

IN THE HIGH COURT OF SINDH, KARACHI**C.P.No.D-6365 of 2023****Naimatullah Vs Province of Sindh & Others**Before: **Mr. Justice Muhammad Junaid Ghaffar**
Mr. Justice Adnan ul Karim MemonDate of hearing: **13.02.2024.**Date of order: **13.02.2024.**Petitioner through M/s. Ghulam Rahman and Ghayasuddin Rajpar
advocate for the petitioner.
State through Mr. Kashif Nazeer, Assistant Attorney General along
with DS Ministry of Science and Technology.

==

ORDER

Adnan-ul-Karim Memon J: Petitioner Naimaitullah has called into question the re-convening of meeting of the Selection Board for promotion to the post of Chief Scientific Officer in BPS-20 in the National Institute of Oceanography (NIO).

2. The case of the petitioner is that he was serving as Principal Coastal Engineer (BS-19) and was considered and recommended for promotion to the post of Principal Scientific Officer BPS-20 by the Departmental Promotion Committee, vide Notification dated 16.03.2023. Petitioner claims that the Principal Coastal Engineer and Principal Scientific Officer are positions of the same designation with the same and similar requirements and eligibilities, moreover with the same functions, authorities, and powers, thus the petitioner was rightly considered and recommended as Principal Scientific Officer under the National Institute of Oceanography Act, 2007. Petitioner further alleges that the said promotion was approved by the Competent Authority and later on, the respondent Ministry intended to do away with the promotion of the petitioner by convening another meeting of Selection Board for consideration of the promotion to the post of Chief Scientific Officer BS-20 in NIO. The petitioner further alleged that there is no provision under the law to recall the promotion of the petitioner in BS-20.

3. Per learned counsel, the petitioner has been promoted to the post of Principal Scientific Officer BS-20, and cannot be demoted without affording an opportunity of hearing and being confronted with the allegations if any; that demotion of the petitioner is in the pipeline, which violates principles of natural justice i.e. no one should be condemned unheard. However, respondents are bent upon reconvening the meeting of DPC to accommodate their favourites

without lawful authority as such immediate indulgence of this court is required. Per learned counsel, the respondents though are competent to take action against the petitioner, subject to adopting proper procedure. Learned counsel referred to the grounds raised by him in the memo of the petition and submitted that the personal bias of the respondent is apparent as the petitioner filed an earlier petition bearing No. D-6204 of 2023 to challenge the meeting and restrain respondent No.3 from achieving his ulterior motive for the illegal acts before this Court. In support of his contention, he relied upon the cases of *Wilayat Ali Mir v Pakistan International Airlines*, **1995 SCMR 650**, *Abid Hassan v PIAC*, **2005 SCMR 25**, *Rana Muhammad Sarwar v Government of Punjab* **1990 SCMR 999** and *Allahyar v General Manager Railway* **2001 SCMR 256**. He lastly prayed for allowing the instant petition.

4. The learned Assistant Attorney General assisted by the official present in Court states that the petitioner was wrongly promoted as Chief Scientific Officer (CSO) (BS-20) in violation of NIO Service Rules 2012, as he was working as Principal Coastal Engineer (BS-19) before his promotion as CSO (BS-20). As per the Assistant Attorney General, the petitioner was neither PSO (BS-19) before promotion to CSO (BS-20) nor had relevant publications. He added that since there was no provision in NIO Service Rules for promotion of Principal Coastal Engineer (BS- 19) to Chief Scientific Officer (BS-20). He prayed for the dismissal of the petition.

5. We have heard the learned counsel for the parties and have perused the record.

6. The question before us is whether the petitioner was rightly considered for promotion to the post of Scientific Officer BS-20 under the Recruitment Rules notified on 23.02.2012; and whether the respondent department can reconvene the meeting of the Selection Board for reconsideration of the proposal of the Selection Board earlier meeting held on 27.02.2023; and whether the National Institute of Oceanography Employees Service Rules 2012 conferred a vested right to the petitioner to claim promotion to the post of Chief Scientific Officer(BS-20)

7. To appreciate the above proposition, it is expedient to have a look at the Recruitment Rules i.e. National Institute of Oceanography Employees Service Rules 2012. According to the S.R.O No. 192(1)/2012, the conditions for promotion from the post of Chief Scientific Officer BPS-20 are as follows:-

02	<i>Chief Scientific Officer (BS-20)</i>	<i>Principal Scientific Officer (BS-19)</i>	<i>17 years of service in BS-17 and above or 12 years of service in BS-18 and above in case of direct recruitment in BS-18 or 5 years service in BS-19 as Principal Scientific Officer. At least 8 research papers published in reputable Scientific/Research journals etc. Preference will be given to a person holding a Ph.D. degree in Oceanography.</i>
03	<i>Principal Scientific Officer (BS-19)</i>	<i>Senior Scientific Officer (BS-18)</i>	<i>12 years of service in BS-17 and above, 7 years in case of direct recruitment in BS-18. At least 5 research papers published in reputable Scientific/Research journals etc.</i>
	<i>Principal Engineer (BS-19)</i>	<i>Senior Engineer/Senior Coastal Engineer (BS-18)</i>	<i>12 years of service in BS-17 and above, 7 years in case of direct recruitment in BS-18. At least 3 research papers, published in reputable scientific journals and magazines.</i>

8. In principle petitioner is seeking the exercise of this Court's extraordinary Constitutional Jurisdiction to undertake judicial review of the decision made by the competent authority to reconvene the Selection Board for promotion of Chief Scientific Officer vide Letter dated 12.12.2023. Primarily, there are at least four discernable components of promotion decisions for purposes of a court exercising judicial review of the decision:

(i) mandatory legal requirements, the failure to observe, which can lead to procedural impropriety;

(ii) objective criteria i.e. eligibility requirements that can be verified by the court based on available records;

(iii) the subjective evaluation of the competence, fitness or potential of an employee that falls within the domain of primary decisionmaker; and

(iv) the reasoning of the decisionmaker which if perverse or reflecting bias or malice or based on extraneous consideration can result in an illegal or irrational decision that can be reviewed by a constitutional court.

9. Given these components of a promotion decision, this Court would intervene and exercise judicial review of such decision where;

(i) there is in breach of principles of procedural fairness or natural justice,

(ii) where employment rules and criteria for promotion prescribed therein have been breached, or irrelevant and extraneous consideration have informed the decision leading to illegality,

(iii) when the objective criteria regarding eligibility for promotion have been misapplied and such misapplication is evident from the record (i.e. miscalculation of years of service, etc.), and

- (iv) *where discrimination or malice is floating on the surface for the record, or the reasoning of the decisionmaker is perverse leading to the conclusion, without the court indulging in any factual controversy, that the decision undermines the fundamental right of an employee to be treated under law and without discrimination.*

10. It is settled law that constitutional courts can undertake judicial review of decisions of executive authorities on grounds of illegality, irrationality, or procedural impropriety.

11. It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee that has to determine the eligibility criteria for promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision-making of the Government the interference with such matters by the Courts is not warranted and no vested right of a Government employee is involved in the matter of promotion or the rules determining his/her eligibility or fitness.

12. In the present case, it appears from the record that the petitioner was holding the post of Principal Coastal Engineer BS-19 and was considered by the Selection Board for the post of Chief Scientific Officer BS-20 without adhering to the Recruitment Rules 2012 as discussed supra, therefore the decision to reconsider the case of promotion on the subject post is the valid decision of the competent authority, thus the petitioner has failed to make out a case for the indulgence of this Court on the analogy so put forward by the petitioner and in absence of illegality, irrationality or procedural impropriety, or breach of applicable rules or discrimination or malice, this Court cannot exercise its judicial review powers under Article 199 of the Constitution.

13. In view of the above this petition is dismissed along with listed application(s).

JUDGE

JUDGE

Shafi