

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 579 of 2023

(Faheemuddin and 5 others v. Province of Sindh and others)

M/s. M.M.Aqil Awan and Muhammad Arshad Khan Tanoli,
advocates for the petitioners.

Mr. Abdul Salam Memon and Ms. Rabiya Javed, advocates
for respondents No.4, 5, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18,
20, 21, 23, 24, 25 and 27.

Mr. G.N Qureshi, advocate for respondents No.6, 8, 13, 19,
22, 28, 29 & 30.

M/s. Malik Naeem Iqbal and Muhammad Saleem Khaskheli,
advocates for Respondent No.19.

Mr. Ali Safdar Debar, Assistant Advocate General Sindh
Mr. Bhoromal, Law Officer, Secretary Services,
Government of Sindh along with Muhammad Saleem
Rajput, Secretary Services, Mr. Altaf Hussain Sario, Addl.
Secretary Services, Sanaullah Qazi, Section Officer.

Date of hearing 13.02.2023

Date of Order: 20.02.2023

ORDER

ADNAN-UL-KARIM MEMON, J. – At the outset, the learned counsel representing the private respondents as well as learned AAG questioned the maintainability of the Petition, *inter-alia* on the ground that the petition is barred under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. However, without prejudice to the aforesaid objection, they submitted that the issues in substance to the promotion and the seniority of the Ex-PCS officers (BS-17) in the light of the order dated 19.01.2021 passed by the Honorable Supreme Court of Pakistan in Civil Appeals No.489 to 491 / 2017, 99-K to 104-K / 2016 and Civil Petitions No.563-K to 565-K/2016, which reads as under:-

“5. The arguments of the learned counsel for the parties have been heard. We find that the Tribunal has exceeded its jurisdiction in granting reliefs not even prayed for. Further it has issued directions which are devoid of any jurisdictional basis. The Service Tribunal is a Tribunal of limited jurisdiction and its powers are circumscribed and confined to those specified in Sections 4 and 5 of the Sindh Service Tribunal Act. We are a State of laws. Courts and Tribunals can exercise only such powers as are conferred by the Constitution or the law. Article 175(2) of the Constitution of Islamic Republic of Pakistan clearly and unambiguously provides that, “No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law”. Examined on the touchstone of this cardinal principle of jurisprudence as enshrined in our Constitution, we have found the judgment of the Tribunal to be unsustainable. Therefore, while allowing these appeals/converting the petitions into appeals and allowing the same with the consent of the learned counsel for the parties, the following order is passed:-

- 1) The impugned judgment of the learned Sindh Service Tribunal dated 29.04.2016 is set aside;
- 2) The seniority list of 2015 is set aside.
- 3) The matter is remanded to the department which shall proceed to prepare a fresh seniority list in the following manner;-
 - a) 50% quota of direct appointees and promotees respectively shall be strictly followed in letter and spirit;
 - b) Promotion shall be subject to availability of post in the relevant quota;
 - c) No cross quota promotion shall be made;
 - d) Those who have been promoted without the availability of posts or in violation of the rules shall be treated as adhoc promotees and shall be entitled to promotion only from the date of their regular appointments, subject to the availability of posts in the respective quotas; and
 - e) Inter se seniority shall be determined by the department from the date of regular appointment and on the basis of relevant rules.
- 4) The aforesaid exercise shall be completed by the department within a period of three months from the date of communication of this order. The Secretary Board of Revenue and the Secretary Revenue Department, Government of Sindh shall ensure timely implementation of this order in letter and spirit; and
- 5) Any party aggrieved of the new seniority list shall have the right to approach the competent forum and avail such remedies as may be available under the law.
6. After the aforesaid exercise has been completed, a report shall be submitted by the department for our examination in Chambers.
7. In view of the above, these appeals are allowed and the petitions are converted into appeals and allowed in the afore noted terms.”

2. In the present case, Petitioners claim that they were appointed as Mukhtiarkars (BS-16) in 2011 and now are working as Assistant Commissioner (BS-17) in the ex-PCS cadre since 2017. They further claim that they are senior to the private respondents. They further claim that their grievance stood redressed by the aforesaid judgment of the Hon’ble Supreme Court of Pakistan, as their original seniority was restored vide seniority list dated 08.06.2021. As per the petitioners, thereafter litigation between the parties was finalized in the order dated 10.02.2022 passed by this Court in CP No.D-806/2022. However, in the intervening period, respondent No.1 issued a fresh Provisional Seniority List of Ex-PCS officers vide notification dated 31.3.2022, which changed the seniority of the petitioners, and the direct recruits/Mukhtiarkars/private respondents were made senior to the petitioners/departmental promotees. The petitioners claim that without requisite formalities meeting of Provincial Selection Board-II (‘PSB’) was convened wherein the private respondents were promoted during the pendency of the seniority case before the learned Sindh Service Tribunal (‘SST’), this fact compelled the petitioners to approach this Court inter-alia calling in question the fitness of the private respondents on the ground that promotions of the private respondents in absence of finalization of their seniority was a nullity.

3. M/S G.N Quershi, Abdul Salam Memon, and Malik Naeem Iqbal learned counsel for the private respondents submitted that they will argue the case without filing counter affidavit/comments on the premise that the petition on the face of it is not maintainable. The learned counsel attempted to give a brief history of the case and submitted that under the recruitment rules notified in 1992, the subject 50% of the posts are to be filled by promotion and 50% by initial recruitment on the recommendation of Sindh Public Service Commission. Thus, the 50% ratio for direct recruits and departmental candidates was worked out as per quota and the private respondents were rightly considered for promotion in BPS-18 vide minutes of the PSB-II dated 17.1.2023, which is in line with paragraph 5(3) of the order dated 19.01.2021 passed by the Hon'ble Supreme Court of Pakistan, thus no ambiguity is left to be decided by this court through the present *lis*. Learned counsel submitted that questioning the promotion of the private respondents made on the strength of the Final Seniority List issued on 19.8.2022 is against the law, order of the Hon'ble Supreme Court of Pakistan, and orders passed by this Court. The learned counsel submitted that the prayer of the petitioners cannot be allowed to restrain the official respondents from issuing the notification of promotion of Ex-PCS officers (Private Respondents) from BS-17 to BS-18 in the light of the ratio of the order dated 10.05.2022 passed by this court in C.P.No.D-806 of 2022. The learned counsel referred to the aforesaid order whereby direction was issued to the Competent Authority to convene a meeting of PSB-II within the shortest possible time. The last Para-7 is reproduced as under:

"In view of the consensus developed between the parties so far as Seniority List of Ex-PCS Officers up to Sr.No.41, these petitions stand disposed of with a direction to the competent authority to convene the PSB-II meeting within the shortest possible time and consider the cases of ex-PCS Officers for promotion strictly in accordance with law and dicta laid down by the Hon'ble Supreme Court of Pakistan vide Order dated 19.01.2021 passed in Civil Appeals No.489 to 491 of 2017 and 99-K to 104-K and Civil Petitions No.563-K to 565-K. However, it is made clear that no prejudice shall be caused to the case of appellants / private respondents in Service Appeal No.32 / 2022 pending before the learned Sindh Service Tribunal at Karachi"

4. The learned counsel for the private respondents pointed out that PSB-II was held in terms of the judgment of the Honorable Supreme Court dated 19.01.2021 as mentioned above, and it is claimed that cases of twenty-seven (27) Ex-PCS Officers of BS-17 / private respondents were considered, and recommended for their promotion to BS-18 by the PSB-II. Therefore, this court cannot intervene in the proceedings. The learned counsel contended that the Petitioners have already challenged the Seniority list prepared in the light of the judgment of the Honorable Supreme Court dated 19.01.2021 before the learned Sindh Service Tribunal vide Service Appeal No.32 of 2022, which is still

pending / sub-judice. Furthermore, this Court has already held in the order dated 10.05.2022 that the promotions of the Ex-PCS officers (BS-17) would be subject to the outcome of the pending Service Appeal No.32 of 2022 filed by the Petitioners and they were/are required to pursue their pending appeals. They emphasized that there is no cap fixed by the court in the aforesaid order restricting to consider of the cases of eligible candidates for promotion to the next rank after Sr. No.41 of the Seniority List of the Ex-PCS officers; besides no consent was given by the private respondents for disposal of the aforesaid petition as portrayed by the petitioners.

5. The learned counsel referred to section 8 of the Sindh Civil Servants, 1973, and submitted that the issue of seniority cannot be examined under Article 199 of the Constitution, which is part and parcel of the terms and conditions of service. Learned counsel also referred to section 4 of the Sindh Services Tribunal Act, 1973, and submitted that the issue of seniority between the parties is pending adjudication before the learned SST, as such no final findings could be given under Article 199 of the Constitution, which may prejudice the case of parties pending adjudication there. The learned counsel further submitted that seniority and promotion is not the vested right of the civil servant, therefore, the petitioners are not entitled to claim any relief from this court under Article 199 of the Constitution. The learned counsel submitted that the private respondents were entitled to seek promotion with effect from the date the vacancy is available against the respective quota and/or the date when their case was deferred by the Departmental Promotion Committee (DPC) at the relevant time. Learned counsel asserted that the promotion of the private respondents was made based on seniority-cum-fitness and the civil servant cannot ask for or claim promotion as a matter of right as it is within the exclusive domain of the government. They added that neither the promotion could take place automatically, nor the seniority alone is the deciding factor as several factors constitute fitness for promotion. It is urged that direct recruits were rightly considered for promotion to the Grade-18 post with effect from the dates when vacancies in their quota became available. Lastly, they submitted that the writ jurisdiction is the extraordinary remedy and it has to be exercised sparingly for the reason that when the law has provided the adequate remedy, constitutional jurisdiction under Article 199 of the Constitution cannot be exercised. It has time and again been held by the Honorable Supreme Court that the tendency to bypass remedy provided under relevant statute by resorting to constitutional jurisdiction is to be discouraged so that legislative intent is not defeated. Therefore, the

captioned constitutional petition is not maintainable and liable to be dismissed. In support of their contentions, they relied upon the cases of Chief Secretary, Government of Punjab, Lahore and others v. Ms. Shamim Usman, 2021 SCMR 1390, Federation of Pakistan through Secretary Establishment, Islamabad v. M.Y. Labib-ur-Rehman and others, 2021 SCMR 1554, Khalillah Kakar and others v. Provincial Police Officer, Balochistan, and others, 2021 SCMR 1168, Shafi Muhammad Mughal v. Secretary, Establishment Division and others, 2001 SCMR 1446, and Zafar Iqbal v. MGO, MGO Branch, GHQ Rawalpindi, and 3 others, 1995 SCMR 881.

6. At this stage, we asked the learned AAG as to how the PSB-II had convened its meeting in order to consider the cases of promotion of the private respondents when the inter se seniority of the petitioners and private respondents was/is sub-judice in Service Appeal No.32/2022 before the learned SST at Karachi. Besides this court vide order dated 10.05.2022 had ordered the competent authority to convene PSB-II meeting for the promotion of Ex-PCS officers up to Sr. No.41 of the Seniority list, more particularly in terms of the order dated 19.1.2021 passed in Civil Appeals No.4189 to 491/2017 and 99-K to 104-K and Civil Petitions No.563-K to 565-K/2016 by the Honorable Supreme Court.

7. Learned AAG replied and submitted that since there was no restraining order passed by the learned SST in the aforesaid Service Appeal(s) preferred by the petitioners, as such promotions of the private respondents were rightly considered by the PSB-II, subject to strict compliance of the Service Tribunal's determination of the pending appeal(s). Learned AAG further argued that the order dated 19.01.2021 passed by the Honorable Supreme Court of Pakistan (in Civil Appeals Nos. 489 to 491 of 2017 and 99-K to 104-K of 2016; and in Civil Petition Nos.563-K to 565-K of 2016); and Orders dated 10th May 2022 and 30th August 2022 passed by this in C.P. Nos.D-806 of 2022 and 1867 of 2022 has been fully complied with in letter and spirit. Learned AAG submitted that there was a gap of six (6) months between the last two (02) meetings of PSB-II, and many eligible and suitable Ex-PCS Officers of BS-17 became entitled to the promotions to the next higher grade, which was otherwise necessitated to promote them in exigency of civil service. Hence, the official respondents were under obligation to convene the meeting of PSB-II in the public interest to run government affairs smoothly. In such circumstances, and keeping in view the opinion of the learned Advocate General Sindh on the subject issue, the PSB-II

considered the promotion cases of the private respondents appearing after Sr.No.42 on the seniority list, subject to the outcome of the Service Appeal No.32 of 2022 pending before the SST. The learned AAG argued that even the seniority issue of the civil servant is sub-judice, he/she could be considered for promotion to the next rank subject to the outcome of the court case and that promotion shall be treated as temporary promotion and the juniors so promoted based on sub-judice seniority shall be assigned seniority as per final court orders and in case no vacancy remains available in the cadre, the junior most shall be reverted to lower post or grade, as the case may be. He averred that there is no infirmity or perversity in the minutes of the meeting of PSB-II. He lastly prayed for the dismissal of the instant petition.

8. Mr. M.M. Aqil Awan, senior advocate assisted by Mr. Muhammad Arshad Khan Tanoli, advocate representing the petitioners has replied to the question raised about the maintainability of the instant petition and submitted that through the instant petition, the petitioners have called in question the fitness of the private respondents from holding the post in BPS-18, which is outside the purview of section 4(1) of the Sindh Service Tribunals Act, 1973 as the SST has no jurisdiction to go into the question of fitness or otherwise of a civil servant to hold a particular post. He further submitted that under the Service Jurisprudence, the Service Tribunal has no jurisdiction against an order or decision of a departmental authority determining the fitness or otherwise of a person for promotion to a higher post or grade and for this reason the petitioners have directly approached this court under Article 199 of the Constitution for redressal of their grievances. He contended that the determination of the eligibility of a civil servant is a question on which jurisdiction of the SST has not been barred as this relates primarily to the terms and conditions of service. So far as the question of fitness is concerned which has an element of subjective evaluation based on objective criteria where substitution for an opinion of the competent authority is not possible by that of service tribunal or this Court and it is in this background that the question of fitness or suitability for promotion has already been considered by the Honorable Supreme Court to be exclusively within the jurisdiction of the competent authority and not by the Service Tribunal exercising supervisory jurisdiction in respect of eligibility and qualification. The learned counsel further submitted that the expressions eligibly and fitness are distinct and or for different purposes as discussed supra and in this particular case as is evident from the statement dated 11.02.2023, it is clear that the private respondents

have been promoted in violation of the order dated 10.05.2022 passed by this Court for the reason that the issue of seniority between the parties is sub-judice before the learned SST and in absence of final say of the learned SST, no promotion of the private respondents could take place and if done it is contemptuous on the part of official respondents. The learned counsel referred to the provisions of the Sindh Civil Servants Act, 1973 and rules framed thereunder and submitted that it is well-settled that when the seniority of the civil servant is sub-judice, no promotion could take place until unless the issue of seniority amongst the civil servants is determined/decided first by the competent forum and proper seniority is assigned and if the matter is pending before the competent court of law the department should layoff its hands and wait for the final decision of the Court. The learned counsel further submitted that in law, the promotion of civil servant could be considered in order of seniority and under the recruitment rules or criteria specified for promotion to the particular post and subject to availability of a post reserved for promotion and in the present case, the petitioners have been highly prejudiced by the acts of the official respondents by allowing the private respondents to be promoted in next rank without considering the senior officers in the cadre when under the seniority rules petitioners are seniors to the private respondents for the post in BPS-18 under the quota reserved for promotes earlier appointed in service than the private respondents, therefore judicial propriety demands that the proceedings of PSB-II are liable to be declared nullity till the decision of the learned SST on their service appeals. In support of his contentions, he placed reliance on the case of Ms. Zubaida Khatoon v. Mrs. Tehmina Sajid Sheikh and others, **2011 PLC (CS) 596**.

9. On merits, learned counsel submitted that petitioners are senior to the private respondents in all respects in terms of their initial appointment letters. He next argued that no junior can be considered for further promotion in presence of his senior unless the senior is superseded under the law. Learned counsel argued that ordinarily, in a genuine dispute of seniority between the civil servants which is pending adjudication before the competent forum, the officers involved in such seniority disputes are not to be considered for further promotion and if at all the DPC or promotion Board is held, those are liable to be deferred under the promotion policy of Sindh Government till final determination by the competent court of law. Since promotions have taken place in violation of the promotion policy as well as the Judgment of the Honorable Supreme Court, which action of the official respondents is ultra-vires of Article 189 of the Constitution. Learned counsel next argued that any

executive action which violates the order of this Court or Supreme Court particularly when such order is passed based on the undertaking given by the parties is void ab-initio, and thereby matures the cause of action in favor of the aggrieved party for initiating Contempt proceedings against delinquents. Learned counsel pointed out that the law requires that the exercise of executive powers vested in the hands of competent authorities being sacred trust in its hand must be exercised fairly, equitably, and under Law. The secrecy maintained by the official respondents in holding the proceedings of the Promotion Board, and doing the whole exercise in the dark behind closed doors, make the impugned action liable to be struck down under Article 199 of the Constitution. He next submitted that the names of the Petitioners had already been placed at a senior position than direct recruits in the seniority list, which was challenged by direct recruits before Service Tribunal, and in the said appeals the petitioners were not impleaded as a party because they were admittedly senior to the direct recruits having been promoted much earlier on regular basis. He next argued that the official respondents have interfered with the settled seniority of Petitioners without lawful authority. Learned counsel asserted that the Petitioners having been promoted under their quota earlier to the appointments of direct recruits/private respondents then there is no question to treat them junior to direct recruits and as such whole exercise of the administrative department is not only violative of Law but in violation of the judgment of Honorable Supreme Court dated 19.01.2021. Learned counsel submitted that the benefit of promotion to the private respondents was wrongly extended by the PSB-II with malafide intention that could be withdrawn till finalization of the issue of seniority. Learned counsel emphasized that the wrong benefit extended beyond the scope of law and rules/policy cannot be claimed in perpetuity or eternity. Learned counsel further submitted that the Petitioners will suffer heavy irreparable loss if the prayer made in this petition is not allowed by this court.

10. We have heard the learned counsel for the petitioners and learned counsel representing the private respondents as well as learned AAG on the subject issue and perused the record with their assistance.

11. Before, we proceed to discuss the merits of the case, we consider it appropriate to first examine the relevant constitutional Articles and laws that regulate the High Court's jurisdiction. Primarily, in service matters, the High Court assumes jurisdiction through service law conferring jurisdiction. Article 212(2) of the Constitution specifically places an

embargo on all other courts except the Service Tribunal to grant an injunction, make any order, or entertain any proceedings in respect of any matter relating to the terms and conditions of service even if there is mala fide, ultra vires or coram non iudice issue.

12. The question in hand is whether the Sindh Service Tribunal has jurisdiction to entertain the request so made by the petitioners through the instant petition under Article 199 of the Constitution. For convenience's sake, the prayer made by the petitioners is as follows:-

“(a) That this Honorable Court would be pleased to declare that the regular promotion of the Respondents (not the deferred one), and determination of their fitness to hold the post of BS-18 is void-abinitio, mala fide, violative of order of the Honorable High Court dated 10.05.2022 and Article 189 of the Constitution.

(b) That restrain the official respondents from issuing the notification of the promotion of direct recruits who are promoted in violation of the order of this Honorable Court and Article 189 and further restrain them from discharging any function or power of an officer of BS-18.”

13. As to objection regarding the maintainability of this Petition because of alternate remedy before Service Tribunal is concerned, it would suffice to hold that it is not a case of eligibility of the private respondents for promotion before us; rather it is in respect of fitness of the private respondents to hold the promotion post in terms of PSB-II meeting (impugned herein), and therefore, in view of Clause (b) of subsection (1) of Section 4 of the Sindh Service Tribunal Act, 1973, learned SST could not entertain the subject issue for the reason that while determining the fitness, the competent authority is required to assess the civil servants objectively and not subjectively. Fitness, in our view, cannot be determined by mathematical formulae because it requires something more than that, though fitness is an important element in considering promotion, it is equally important that it precedes the phrase of seniority which is of paramount importance for an employee/Civil Servant. It imparts a legitimate expectancy in senior officers to be considered for promotion on a priority basis.

14. In the present case, no such reasons have been provided by the department and/or PSB-II to accord promotion to the private respondents, whose seniority has not yet been finalized; and it is yet to be determined by the learned SST amongst the parties who are senior in Ex-PCS cadre, however, to circumvent the pending decision in service appeal, the official respondents rushed to convene the meeting and accommodated the private respondents; and prima-facie, it tantamount to superseding the petitioners without any fault on their part, which undoubtedly was a harsh step on the part of official respondents, leaving a stigma on petitioner's career, for the reason that

promotion of the civil servant is always considered as a recognition of his/her unblemished service rendered in the institution. It is worth considering that when a civil servant is deprived of his/her legitimate expectation, it not only stigmatizes his/her professional career but also leaves an adverse impact on his/her personality.

15. In principle, the competent authority, before taking on such a step is required to probe into the matter in depth and even then if forms an opinion against his/her promotion, is required to give sound reasons in support thereof. The competent authority is not vested with unqualified discretion to pass arbitrary, capricious, and fanciful orders to give undue favor to one class of civil servants only and leave the others in the lurch. The discretion is a trust, reposed in the competent authority, and is to be exercised honestly, fairly, judicially, and under law and rules. If it transgresses the judicial norms, it is liable to be struck down under Article 199 of the constitution.

16. For the aforesaid reasons, we are satisfied that as the matter concerns the fitness of the private respondents for promotion to the next rank, hence the jurisdiction of the learned SST would not be attracted, therefore, the instant petition is held to be maintainable before this Court under Article 199 of the Constitution, and the objection raised thereof is overruled in terms of dicta laid down by the Hon'ble Supreme Court in cases of *Secretary, Establishment Division v. Aftab Maneka*, **2015 SCMR 1006**. The Honorable Supreme Court has held in paragraph 5 of the judgment in the case of *Chief Secretary, Government of Punjab, Lahore and others v. Ms. Shamim Usman*, **2021 SCMR 1390**, "it is only under section 4(1) (b) of the Act that no appeal can lie to a Tribunal against an order or decision determining the "fitness" of a person to be appointed or promoted and falls outside the purview of the jurisdiction of the Tribunal. In order to fall in the exception envisaged under section 4(1)(b) of the Act, the order must determine the "fitness" of a civil servant to an appointment or promotion. In the instant case, the order under challenge before the High Court pertained to the eligibility of the petitioner to be even considered for proforma promotion due to the seniority of a large number of officers awaiting promotion before her and in no manner determined the "fitness" of the respondent. High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution". (**Emphasis added**)

17. The next question to be answered is whether the impugned action of the PSB-II vide notice dated 11.01.2023 falls within the parameters of the law by

which it has recommended the promotion of respondents overlooking the inter se seniority dispute pending before the SST.

18. The Honorable Supreme Court in the case of *Chief Secretary Sindh vs. Riaz Ahmed Massan & others* [2016 SCMR 1784] has settled the aforesaid proposition once and for all by interpreting the Rule 13 of Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975 and has held as under:

“Even otherwise, in presence of Rule 13 of Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975 a Civil Servant who is not promoted on his turn on the ground inter alia; (i) **his seniority is under dispute or is not determined**; (ii) he is on deputation, training or on leave; or disciplinary proceedings are pending against him, or (iii) he is not considered by the selection authority inadvertently. The moment causes as noted in rule 13 ibid for deferment of promotion of a Civil Servant is removed, **in as much as dispute as to his seniority is resolved in his favor**, deputation, training or leave is over, disciplinary proceedings culminated in his favour or where inadvertence for his non-consideration is remedied, only then on subsequent promotion, a such civil servant would rank and be deemed to have been promoted in the same batch at par with his contemporary batch mates who were promoted earlier to him”.(**emphasis added**).

Thus the question raised by the learned AAG that in pending seniority issues, temporary promotion could be granted to the civil servants is of no consequence as this is not the case of the individual civil servant rather the members of the Ex-PCS cadre shall be affected.

19. In the first place, the very action of the PSB-II recommending the promotion of the officers by Sr. No.41 of the seniority list of the Ex-PCS officers is contemptuous of the orders of the Hon’ble Supreme Court, and this Court knowingly that their seniority issue is subjudice. Non-issuance of injunctive order by SST does not give the right to the PSB-II to recommend the promotion of the private respondents. Besides, the official respondents did not need to hurriedly convene the meeting of PSB-II, they ought to have shown patience, however, in their abortive attempt, they tried to circumvent the decision pending in service appeal, the reason is prima-facie obvious.

20. The law on the subject is clear in its terms that the appointing authority was/is required to make out a seniority list of the members as the seniority in a post, service, or cadre to which a civil servant is appointed shall take effect from the date of regular appointment to that post, whereas in the promotion cases, the civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post under the rules for departmental promotion in the service or cadre to which he belongs. In the present case, private respondents claim promotion to the post (BS-18), which is a Non-Selection Post, and in principle promotion to that post is required to be made on seniority-cum-fitness basis; and, it is yet to be determined by the

learned SST who is senior amongst the parties and fit for promotion in the next rank.

21. In the circumstances, the meeting convened by PSB-II in 2023 recommending the promotion of the private respondents ought not to have been called for on account of the pendency of the seniority dispute between the parties before the learned SST, in our view, the recommendation made by PSB-II in its meeting was/is the erroneous decision on their part.

22. We hold that the purported recommendation made by PSB-II in the meeting held on 17.01.2023 vide notice dated 11.01.2023 for the promotion of private respondents was without justification and, therefore, we are compelled to nullify the proceedings. We however hold that the promotion of all the parties would be subject to the outcome of the service appeals filed by the parties. Those who are not a party may join the service appeals by the appropriate application before the SST or even the appellants may implead any of the aggrieved civil servants as a party.

23. This petition stands allowed in the above terms.

JUDGE

JUDGE

Nadir/-