

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-1169 of 2023

(Dr. Shafi Muhammad Vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;
Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing 07-05-2024

Date of Order 07-05-2024.

Mr. Niaz Muhammad Ghanghro, advocate for the petitioner.
 Mr. Tarique Hanif G. Mangi, advocate for respondent No.6
 Mr. Zulfiqar Ali Naich, Assistant Advocate General, Sindh.

ORDER

Adnan-ul-Karim Memon J:- Through the captioned Constitutional petition, the petitioner seeks proforma promotion in BPS-19 in Health Department Government of Sindh with effect from 02.10.2019 when his junior colleagues were promoted in Provincial Selection Board-II. Petitioner also claims the releasing of his outstanding salaries with effect from 18.1.1998 to 11.2.1999.

2. The initial grievance raised by the petitioner in C.P.D-320 of 2021 was that the period of service during his contract employment in the Health Department Government of Sindh starting from 10.01.1996 to 20.03 2004, had not been included in calculating the pension; and, the same petition was allowed by this Court vide order dated 28.10.2021 on the premise that he had already completed the minimum period of service of 10 years after his regularization from 2004 to 2019 when he finally retired in the year 2019. It is stated that he is now receiving the pension, and now the issue before this court is whether the petitioner is entitled to proforma promotion with effect

from the date when his junior colleagues were promoted in Provincial Selection Board-II vide minutes of meeting dated 30.9.2019.

3. The tenacity of the petitioner to file the instant petition is that he was appointed as Medical Officer in BPS-17 on 10-01-1996 on a contract basis and then his contract period was extended by the Sindh Government Health Department from time to time and lastly on 20-12-2003; that as per seniority list issued by Government of Sindh Health Department vide Notification No. SOCI(H)Misc/2013 dated 31-12-2012 the name of the petitioner was placed a Sr. No. 2144, whereas the name of the private respondent No. 6 appeared at Sr. No. 2300 and the petitioner retired on 27-09-2019 on attaining age of superannuation in PBS-18 in the year 2019 without his promotion whereas 60 co-employees/co-doctors were retired in light of Notification No.SOIII(S&GAD)7-2/2019 dated 21-01-2020 issued by the Health Department; the petitioner moved various applications to respondents to resolve his issue, hence seeing no other alternate, the petitioner has filed the instant petition seeking direction to the respondents No. 1 to 4 to decide and release his post-retirement/pensionary benefits as well as proforma promotion in BPS-19.

4. The petitioner who is present along with his counsel 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 as he was senior to respondents No. 5 to 7 as per seniority list; however, the respondents without realizing the fact that the petitioner was senior, his juniors were promoted vide notification dated 02-02-2021 and the petitioner was left in the lurch; that he had served the department for more than 23 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 Jatoi 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 the promotion of the eligible medical officers; however, it has been agitated that his working paper was neither placed before Provincial Selection Board-II, nor his case was considered in PSB-II meeting held in the year 2019, despite availability of vacant seats in his cadre and he was allowed to retire on 27-09-2019 vide notification dated 15-10-2019, 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-19 with effect from 30.9.202019 when his bench mates were promoted and/or when a vacancy occurred in BS-19. The learned counsel for the private respondents has opposed this petition by referring the objections and prayed dismissal of this petition.

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

6. The record does not reflect that the petitioner was not eligible to be considered for promotion in BPS-19 when his junior colleagues were granted promotion in BPS-19. Even learned AAG has not disputed the eligibility of the petitioner for promotion in BPS-19 in time; however, he simply stated that since the petitioner has retired from service in the year 2019; therefore, he cannot be granted antedated promotion i.e. proforma promotion besides he filed C.P No. D-109 of 2022, which was dismissed for non-prosecution vide order dated 02-03-2022 and another C.P No.D 1022 of 2023 which was dismissed as not pressed vide order dated 03-05-2023. Be that as it may, it is well settled law that the right to promotion is neither an

illusionary nor a perfunctory right that could be ignored casually. Non-considering of an officer being equally eligible for promotion is a 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 BPS-19.

7. Besides the above, the Supreme Court has passed the order 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 on the subject issue which needs to be looked into by the Competent authority. 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.

8. 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. 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.

9. 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 case of the petitioner need to be looked into by the competent authority of the respondents and to see

whether the petitioner was senior to his colleagues i.e. respondents Nos. 5 to 7 and whether they were rightly promoted in BPS-19 and the petitioner was ignored by the respondent department.

10. 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. On the aforesaid proposition, we are fortified by the decisions of the 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.

11. We for the aforesaid reasons dispose of this Constitutional petition and direct the competent authority/respondents to consider the case of the petitioner for proforma promotion in BPS-19, if he is at all entitled under the law and if he is found entitled the same benefit be given to him by way of circulation within two weeks subject to the availability of vacancy in BPS-19 under Recruitment Rules. As the petitioner has already 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. The issue of salaries of the intervening period shall also be decided under law.

Judge

Judge

Nasim/P.A