

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-3944 of 2020

(Ali Murad Sipio v. Employees' Old Age Benefits Institution and 27 others)

Constitutional Petition No.D-1723 of 2021

(Mahmood Nabi Jaan v. Employees' Old Age Benefits Institution and 28 others)

Mr. Altamash Faisal Arab, advocate for the petitioners

Mr. Ali Asadullah Bullo, advocate for the respondent
EOBI a/w Mr. Abdul Ahad Memon, Director Law EOBI

Date of hearing

& Decision: 22.02.2023.

ORDER

Petitioners have brought a common question for adjudication through these petitions, by assailing the legality of the appointment of private respondents in Operation Cadre of Employees Old Age Benefits Institution (EOBI), inter-alia, on the ground that they do not meet the requirement under EOBI service Regulations 1980 as the private respondents do not qualify to be appointed on the subject posts without the competition of probationary period, and therefore, the impugned regularization of probation of the private respondents was issued without lawful authority as well as against the ratio of judgment rendered by the Honorable Supreme Court in Constitution Petition No.6 of 2011 and H.R.C No. 49012-P of 2010, wherein the hon'ble Supreme Court held that all the illegal appointments, deputations, and absorptions made in the E.O.B.I., as detailed in the report of Fact Finding Committee on recruitment/ appointment, were declared to be without lawful authority and of no legal effect.

2. Petitioners claim that they were appointed earlier to the private respondents in the E.O.B.I and were/are entitled to the benefits of seniority, promotion, and postings, following the seniority principles, whereas the private respondents joined respondent-EOBI on 23-01-2007 on probation, and their services were regularized on 13.11.2008 before completion of three (3) years probationary period in the terms of Advertisement dated 13.08.2006; and, subsequently they were made senior to the petitioners and enjoyed their postings on executive cadres without lawful authority.

3. We asked the learned counsel as to how this petition is maintainable under Article 199 of the constitution when the competent authority of EOBI curtailed

the period of probation of the private respondents and regularized/confirmed their services with effect from 13.11.2008.

4. Mr. Altamash Faisal Arab, learned counsel for the petitioners, attempted to give a brief history of the case and argued that the private respondents had been temporarily recruited vide the Probationary Officers Induction Scheme' and for a stop-gap arrangement, rather than through the regular recruitment procedure as prescribed in the EOBI service laws. As per learned counsel, NOC issued by Establishment Division, for 12 vacancies in Operations Cadre vide letter dated 19.07.2005; however, Respondent No. 1 (EOBI) had given the advertisement for 30 Probationary Officers; that the Advertisement dated: 13.08.2006 under the 'Probationary Officers Induction Scheme', based on which the private respondents were recruited, required the mandatory pre-requisite/criterion of probation period of three years or more. As per learned counsel clause (xi) of the Appointment Letter dated: 23.01.2007 read that the probationary period shall start from the end of the training period (nine months), in terms of which the Probationary Period was to end in Nov/December 2010 tentatively, thus placing their seniority level (notwithstanding that the appointment of Respondents No. 5 to 29 in the Operations Cadre' is illegal) below the Petitioners (who were promoted to Grade-07) on 19.12.2009. The Learned counsel urged that perusal of clause 4 (3) of the Employees Old-Age Benefits Institution (Employees Seniority) Procedures, 1998 enunciates that the advertisement shall bear the grade of a cadre, which was a pre-requisite, was missing in the advertisement dated 13.08.2006. the learned counsel urged that private respondents had been illegally placed in the 'Operations Cadre' list by Respondent No. 1 (Chairman EOBI) rather than according to the decision of the Selection Committee. The learned counsel emphasized that the Minutes of the Department Selection Committee dated: 29.12.2006 nowhere recommended that Respondent Nos. 5 to 29 shall be recruited in the 'Operation Cadre' list. Thus, all the appointments of private respondents are illegal and void ab initio and ought to have been in the "other cadres"; at the time of recruitment in the year 2007, as none of the private respondents possessed three (3) years mandatory requirement of three years post qualification experience as stated in the Advertisement Letter dated 13.08.2006 for the post of Assistant Director (Operations). Thus, the whole recruitment process of all the appointments made in the year 2007 is void and illegal, and in terms whereof the Impugned seniority List holds no legal

value. Learned counsel further submitted that the Regularization Letter dated: 13.11.2008 is illegal at the very outset in terms of Section 15 of the EOBI (Employees Service) Regulations 1980. The learned counsel next submitted that the private respondents were promoted without a departmental promotion course. The learned counsel added that the appointment of private respondents was objected to by Commercial Audit, AGP, vide letter dated 18.02.2019. The learned counsel next argued that six of the promoted officers failed to qualify for the PGD Course on Social Protection at IBA and it was made clear by EOBI management that the officers who failed the IBA PGD Course could be placed in seniority after their colleagues who qualified for the IBA PGD Course. The learned counsel averred notwithstanding the turning down of the seniority of the private respondents they were promoted and made senior to the petitioners. He prayed for allowing the instant petition.

5. Mr. Ali Asadullah Bullo the learned Counsel for Respondents has objected to the maintainability of these Petitions on the ground that there are no statutory rules of service of EOBI thus the petition is not maintainable; that the private respondents were competent and were eligible to hold the posts; that in law even a person on probation his probation could be curtailed and regularized; that the Petitioner had involved himself into various litigation against the respondent-institution, hence, is disqualified to raise the aforesaid grievances after they retired from service, and therefore, the Petitions are liable to be dismissed. The learned counsel prayed for the dismissal of the instant petitions.

6. The entire controversy rests on the issues of the initial appointment of private respondents, their seniority, and promotion in Operation Cadre of EOBI. Besides, there is a dispute to the effect that the private respondents were appointed in violation of the terms of advertisement, as the basic qualification and experience were relaxed by BOT of EOBI in its meeting, to accommodate the private respondents. It is also in dispute that when private respondents were appointed on probation for three years and were yet to be confirmed as regular employees, their probationary period was compromised without lawful authority.

7. To resolve the aforesaid questions, the private respondents are put on notice to assist this court on the subject issue involved in the proceedings. To come up after two weeks at 11. am.

JUDGE

JUDGE

Nadir*