadre.
- IV.* Any other relief which this Honorable Court deems fit may also be granted for the interest of justice.

2. Petitioner, who appears in person, has argued that Rule-03 of the Rules of Directorate of Hajj notified vide SRO-83(I)/89 dated 25.01.1989, wherein, Stenographers of BPS-15 are eligible for being promoted as Deputy Assistant Director Hajj (BPS-16), is in violation and contrary to the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 including Civil Servants (Seniority) Rules, 1993. He has further argued that Respondent

No.3 has been put Senior to him though he belongs to different cadre and not eligible for the post of Deputy Assistant Director Hajj.

3. Learned Assistant Attorney General has opposed this petition on the ground that in fact the Rules have not been challenged; but the seniority of Respondent No.3 is being challenged, for which this Court is not appropriate forum; hence this petition is not maintainable and is liable to be dismissed.

4. We have heard the Petitioner in person, learned Assistant Attorney General and have perused the record. On perusal of Memo of petition vis-à-vis its' prayer clause, it reflects that the contention of learned Assistant Attorney General appears to be correct inasmuch as the primary grievance of the Petitioner is in fact the seniority of Respondent No.3, as according to him though the said respondent has also been promoted in BPS-16; however, since he is from different cadre, he ought not to have been placed senior to the Petitioner. We are afraid under the garb of challenge of some Rules, the relief, which has been sought, is in respect of *inter se* seniority and for that constitutional jurisdiction is not available and the Petitioner is required to avail appropriate alternate remedy first before the department and then before the Service Tribunal, if at all. Record further reflects that such remedy was also availed and then in between abated by withdrawing the Appeal filed before the Federal Service Tribunal allegedly on some assurance, which we are afraid does not entitle the petitioner to at least approach this Court in its constitutional jurisdiction.

5. Nonetheless, even otherwise we have not been able to persuade ourselves with the contention of the Petitioner that a person, who has admittedly been promoted to BPS-16, cannot hold office of Deputy Assistant Director Hajj despite his promotion on the ground that he was a Stenographer in BPS-15. In fact, the entire arguments appear to be absurd.

6. Accordingly, in view of the above, we do not see any reason to exercise our discretion in this matter, whereas, the petition otherwise in essence appears to be not maintainable; hence being misconceived, is hereby dismissed with pending applications.

J U D G E

J U D G E

Ayaz p.s.