

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-978 of 2021

(Naeem Qudrat & 6 others 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 and order: 25-04-2024.

Mr. Zaffar Ali Eidan Mangi, advocate for the petitioners.
 Mr. Khuda Bux Chohan, advocate for respondents Nos. 2 & 3.
 Mr. Shaharyar Imdad Awan, Assistant A.G, Sindh.

ORDER.

Adnan-ul-Karim Memon, J;- Petitioners are employees of Municipal Corporation Sukkur seeking up-gradation of their posts i.e. Octroi Inspector to BPS-14.

It is the case of the petitioner that they were appointed as Octroi Inspectors (BPS-08) in 2009 and to date, their posts have not been upgraded from (BPS-08) to (BPS-14). Petitioners have pleaded discrimination as the Government of Sindh vide letter dated 11-03-2012 approved the recommendation for the upgradation of the employees who were performing duties in (BPS-05) to (BPS-11) in the same department, however, they have been ignored.

Learned counsel for the petitioners has submitted that respondent Municipal Corporation passed the Resolution on 30-08-2017 for the upgradation for different cares i.e. Octroi Inspector (BPS-08) to (BPS-14), Tax Recovery Clerk (BPS-05) to (BPS-11), Penchayat Clerk (BPS-05) to (BPS-11) and Octroi Clerk (BPS-05) to (BPS-11), the same Resolution was approved by majority votes; however, the post of the petitioners were not upgraded.

Learned counsel emphasized that respondent No.3 issued an office Order dated 31-01-2020 in which posts of Octroi/Junior Clerk (BPS-05) were upgraded to Junior Clerk (BPS-11) with effect from 03-05-2018 in which again the name of the petitioners were bypassed and the posts of juniors were upgraded. Learned counsel has pleaded that their case needs to be considered by the competent authority in terms of the Resolution passed by the respondent-Municipal Corporation.

Parawise comments have been filed on behalf of the respondent Nos. 2 & 3 in which the right of the petitioners to upgradation of their posts has been denied on the ground that the up-gradation issue is a Government policy and the Government of Sindh has not framed the policy to upgrade the posts of Octroi Inspectors in Sukkur Municipal Corporation; however, they have admitted in the comments that respondent Nos. 2 & 3 have forwarded the applications of the petitioners along with the Resolution passed by the Municipal Council Sukkur vide Office letter dated 26-02-2018 and 04-08-2020 for necessary orders for upgradation of the post of Octroi Inspectors from (BPS-08) to (BPS-14) and the matter is pending with the Government of Sindh. They have also admitted in Para No. 4 that the post of Clerk has been upgraded to (BPS-11). They prayed for the dismissal of the petition.

Learned AAG has referred to the statement of respondent No. 1 the post of Octroi Inspector (BPS-08) to (BPS-14) and submitted that the Government of Sindh has not upgraded in any Division of the Sindh Province.

We have heard learned counsel for the parties and have gone through the material available on record with their assistance.

Upgradation is carried out under a scheme and or a policy to incentivize and encourage and to give financial benefits without creating additional vacancies of higher grade, upgradation by no standards could be treated and or considered as promotion to higher grade. The upgradation cannot be made to benefit a particular individual in terms of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting. The upgradation cannot be claimed as a matter of right but it is based on a policy decision of the competent authority for its implementation across the board for the particular categories of employees jot down in the scheme/notification who fulfilled the required qualification which is normally a particular length of service in a particular pay scale. There is a meticulous differentiation stuck between upgradation and promotion. The promotion involves advancement in rank, grade, or a footstep en route for advancement to a higher position whereas the facility or benefit of upgradation simply confers some monetary benefits by granting a higher pay scale to ventilate stagnation. On the aforesaid proposition, we seek guidance from the decision of the Supreme Court in the case of Regional Commissioner Income Tax versus Syed Munawar Ali (2016 SCMR 859) and Federal Public Service Commission through Secretary vs. Anwar-ul-Haq (Private Secretary) Islamabad and others (2017 SCMR 890). The Supreme Court has held that up-gradation is carried out under a policy and specified scheme. It is resorted only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Upgradation under the scheme is personal to the incumbents of the isolated posts to address stagnation and frustration of incumbent on a particular post for a sufficient length of service without any progression or avenue of promotion.

To justify up-gradation, the Department needs restructuring, reform or to meet the exigency of service in the public interest, in the absence of the aforesaid pre-conditions, up-gradation is not permissible under the law. Our view is supported by the decision

rendered by the Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch & others v. Province of Sindh & others, 2015 SCMR 456.

In the present case, respondent Nos. 2 & 3 have forwarded the applications of the petitioners along with the Resolution passed by the Municipal Council Sukkur vide Office letter dated 26-02-2018 and 04-08-2020 for necessary orders for up-gradation of the post of Octroi Inspectors from (BPS-08) to (BPS-14) and the matter is pending with the Government of Sindh. If this is the position of the case, let the competent authority of respondents decide the subject issue of up-gradation of the post of the petitioners within 30 days and if the Resolution passed by the Municipal Council Sukkur is acted upon the same be communicated to the petitioners and if they decline through speaking order after providing meaningful hearing to the petitioners.

This petition stands disposed of in the above terms.

Judge

Judge

Nasim/P.A