

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 424 of 2022

[Madni Ahmed Ali Arfat Siddiqui *versus* Sui Southern Gas Company Limited and another]

- Date of hearing : 11.08.2022, 28.09.2022 and 03.10.2022.
- Date of Decision : 03.10.2022.
- Plaintiff : Madni Ahmed Ali Arfat Siddiqui, through M/s. Muhammad Ali Lakhani and Mujtaba Sohail Raja, Advocates.
- Defendant No.1 : Sui Southern Gas Company Limited, through M/s. Faisal Mahmood Ghani and Sohail Tharani, Advocates, along with Mr. Bilal Farooq Alvi, Senior Legal Counsel.
- Defendant No.2 : Mr. Ameer Haider, Advocate, holds brief for Mr. Ovais Ali Shah, Advocate for Defendant No.2.

J U D G M E N T

Muhammad Faisal Kamal Alam, J:- Through the present action at law, Plaintiff has challenged the Public Notice dated 05.12.2021, given by Defendant No.1 through Defendant No.2, for recruitment of professionals in senior management positions in different Departments of Defendant No.1. Plaintiff contains the following prayer clause_

- “i. a declaration that Defendant No.1’s Employment Policy, its Human Resource Handbook and Succession Planning are of binding effect and nature;*
- ii. (Consequently) A declaration that progression via promotion precedes recruitment in any manner;*
- iii. (Resultantly) A declaration that Public Notice dated 05.01.2022 and all ensuring processes are illegal, unlawful and without jurisdiction;*
- iv. A Mandatory Injunction directing Defendant No.1 (including persons acting under it, through it and / or on its behalf) to initiate a promotion cycle for Job Grade 9 as per applicable rules / regulations;*
- v. A permanent Injunction suspending the recruitment process initiated under Public Notice dated 05.12.2021;*
- vi. A permanent Injunction restraining Defendant No.1 (including persons acting under it, through it and / or on its behalf) from causing recruitments to offices specified in Paragraph 3 supra;*

- vii. *(In pursuance of present cause) A Permanent Injunction restraining Defendant No.1 (including persons acting under it, through it and / or on its behalf) from taking any action(s) adverse to the rights of the Plaintiff, including suspension from service, initiation of disciplinary proceedings, an outstation transfer, termination or dismissal from service, withholding of service benefits etc.;*
- viii. *Grant of relief(s) otherwise deemed necessary, just and appropriate in given facts and circumstances;*
- ix. *Grant costs of proceedings.”*

2. Gist of the submissions of Mr. Muhammad Ali Lakhani, Advocate, is, that the manner in which Defendant No.1 is trying to fill up Senior Management positions of Senior General Managers in its Departments, viz. Senior General Manager (Information Technology), (2) Senior General Manager (Procurement & Inventory Management) and (3) Senior General Manager (Health, Safety, Environment & Quality Assurance / Quality Control – HSEQA), violates the Service Rules and Policy of Defendant No.1 itself, besides, impeding the career progression of the Plaintiff and therefore, the present *Lis* is filed and is maintainable. Plaintiff has legitimate expectation that considering the long association of Plaintiff with the Defendant No.1 with unblemished service record, the Defendant No.1 should first consider the Plaintiff for any of the positions advertised and then go for external selection of eligible persons, *inter alia*, by following the internal succession plan of Defendant No.1 – SSGCL. In support of his arguments, learned counsel has relied upon the following case law_

- i. P L D 2001 Supreme Court 176
[*The Managing Director, Sui Southern Gas Co. Ltd. versus Saleem Mustafa Sahikh and others*] – Saleem Mustafa Shaikh case;
- ii. Unreported Judgment dated 06.06.2022 passed in Civil Petition No.419 of 2020 [*President, ZTBL, Head Office, Islamabad versus Kishwar Khan and others*] – ZTBL case
- iii. 1995 S C M R 1053
[*Federation of Pakistan through Secretary, Government of Pakistan, Establishment Division, Islamabad and 2 others versus Abdul Rashid*];

- iv. 1005 S C M R 650
[*Walayat Ali Mir versus Pakistan International Airlines Corporation through its Chairman and another*];
- v. 2004 S C M R 1820
[*Nighat Yasmin versus Pakistan International Airlines Corporation, Karachi and another*]; and
- vi. 1989 S C M R 353
[*Messrs Radaka Corporation and others versus Collector of Customs and another*]

3. On the other hand, Mr. Faisal Mahmood Ghani, Advocate, representing Defendant No.1, has raised serious question about the maintainability of present suit; contended that it is the discretion of Defendant – SSGCL to search, select and appoint the best from the job market, in order to improve the overall business operations of Defendant Company. Paragraph-31 of the Counter Affidavit is referred, to rebut the arguments of Plaintiff, that the latter was not considered for the advertised position; Plaintiff applied for the position of HSEQA, he was considered by the Committee and was not found fit. Further clarified, that Plaintiff has relied upon the Policies and Service Rules, which have been superseded by the Policies, through various decisions of the Board of Defendant No.1 Company and in this regard he has filed relevant portions of the decisions under his Statement dated 13.08.2022. He has cited the following case law in support of his arguments_

- i. **2016 S C M R 1021**
[*Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others versus Hayat Hussain and others*] – **Hayat Husain case**;
- ii. **Unreported Judgment of the Honourable Supreme Court passed in Civil Petition No.4282 of 2018** [*Faraz Ahmed versus Federation of Pakistan through Secretary, Ministry of Communications, Government of Pakistan, Islamabad and others*] – **Faraz Ahmed case.**

4. Since no triable issues exist, thus this *Lis* can be decided on legal issues. From the pleadings of the parties, following issues are settled_

1. ***Whether the Suit is maintainable?***
2. ***Whether the Defendant No.1 has violated its own service regulations and policies when it advertised the impugned Public Notice dated 05.12.2021 / Advertisement?***
3. ***What should the decision be?***

5. The précis of the case law relied upon by the Plaintiff's counsel is that, in the case of Saleem Mustafa Shaikh (*ibid*), it is held that although Rules of SSGCL (present Defendant No.1) are non-statutory, but since is owned and controlled by the Federal Government, therefore, it cannot be accepted that such Rules are not enforceable and hence, such Rules are to be adhered to, even if the rules are non-statutory. Notification for filling up the Post of Director General is to be first filled by promotion and recruitment including induction of outsider candidate be done if no Officer in the Department is eligible and qualified for the promotion. If an employee is prevented through *mala fide* acts from getting promotion, then same can be corrected in an appropriate proceeding. Service Rules of Statutory Organization binds the Employer and the Employee both. Established Departmental practice if is not violative of any law or rules, should be equally applied to other persons having the same case. In the recent judgment, the Honourable Supreme Court in the case of ZTBL (*ibid*) has propounded the phrase "Master and Servant" and it is held that a suit is maintainable for declaration and injunction, challenging the imposition of penalty, while dealing rather diluting the strict interpretation of the concept of 'Master and Servant' from the perspective of human rights.

6. Crux of the case law relied upon the Defendant's counsel is that the Government is entitled to make Rules in the interest of expediency of service and to remove anomalies in its Service Rules, which is exclusive domain and policy decision making of 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; for a contractual employee, no vested rights exist for his permanent absorption on account of his length of service, but his request can be considered by the Management.

7. Adverting to the present case.

8. Learned counsel for the Plaintiff in rebuttal has also referred to earlier Email of 22.12.2020 (*available at page-91 of the second part of Court's file*) that on occasions, Defendant No.1 has invited employees to apply for different Posts, which shows that for the present Posts as well same criterion should have been followed. He has further referred to a newly promulgated amendments in H.R. Manual and Service Rules, particularly, relating to the Succession Plan. He argued that present advertisement clearly violates the paragraph-18 of current Succession Plan, in which criterion is laid down for promotions, *inter alia*, from Grade 8 to 9 and 9 to 10. However, to a specific query on paragraph-31 of the Counter Affidavit of Defendant, which has been referred, to which it is replied, that Plaintiff was assessed last year, that is, FY 2020-21, for the Senior Post of HSEQA (Health, Safety, Environment & Quality Assurance / Quality Control) and not for the present impugned Advertisement. However, the said paragraph-31 clearly states that Plaintiff was not found fit. Plaintiff's counsel then referred to Annexure 'H' with the caption 'minimum eligibility criteria for promotion as approved by H.R. Committee / BOD' and refers to its serial No.9, that criteria mentioned for the post of Senior General Manager in Grade-9 is that a person should be a General Manager in Grade-8 (which the Plaintiff is) and should have worked in the said Grade for at least three years. To this argument, it is stated by learned counsel for the Defendant No.1, that this Policy has been superseded by the latest H.R. Manual (which is filed under the Statement of Defendant).

ISSUE NO.1:

9. As far as Issue No.1 is concerned, in view of the Case Law on the subject and particularly, the latest decision of the Honourable Supreme Court in ZTBL case (*supra*), I am also of the considered view that merely because Rules are non-statutory and relationship of Defendant No.1 and Plaintiff is that of Master and Servant, it does not mean that Plaintiff and such other employees are remediless. If the service regulations are violated or the established policies are deviated from to deprive an employee, from his career progression, then the suit is maintainable, because Section 24-A of the General Clauses Act, 1897, is also applicable to Defendant No.1, while framing the Policies for the Employees, they have to act fairly, justly and reasonably.

ISSUE NO.2:

10. The Posts advertised require specialized qualifications. In order to run organization in an efficient and viable manner, it is not necessary that a senior management position is always filled up internally through promotion, specially when the present positions are on contract and not regular posts. Defendant No.1 and any other Organization, especially of Public Sector, can hire the services of well qualified and reputed professional(s) in order to operate efficiently. *Secondly*, in my considered view, an employee can be considered for such specialized posts, only if he has the requisite qualifications. Merely that he fulfills the criteria of length of service or any other general criteria for promotion does not itself creates a vested right in favour of Plaintiff. Defendant No.1 is not bound to promote an employee to the next higher grade if that post requires specialized qualifications. The present qualification of the Plaintiff should have direct nexus with the Posts advertised. Record shows that Plaintiff has done B.E. Electronics, thus, obviously he cannot be considered for the post

of Senior General Manager-Information Technology, which in the present times, is one of the most important posts in any Organization; rather, *sine qua non* for viable operation of an Organization, including Defendant No.1. Similarly, he was last year considered for the position of HSEQA and was not found fit and nothing is placed on record that what further qualification the Plaintiff has acquired, to become eligible for the said position. As far as the third Post of Senior General Manager, Procurement and Inventory Management, is concerned, it is sole discretion of Defendant No.1 to consider any of the employees including Plaintiff, if the Defendant No.1 is unable to hire / induct a suitable candidate externally.

11. In the previous and present Service Regulations, H.R. Manual and Employment Policies, nothing has been shown, which can be termed as violative of any principle of law or statutory provisions. Taking guidance from the Honourable Supreme Court Judgment in Hayat Hussain Case (*ibid*), it is discretion of the Board of Defendant No.1 to modify, amend, replace and frame policies in accordance with the present day requirement. The Defendant No.1 has decided to induct the best of the best from the open market through the impugned Advertisement and no tangible material has been brought on record to show that such act, decision or the subject Advisement is violative of any of the provisions of its HR Manual or Succession Plan (*in particular*), therefore, answer to the Issue No.2 is that the subject Advertisement does not violate any of the provisions of present service structure, Rules or Policy; hence, no interference is required in this proceeding in the executive decision(s) of Defendant No.1, which is lawful.

12. The case law cited by learned counsel for the Plaintiff is quite distinguishable from the facts of present case, *inter alia*, as nothing adverse has been done against the interest of Plaintiff. *Similarly*, the other factor is that such Advertisement / Public Notice, has been challenged only by

Plaintiff and if it was / is so blatantly repressive, then other Senior Employees should have come forward. However, this fact is not a determining factor of this case. It is further clarified that there is a difference between maintainability of suit and grant of any relief. In the foregoing paragraphs, it has already been decided that facts of present suit *prima facie* show that the suit is maintainable, but after considering of record, the main relief with regard to setting aside the recruitment process initiated through the impugned Advertisement / Public Notice dated 05.12.2021, cannot be granted, coupled with other relief(s) as mentioned in the Prayer Clause (*ibid*), including relating to promotion and recruitment through promotion, but, Defendant No.1, exercising its discretion can consider Plaintiff or any other eligible employee for the advertised positions.

13. Consequently, this Suit is dismissed along with all pending application(s), but with no order as to costs.

Judge

Karachi.

Dated: 03.10.2022.

Riaz / P.S.