

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 6095 of 2021 : Capt. Muhammad Ali Khan vs.
Port Qasim Authority & Others

For the Petitioner : Mr. Malik Naeem Iqbal Advocate

For the Respondents : Mr. Khalid Mehmood Siddiqui, Advocate
Mr. M. Arshad Khan Tanoli, Advocate
Mr. Muhammad Nishat Warsi
Deputy Attorney General

Date/s of hearing : 30.08.2022

Date of announcement : 30.08.2022

JUDGMENT

Agha Faisal, J. The crux of this determination is whether seniority in a post or service ought to be determined upon antecedents preceding such service, rendered prior to regularization.

Factual brief

2. Briefly stated, the Port Qasim Authority (“PQA”) sought to engage pilots / tug commanders on contractual basis and pursuant thereto, vide its meeting dated 29.09.2009¹, manifested its particularization of qualifications, in respect of candidates, vide an assessment sheet (“Assessment Sheet”).

3. Subsequently, the respondent nos. 3 and 4 were employed on contract on 09.10.2009 respectively; whereas, the petitioner was contractually engaged later on 10.10.2009. The respective employment contracts contained an express stipulation that the appointment did not confer any right for being placed in the grade / seniority list of the cadre / group to which the relevant post belonged. Subsequently, the services of the petitioner and the relevant respondents were regularized, with effect from their date of joining PQA.

¹ Being a date even prior in time to the contractual appointment of the parties under scrutiny.

4. A provisional seniority list dated 07.03.2017 and the consequent final seniority list dated 04.01.2018 are on file; however, the petitioner has disavowed any knowledge thereof. Another provisional seniority list dated 26.12.2019, consistent with the lists mentioned supra, has ostensibly aggrieved the petitioner, who filed his objections thereto on 11.01.2020² and eventually this petition on 09.10.2021 seeking precedence in seniority over the respondent nos. 3 and 4.

Respective arguments

5. The basic premise of the petitioner's case was that since the score assigned to the petitioner in the Assessment Sheet was higher than that assigned to the respondents, therefore, he had the rightful claim to ascendance in seniority. Reliance was placed on Rule 2(2) of the Civil Servants Seniority Rules 1993 ("Rules").

6. It was the respondents' case that seniority *inter se* in the present facts and circumstances was borne from the date of joining and admittedly the respondents' joining preceded that of the petitioner. Reliance was placed on Regulation 62(4) of the PQA Employees Service Regulations 2011 (Regulations) read with PQA's board resolution 85 of 2007 dated 10.11.2007 ("Resolution"). It was also articulated that this petition was barred by *laches*.

7. Heard and perused.

Issue of delay

8. It is considered appropriate to address the issue of delay at the very onset. The admitted record demonstrates that the petitioner was regularized in 2010 and his regularization was specified to take effect from the date of joining. Admittedly, the petitioner has never articulated any cavil to the foregoing notwithstanding having known that the respondent nos. 3 and 4 were also regularized from their dates of appointment, being prior in time to that of the petitioner. The delay of over a decade in agitating this issue has not even been endeavored to be justified before us.

9. A perusal of the provisional seniority list dated 07.03.2017 demonstrates that it was marked for distribution to all concerned and personal files. The pursuant final seniority list dated 04.01.2018 also shows that it was marked for

² Received by PQA on 15.01.2020.

distribution amongst all concerned. The phrase “*all concerned*” in the very least appears to be a reference to all the persons mentioned in the relevant lists, including the petitioner. No case has been set forth before us to consider the petitioner’s professed ignorance of the relevant lists.

10. Notwithstanding the foregoing, while the petitioner claims to be aggrieved of a provisional seniority list dated 26.12.2019, however, failed to assail the same before this Court until almost two years later. No justification for this manifest delay was articulated before us on behalf of the petitioner.

11. The petitioner is apparently still not aggrieved of his regularization having taken effect from the date of his appointment, as the terms of regularization in 2010 have never been assailed as of date. Even the earlier provisional / final seniority lists were never challenged, ostensibly feigning ignorance. The challenge to the last provisional list has also been made after a delay of almost two years. The Supreme Court has deprecated unduly belated challenges to seniority lists in *B A Tabassum*³. Similar edicts have been rendered in contemporary times including in *Sarosh Haider*⁴, wherein the Supreme Court maintained that delay could be fatal to a challenge to seniority lists and supplemented that failure of a person to agitate his grievance in such regard at successive occasions could manifest acquiesce and / or abandonment of claim.

12. It is, thus, manifest that the petitioner has remained unable to account for the delay in preferring the present petition, which appears *prima facie* to be hit by *laches*.

Assessment Sheet

13. It is noted that this matter has been pending for over a year, therefore, without prejudice to the foregoing, it is considered proper to advert to the merits as well. The entire crux of the petitioner’s case is rested on the Assessment Sheet, however, prior to deliberating the effect thereof it is expedient to illustrate the said article. The document placed on record consisted of only one of two pages and that also illegible. The typed copy provided contains birth dates, education / experience and figures in columns, devoid of any heading. It is considered safe to observe that under no reasonable circumstances could any order of merit be discerned there from.

³ Per *Saiduzzaman Siddiqui J* in *Pakistan vs. B A Tabassum & Others* reported as 1995 SCMR 1231.

⁴ *Sarosh Haider vs. Muhammad Javed Chundrigar & Others* reported as PLD 2014 SC 338.

14. Even otherwise, the Assessment Sheet in itself could not be demonstrated to confer any right, order of merit or otherwise, since it was professed to have been a document utilized in respect of contractual employment and admittedly not in respect of regular service. In any event, the tenure of regular service of the petitioner could only be reckoned to commence from the effective date of regularization, rendering antecedents pertaining to past service futile for purposes of seniority.

Rules

15. The petitioner had relied upon Rule 2(2) of the Rules to insist that the seniority be determined per the Assessment Sheet. The relevant rule prescribes that the seniority of persons initially appointed consequent to open advertisement may be determined in order of their merit assigned by the selection authority. At first glance this rule appears directed at initial appointments. Section 8 of the Civil Servants Act 1973 deals with seniority and subsection (3) thereof confines determination per rules to initial appointments. However, Subsection (4) thereof stipulates that seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post⁵.

16. In order to afford primacy to Rules 2(2) of the Rules, the petitioner relies upon Regulation 53 which states that seniority of employees shall be determined in accordance with rules / instructions issued by the Federal Government from time to time. As stated supra, the Civil Servants Act 1973 befalls seniority on initial appointment upon rules and no case has been set forth before us to consider otherwise. The case before us is that of employment having commenced by virtue of regularization and not by advertisement.

Nexus of regularization and seniority

17. The record demonstrates that the employment contract accepted by the petitioner precluded any claim for seniority. The office order⁶ relied upon by the petitioner himself, to demonstrate the regularization of his service, expressly states that the regularization is with effect from the date of joining. The relevant office order also denotes that the date of joining of the petitioner is subsequent to that of the respondent no. 3⁷. There is no suggestion of any cavil having been

⁵ Consistent with Regulation 62(4) of the Regulations.

⁶ Dated 01.10.2010.

⁷ A separate office order is on record demonstrating that the date of joining of the respondent no. 4 is also prior to that of the petitioner.

articulated by the petitioner at any time whatsoever with respect to the terms and conditions of his contract and / or subsequent regularization.

18. Regulation 62(4) of the Regulations expresses that the regularization of the employees shall have effect from “*their joining*”. The Resolution amplifies the regulation referred to supra and echoes that the relevant services being regularized shall take effect from the respective “*joining*”. The petitioner’s counsel did not dispute the employment documents, Regulation or Resolution mentioned supra, however, contended that that regularization was independent of seniority, which ought to be reckoned on the basis of the Assessment Sheet, issued prior to even the contractual employment of the petitioner.

19. The Supreme Court has recently maintained in *Bashir Badini*⁸ that seniority is to take effect from the date of regular appointment and service rendered prior to regularization would have no impact on the issue of seniority.

20. The nexus of seniority and *joining*⁹ was also considered by the Supreme Court earlier in *Farrukh Irfan*¹⁰. The comparable fact was that the petitioner took oath of office a day later than his batch mates and was thus relegated in seniority. The august Court held that in view of the verbiage employed by the pertinent notification the relevant appointment was to take effect from the date of taking oath and any contrary conclusion would be unmerited.

21. The verbiage of the petitioner’s employment contract and the office order regularizing his services is clear. Whilst the prior precludes any claim in respect of seniority, the latter determines service to commence from the date of joining. In view hereof, we respectfully find ourselves unable to sustain the petitioner’s argument that seniority had no nexus with regularization in the facts and circumstances under scrutiny.

Conclusion

22. The Regulations and the Resolution prescribe regularization to take effect from the date of joining. Seniority has been demonstrated to be a corollary

⁸ Per *Muhammad Ali Mazhar J* in *Bashir Ahmed Badini vs. High Court of Balochistan & Others* reported as 2022 SCMR 448.

⁹ Albeit in an analogous context.

¹⁰ Per *Shaikh Azmat Saeed J* in *Justice Muhammad Farrukh Irfan Khan vs. Pakistan & Others* reported as PLD 2019 SC 509.

and to be determined post facto. Such determination of seniority has been recognized by the Supreme Court in *Abdullah Khan*¹¹.

23. In view hereof, we are constrained to observe that this petition is misconceived and even otherwise devoid of merit, hence, was dismissed, along with pending application/s, vide our short order announced in open Court earlier today. These are the reasons for the short order.

JUDGE

JUDGE

¹¹ Per Muhammad Afzal Zullah J in *Abdullah Khan vs. Director Labour Welfare NWFP & Others* reported as 1989 SCMR 1193.