

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
MR. JUSTICE NISAR AHMED BHANBHRO

C.P. No. D-5412 of 2022

(Nisar Hussain Shaikh v/s Province of Sindh and others)

Petitioners : Through Mr. Ali Asadullah Bullo,
Advocate
Respondents : Through Mr. Ali Safdar Depar, AAG.
Date of hearing : 03.03.2025
Date of Announcement: 07.03.2025

ORDER

Nisar Ahmed Bhanbhro, J. Petitioner seeks indulgence of this Court to declare acts of Health Department for non-consideration of his case for promotion to the post of Chief Chest Specialist BS-20 (hereinafter referred as **the said post**) as illegal; and seeks directions for his promotion to **the said post** on Proforma Basis from the date of occurrence of Vacancy with benefits.

2. Succinctly stated, facts of Petitioner case are, that he applied for recruitment to the post of Chest Specialist (BPS-18) in Health Department in the year 1997 pursuant to a consolidated advertisement issued by Sindh Public Service Commission. The Petitioner, undergoing process of Test and Interview, was recommended for appointment as Chest Specialist (BS-18) in the year 1999 in Health Department. He joined services as Chest Specialist BS – 18 in Health department, performed his job diligently, honestly, with an unblemished record. He was promoted to the Post of Senior Chest Specialist BS -19 in year 2019 on the recommendations of Provincial Selection Board II. The Health Department in the month of July 2021 issued a Seniority List of Senior Chest Specialist (BS-19) showing the name of Petitioner at serial Number 2. The Department did not

convene the meeting of Provincial Selection Board-1 to fill the vacant position of Chief Chest Specialist BS-20 causing Petitioner to retire in Grade-19 in year 2022. Health Department fixed criteria for appointment and Promotion of Specialist Cader Doctors in grade 18 to 20 vide Notification dated 28.10.2021 determining the ratio of Postgraduate Doctors and Diploma Holder Doctors as 80% and 20% respectively. The Petitioner filed representations seeking his promotion but without any fruit. Hence this Petition.

3. The Respondents Health Department and Services Department (Respondents No 2 and 3) on notices by this Court made appearance, filed detailed reply denied assertions of Petitioner. The Respondents placed on record documents showing that case of Petitioner was considered for Promotion to **the said post** \but regretted for want of any vacancy in the category of Petitioner.

4. Mr. Ali Assadullah Bullo Learned Counsel for the Petitioner contended that the Petitioner served Health Department for a period of 23 years. He was promoted to grade 19 as Senior Chest Specialist in the entire career. The Petitioner on account of Length of Service and Performance was entitled to promotion **the said post**. He was denied promotion with mala fide intentions under the garb of a notification fixing ratio of Post Graduate Doctors and Diploma Holder Doctors for **the said post**. He contended that the name of Petitioner appeared at serial Number-1 in the Seniority List issued by Health Department in the Month of July 2021, despite a clear vacancy of **the said post** available since 2021, he was not considered for promotion. The Petitioner has retired from services in year 2022 on attaining superannuation, therefore, he cannot get promotion to Grade 20 on Regular Basis but has earned an undeniable right to **the said post** on Proforma basis with back benefits since the date of occurrence of vacancy. He laid emphasis that Fundamental Rule-17 entitled petitioner for promotion in **the said post** on Proforma basis retrospectively. The Petitioner has not been dealt in accordance

with law, the acts of Respondents declining promotion to the Petitioner are arbitrary, illegal and violative of the fundamental rights enshrined under article 4, 9 and 25 of the Constitution, he prayed for allowing the Petition.

He placed reliance upon the cases of **\Walayat Ali Mir Versus Pakistan International Air Lines Corporation** reported in **1995 SCMR 650** and **\Abid Hassan Versus P.I.A.C** reported in **\2005 SCMR 25**.

5. Conversely Mr. Ali Safdar Depar, Learned Assistant Advocate General Sindh, has strongly opposed this Petition. He contended that promotion is not a vested right of Civil Servant. Petitioner has been dealt in accordance with law, he was promoted in Grade-19. Petitioner was considered for promotion to Grade 20 by **Provincial Selection Board I** but regretted as no vacancy to **the said post** in the Category of Petitioner was available. The Petitioner has not challenged decision of Provincial Selection Board I before Competent Forum. Petitioner has retired from services; he cannot seek benefits of the post on which he never worked. There is no concept of Proforma Promotion in any of the Service Laws. He prayed for dismissal of Petition with costs.

6. We have heard Learned Counsel for Petitioner, Learned Assistant Advocate General Sindh and examined record.

7. We find, Contention of Learned Counsel for Petitioner that Respondent Health Department has violated fundamental rights by not-considering him for promotion to **the said post**, is not correct. Health Department in its reply to the averments made in Petition has categorically denied this claim by providing documentary evidence in the shape of working paper sent to Services and General Administration Department to consider case of Petitioner for Promotion to **the said post**. Case of Petitioner was considered but regretted for want of any vacancy in the Specialist Cader Petitioner belonged, such information was given to Health Department vide letter dated 30.08.2022. Petitioner instead of challenging

decision of Provincial Selection Board I before Competent Forum (which in the present case is Services Tribunal) filed Constitution Petition before this Court by concealing the above referred decision, prima facie, it establishes that Petitioner has approached this Court with unclean hands. To seek equitable relief under writ jurisdiction Petitioner has to demonstrate his bona fides. When confronted to such factual and Legal aspects of matter, Learned Counsel for Petitioner could not dispel any of them. Case of Petitioner having been considered for promotion to **the said post** was regretted on account of availability of any vacancy under the Category of Diploma Holder Doctors.

8. It has been held by Honorable Apex Court time and again that Promotion is not a vested right of Civil Servant, he cannot claim promotion as a matter of right. We find that Department has dealt Petitioner in accordance with law by adhering themselves to laws. Learned Counsel for Petitioner failed to point out departure by Respondents from rules while dealing with the case of Petitioner. In view of the above position, no declaration can be granted in favour of Petitioner as he has been dealt by the Department in accordance with law.

9. Contention of Learned Counsel for Petitioner that Health Department has framed rules determining ratio of 90 and 10 percent for Post Graduate Doctors and Diploma Holder Doctors with mala fide intention aiming to deprive Petitioner from promotion does not find support of law. Rule 3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, empowers Administrative Department to lay down method, qualification, experience and other conditions for appointment and promotion to any post. Health Department in consultation with Services & General Administration Department determined such mechanism for appointment and promotion of Specialist Cader Doctors vide Notification dated 28.10.2021. The criteria for promotion to the Post of Chief Chest Specialist Grade 20 (**the said post**) being relevant for this case, the same are reproduced for ease of reference:

- i. ***Ninety percent by promotion from amongst the persons holding the post in BS-19 in the same Specialist Cadre, possessing either degree of FCPS or FRCS or MS or MD in the relevant field from recognized University and having at least twelve years of service as such in BPS-18; and***
- ii. ***Ten percent by promotion from amongst the persons in BPS-19 in the same Specialist Cadre, possessing postgraduate diploma in the relevant field from recognized University/Institute and having at least twelve years of service as such in BPS-18 and above.***

10. Petitioner has not challenged Notification Dated 28.10.2021 in the present lis. He has failed to point out any illegality in the referred notification. The criteria laid down by the Health Department for promotion in Grade 20 is appreciable as more space has been provided for higher qualification, this will encourage research in the health sector being demand of the day. We find that the criteria laid down by the Health Department for appointment and promotion of Specialist Cader Doctors vide notification dated 28.10.2021 is well within the bounds of law, in line with statutory provisions and does not require interference. It is prerogative of the executive bodies to make rules. The Courts have always respected mandate given to Legislative and Executive bodies to make laws and frame rules, provided that the sub ordinate legislation / Rules are not in conflict with the statutory provisions or person specific or based on mala fides.

11. Adverting to the next contention of Learned Counsel for Petitioner that he was entitled to Proforma promotion in Grade-20, back benefits from date of accrual of such right or occurrence of Vacancy in terms of Fundamental Rule – 17, proviso of said rule paved a way for Proforma promotion when it was established that an employee was denied right of promotion with no fault on his part. We are afraid, proviso to Fundamental Rule 17 relied upon by Learned Counsel for Petitioner was omitted by Finance Division vide SRO No 965(I)/2022 dated 20.05.2022, as such benefit of Proforma Promotions under FR – 17 was only available to Civil Servants retiring before cut-off date, as Petitioner as he retired from service after 20.05.2022, this benefit is not available to him.

12. The concept of Pro Forma Promotion or Promotion with a retrospective effect to a retired Civil Servant is alien to the scheme of law. The Sindh Civil Servants Act 1973 and Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 being governing laws in matters of appointment and promotions do not contain any provision entitling a Civil Servant for Proforma Promotion after retirement. In absence of any laws conferring rights of proforma promotion to the retired Civil Servants, this Court cannot issue writ directing the public sector organizations / entities/ departments to do an act otherwise not permissible under the law. The guidance in this regard be sought from the judgment of Honorable Supreme Court in the case of **Secretary Ministry of Finance, Finance Division, Government of Pakistan Versus Muhammad Anwer** reported in **2025 SCMR 153**, case of **National Bank of Pakistan through its President Versus Sajjad Ali Khaskhelli and another** reported in **2024 PLC (CS) 276**, and the case of **Inspector General of Police Punjab versus Waris Ali** reported in **2024 SCMR 1109**.

13. In the case of **National Bank of Pakistan** (Supra), Honorable Supreme Court of Pakistan has been pleased to hold in Para No 3 of the judgment as under:

“3. Having heard the Learned Counsel for the parties and going through the record, it is clear and obvious that the Respondent had been superseded in 2010, which supersession was not challenged within a reasonable time. The constitutional petition filed by the Respondent before the High Court suffered from laches. Further, the right that the respondent asserted and continues to assert to be granted proforma promotion for which there is no provision in the relevant service rule. This is coupled with the fact that the Respondent has already retired from service and received all his benefits due to him under the law. As a result, we find that interference by High Court in the matter at the stage it interfered was not supported either by the either by the relevant law or

by any of the rules which governs the terms and conditions of employees of Petitioner / Bank. We, therefore, find the impugned judgment to be unsustainable. Consequently we convert this petition into appeal and allow the same. The judgment of Peshawar High Court is set aside”

14. With utmost respect and reverence Judgments relied upon by Learned Counsel for Petitioner are distinguishable from the facts and circumstances of the case in hand.

15. For what has been discussed hereinabove, we do not find any merits in the instant petition warranting interreference by this Court. Consequently, the Constitution Petition is dismissed with pending applications if any.

Judge

Head of Const. Benches

Jamil