

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P No.D-2920 of 2022

[Ali Abbas versus Chief Minister Sindh & Ors]

Before:-

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Adnan-ul-Karim Memon

Petitioner : In person
Respondents : Through Mr. Rafique Ahmed Dahri, Asst. A.G
Date of hearing : 03.05.2023
Date of Decision : 03.05.2023

J U D G M E N T

ADNAN-UL-KARIM MEMON J:- Through the captioned constitutional petition, the petitioner seeks proforma promotion in BPS-20 in Health Department Government of Sindh with effect from 01.06.2018.

2. Petitioner, who is present in person submits that he was appointed as Planning Officer (BS-17) in Health Department, Government of Sindh and, during service he earned promotion to the post of District Officer (BS-19) vide Minutes of Meeting of PSB-II held on 27.1.2010; however, in the intervening period, his junior(s) was promoted in BS-20 by creating the posts vide notification dated 1.6.2018, but he was ignored and discriminated against; meanwhile, he stood retired from service on 18.6.2021. The petitioner further submits that the respondent department was bound to finalize the issue of promotion of the petitioner before his retirement under the law as he was neither deferred nor superseded; that he had served the department for more than 29 years without any stigma on his career and he by all means was entitled to promotion; therefore, now proforma promotion with all other pecuniary benefits may be allowed to him from the date when his junior was promoted; that the impugned action of the respondents was/is against the law and the dicta laid down by the Supreme Court in the case of *Abdul Sattar Jatui Vs Chief Minister Sindh and others*, **2022 SCMR 550**; that it has not been disputed that much before his retirement, a working paper was prepared about his promotion; however, the working paper was neither placed before Provincial Selection Board-II, nor his case was considered in PSB-

II meeting held on 25.5.2018, despite availability of two vacant seats in his cadre. Petitioner submits that he succeeded in obtaining favorable order from Sindh Services Tribunal (SST) where his junior was non-suited and his promotion in BS-20 was recalled vide notification dated 16.5.2022, who later on approached the Supreme Court, wherein his Appeal was also dismissed vide judgment announced on 10.1.2022; and, before such announcement of judgment of Supreme Court, he attained the age of superannuation on 8.6.2021; therefore he cannot be held responsible on account of departmental lapse; that if the service benefits have accrued to Civil Servant but for one reason or the other such benefits could not be awarded to him/her, then, irrespective of the fact of his/her having retired from service, the department concerned shall still have to further consider his/her case for such promotion and to allow him/her benefits of such promotion, even after retirement from service. He lastly prayed for grant of proforma promotion in BS-20 with effect from 1.6.2018 when his benchmates were promoted and/or when a vacancy occurred in BS-20.

3. We have gone through the judgment rendered by the Supreme Court in the case of Abdul Sattar Jatoi supra. The Supreme Court has upheld the judgment dated 22.09.2020 of Sindh Services Tribunal. An excerpt of the judgment of Supreme Court is reproduced as under:-

“23. For what has been discussed above, we find no illegality in the impugned judgment of the Tribunal and are not persuaded to interfere with the same. The appeal is, therefore, dismissed”.

4. Learned A.A.G. vehemently opposed the petition and submits that before this petition, the petitioner had approached the Sindh Service Tribunal through Service Appeal No.1009 of 2019 for the same relief and vide judgment dated 22.09.2020, though the promotion of junior of the petitioner was turned down, yet no directions for grant of promotion to petitioner were given; that the said judgment of Tribunal was challenged before Supreme Court through Civil Appeal No.1167 of 2020 and vide Judgment dated 20.04.2021 the Supreme Court maintained the decision of Tribunal but without any directions for grant of promotion to the petitioner; that there existed no provision in law to grant antedated promotion; therefore, he prayed for dismissal of this petition, as the grievance of the petitioner has attained finality up to Supreme Court.

5. We have heard the parties on the subject issue and perused the record with their assistance.

6. The case of the petitioner is that he was appointed in the year 1992 as Planning Officer (BPS-17) in Health Department, Government of Sindh on the recommendation of Sindh Public Service Commission, which contains the merit list where the name of the petitioner was mentioned at Serial No.5, while the name of his junior colleague namely Abdul Sattar Jatoi was mentioned at Serial No.9; that both were promoted together as Deputy District Officers (P&D) (BPS-18) vide notification dated 11.10.2004, in which the name of petitioner was at Serial No.3, while that of his batchmate was at Serial No.5. Record reflects that the petitioner and his junior colleague were again promoted together as District Officers (Administration, Accounts, and Development) (BPS-19) by the Provincial Selection Board No.II vide notification dated 27.10.2010, wherein the name of the petitioner was at Serial No.2, while his junior colleague was at Serial No. 5. They continuously remained in BPS-19. Petitioner claims that when his turn for promotion in BS-20 was due, all of a sudden through a notification dated 01.06.2018, only his junior colleague was granted promotion to the post of BPS-20, and that too by making specific amendments in the Recruitment Rules by creating person-specific post of Director (Administration, Accounts & Development) in BPS-20. Per petitioner, the parties litigated up to Supreme Court, finally, the promotion of his immediate junior was recalled by the direction of Sindh Service Tribunal and Supreme Court.

7. It seems that the case of regular promotion of the petitioner was not placed before the competent authority for determination of his merit to the post in BPS-20. Record does not reflect that the petitioner was not eligible to be considered for promotion in BPS-20 when his junior colleague was granted promotion in BPS-20. Even learned AAG has not disputed the eligibility of the petitioner for promotion in BPS-20; however, he simply stated that since the petitioner has retired from service; therefore, he cannot be granted antedated promotion i.e proforma promotion.

8. We do not agree with the aforesaid submission of learned A.A.G., for the reason that the right to promotion is neither an illusionary nor a perfunctory right which could be ignored casually. Non-considering of an officer being equally eligible for promotion is matter which not only

undermines the discipline but creates serious bad blood and heart-burning amongst colleagues. Petitioner has required length of service in his credit besides there was/is no issue of eligibility of the petitioner to be considered for promotion in BS-20.

9. We find that it has not been disputed that a working paper was prepared by the respondent-Health Department about promotion of the petitioner in BPS-20 much before his retirement, but the matter was delayed without any justifiable reason, and in the meanwhile, Petitioner attained the age of superannuation. Prima-facie he cannot be made to suffer on account of departmental lapse. Besides the above, the petitioner has also produced a notification dated 21.10.2019 duly approved by the competent authority, under which proforma promotion was allowed to other retired Senior Medical Officers in BPS-20, in compliance of the direction of Supreme Court passed in Crl. Orig. P No.15-K of 2016 in C.A. 30-K of 2014 and Crl. M.A 37-K of 2017 in Crl. Orig. P No.15-K of 2016. Additionally, in the matter of civil service, there should not be at all any instance where the competent authority is found to be accommodating any one civil servant for grant of promotion and leaving all other equals and even seniors abandoned.

10. Coming to the main case, the concept of Proforma Promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his/her legitimate turn due to any reason but not a fault of his own.

11. To appreciate the controversy from a proper perspective, we think it appropriate to have a glance at Rule 7-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 which is reproduced as under:-

“7-A -(1) The appointing Authority may approve the promotion of an Officer or official from the date on which the recommendation of the Provincial Selection Board or, as the case may be, the Departmental Promotion Committee is made.

(2) Notwithstanding anything contained in rule 31 of the Sindh Civil Services Rules, the Officer or official who expires or superannuates after the recommendations of the Provincial Selection Board of the Departmental Promotion Committee and before issuing the notification of promotion shall stand exempted from assumption of the charge of the higher post.

(3) The Accountant General in the case of an Officer and an officer authorized in this behalf in the case of an official will give a

certificate to the effect that the officer or official has expired or superannuated.]”

12. From the above it is clear that a civil servant is entitled to proforma promotion. In this context, the Supreme Court of Pakistan in the case of Secretary Schools of Education and others v. Rana Arshad Khan and others (2012 SCMR 126) while granting Proforma promotion to retired public servants has held as under:-

“Much before the retirement of the respondents, a working paper was prepared by the department with regard to their promotion but the matter was delayed without any justifiable reason and in the meanwhile, respondents attained the age of superannuation. They cannot be made to suffer on account of the departmental lapse.”

13. The Supreme Court in the case of Federation of Pakistan through Secretary, Ministry of National Health Services Vs. Jahanzaib and others 2023 PLC (C.S.) 336 has held that if a person is not considered due to any administrative slip-up, error, or delay when the right to be considered for promotion is matured and without such consideration, he reaches the age of superannuation, then obviously the avenue or pathway of proforma promotion comes into the field for his rescue.

14. The Supreme Court in the case of Homeo Dr. Asma Noureen Syed Vs. The Government of Punjab and others 2022 SCMR 1546 has held that a retired civil servant may be considered for grant of proforma promotion, which was declined by the Service Tribunal and the matter was remanded to Service Tribunal for decision afresh.

15. In the present case, the competent authority has not bothered to ask the parent department of the petitioner to place the case of the petitioner before PSB-II for determination of his case for promotion, before his retirement on 18.6.2021. Prima-facie, the reasons are obvious as they intended to accommodate the junior colleague of the petitioner and flatly ignored the petitioner for consideration for that the SST set at naught the promotion of the junior colleague of the petitioner and the decision of SST was maintained by Supreme Court with strong findings on law, which has binding effect under Article 189 of the Constitution.

16. It is well settled that while considering the case of regular promotion of civil servants, the competent authority has to consider the merit of all the eligible candidates and after due deliberations, to grant

promotion to such eligible candidates who are found to be most meritorious amongst them. Since the petitioner was held to be senior to his colleague who was promoted in BS-20, the petitioner was ignored by the respondent department just to extend favor to the blue-eyed candidate, which is apathy on the part of the respondent department.

17. In the light of the position explained above, it is concluded that a civil servant has a fundamental right to be promoted even after his retirement by awarding proforma promotion; provided, his right of promotion accrued during his service but could not be considered for no fault of his own and meanwhile he retired on attaining the age of superannuation without any shortcoming on his part about deficiency in the length of service or in the form of inquiry and departmental action was so taken against his right of promotion.

18. Further, we have noticed that the respondents have not complied with the direction of Supreme Court passed in Crl. Org. P No.15-K of 2016 in C.A. 30-K of 2014 and Crl. M.A 37-K of 2017 in Crl. Org. P No.15-K of 2016 in letter and spirit and denied him proforma promotion in BPS-20; thus we are inclined to entertain the request of the petitioner in the matter. On the aforesaid proposition, we are fortified by the decisions of Supreme Court rendered in the cases of Dr. Syed Sabir Ali v. Government of Punjab through Secretary Health Punjab and others, **2008 SCMR 1535**, Federation of Pakistan and others v. Amir Zaman Shinwari, Superintending Engineer, **2008 SCMR 1138** and Dr. Muhammad Amjad v. Dr. Israr Ahmed, **2010 SCMR 1466**.

19. We for the aforesaid reasons allow this constitutional petition and direct the competent authority/respondents to consider the case of the petitioner for proforma promotion in BS-20 by way of circulation within two weeks subject to availability of vacancy in BPS-20 under Recruitment Rules. As the petitioner has already stood retired, therefore, his proforma promotion will not affect the seniority of any person already in service and he would be entitled to his emoluments and pensionary benefits.

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