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ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-2052/2007

Date

Order with signature of Judge

3.4.2009.

Mr. Muhammad Nawaz Shaikh, Advocate for the Petitioners.

Mr. Miran Muhammad Shah, AAG Sindh.

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MUHAMMAD KARIM KHAN AGHA J. - The petitioners are holders of Diploma of Associate Engineers, who have been working as Water Management Officers in BPS-16 in the Ministry of Agriculture, Government of Sindh, and have in essence moved this Constitutional Petition against an order issued by the Respondent No.4 (Finance Department, Government of Sindh) dated 26.2.1997 (the Order).

2. According to the Order the Water Management Officers possessing a degree in Agricultural/Civil/Mechanical Engineering in at least 2nd Division or M.S.C. (Agriculture) at least 2nd Division from a recognized University in the Agricultural and Wildlife Department were allowed in the pay scale of BPS-17, to the exclusion of those Water Management Officers (including the petitioners) who did not hold such qualifications.

The Order is reproduced below:

"ORDER

The Government of Sindh is pleased to allow PBS-17 to the existing incumbent Officers possessing a degree in Agricultural/Civil/Mechanical Engineering in at least 2nd Division or M.S.c. (Agriculture) at least 2nd Division from a recognized University in the Agricultural and Wildlife Department, with immediate effect.

2. Those Water Management Officers not in possession of the above qualifications shall continue to work in BPS-16."

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3. The petitioners' main contention is that the Order is discriminatory in nature as it discriminates against Diploma Holders who are working alongside graduates in the Water Management Officers Department at BPS 16, whilst performing the same functions and in some cases enjoying greater seniority.

4. Pursuant to the Order the office of Respondent No.3 issued a Notification dated 12.3.1997, promoting 93 Water Management Officers (graduates) to grade 17 to the exclusion of the diploma holders.

5. In support of their contentions, learned counsel for the petitioners submitted that even the Administrative Department of the Respondent No.3 (Secretary, Agriculture Department) took exception to the Order by which the graduate Water Management Officers were allowed to BPS-17 and the Diploma Engineers Water Management Officers were deprived from the said pay scale and as such put the petitioners' case before the Respondent No.4 (Secretary, Finance Department) through a letter dated 16.05.1997.

6. The Respondent No.3 in the aforesaid letter came to the conclusion that the request of the petitioners need consideration and recommended their case inter-alia on the following grounds:

- "i) The terms and conditions for appointment/promotion for the above post are same i.e. B.E/Three year Diploma of Associate Engineer + 2 years experience.
- ii) The Seniority list of all the Water Management Officer's is same irrespective of their qualification.
- iii) the duties and responsibilities are same for B.E./Diploma holders."

7. The bottom line, however was that Respondent No 4 (the Finance Department) was not ready to accept such recommendations of Respondent No.3 made on behalf of the petitioners. Repeated correspondence between the concerned departments are on the Court's record to show that this

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matter was passing back and forth between the various departments without any definitive decision on Respondent No.3's recommendation since 1997.

8. As a last resort, the petitioners themselves sent detailed appeals individually as well as jointly on 30.8.2004, and 10.9.2004 to Respondent No.4 requesting it to set aside the Order, which discriminated against them.

9. According to the petitioners, despite their best efforts, Respondent No 4 gave no definitive response to their request to be treated equally with their graduate colleagues and as such were left with no alternative but to file this petition against the Order in order to prevent them from being discriminated against.

10. They have prayed this Court as under:

"a) to direct the Respondent no.4 to accept the recommendations of the Administrative Department of the Petitioners, viz. Respondent No.3 and award BPS-17 to the Petitioners Diploma Engineers from the due date.

b) Any other relief(s), which the Honourable Court may deem fit and appropriate looking to the circumstances of the case."

11. The counter-affidavits filed on behalf of the Respondents Nos.1, 2 and 3 do not controvert the factual contentions of the petitioners.

12. Learned counsel on behalf of Respondent no.4, however, reiterated Respondent No.4's counter-affidavit and rejected the petitioners' contentions that the Order was discriminatory. According to him the Order was not discriminatory because it was based on a difference in the qualifications of the Officers and had just not divided the categories of employees of the Water Management Officers into two groups in an arbitrary or whimsical fashion. The fact that some of the petitioners had more seniority than some of the graduates, who benefited from the Order was not relevant.

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13. Learned Counsel for Respondent No 4 concedes that on the basis of the various correspondence and representations passing between the parties, as noted earlier and as per the courts record, the final resolution of this matter had remained under examination for a considerable amount of time. According to him this delay had been caused since in order to properly examine the recommendations made by Respondent No.3, information had to be called for and assessed from the concerned Administrative Departments by Respondent No.4.

14. Finally however in order to bring a closure to this matter a note for Respondent No 4 was moved by the Agricultural Department, Government of Sindh on 11.11.2004, recommending that the petitioners be treated in the same way as the degree holders.

15. Learned counsel pointed out that the Finance Minister finally rejected the recommendation of Respondent No 3 that Diploma holders and degree holders be treated on an equal footing for the purpose of promotion from BP 16 to 17 by a manuscript notation dated 16.11.2004 on the aforesaid note on the basis that:

“There is a difference between Diploma Holder & Degree. I can't treat both on the said grid. Regret.”

16. Based on the above-mentioned statement from the Finance Minister learned counsel for Respondent No.4, claims that there was no discrimination in the treatment of the petitioners and that the Order was issued on reasoned grounds.

17. We have closely reviewed the documents on the file and carefully considered the arguments advanced by learned counsel.

18. Article 4 of the Constitution provides a right for individuals to be dealt with in accordance with law and to be treated in accordance with law

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is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

19. Article 25 provides that all citizens are equal before the law and are entitled to equal protection of law.

20. There can be no cavil with the proposition that under Articles 4 and 25 of the Constitution Pakistani citizens cannot be discriminated against.

21. Discrimination can fall into various categories such as racial, sexual, on account of caste, color, or creed etc. These are the obvious forms of discrimination. Discrimination however arises in many other ways. In the instant case the alleged discrimination revolves around the question of classification, namely, whether it is fair to enable one class of employees performing the same duties as another class of employees to be promoted to a higher pay scale to the exclusion of the other class of employees fulfilling the same functions. If this were to happen, prima-facie, it would appear to be discriminatory. The matter, however, is not as simple as that and each case will turn on its own particular facts and circumstances.

22. In dealing with the determination of the question of discrimination in cases of classification the Court cites with approval the case of GOVERNMENT OF BALOCHISTAN through Additional Chief Secretary V/s AZIZULLAH MEMON and 16 others (PLD 1993 S.C. page 341) with regard to Article 25, where the Supreme Court laid down principles for the application of the equality clause (Article 25) of the Constitution:

- (i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
 - (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
 - (iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having
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different financial standings, and persons accused of heinous crimes;

- (iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
- (v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- (vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;
- (vii) that in order to make a classification reasonable it should be based----
- (a) on an intelligible differentia which distinguished persons or things that are grouped together from those who have been left out;
 - (b) that the differentia must have rational nexus to the object sought to be achieved by such classification."

23. Reliance was also placed on the above principles in the case of MEHRAM ALI v. FEDERATION OF PAKISTAN (PLD 1998 S.C. at page 1455) and MUHAMMAD ASGHAR ZARDARI and others v. C.D.A. and others (PLC 2008 C.S. 1219).

24. According to the above principles in order to determine whether a classification is reasonable it should be based on an intelligible differentia which distinguished persons or things that are grouped together from those who have been left out; that the differentia must have rational nexus to the object sought to be achieved by such classification.

25. It is also to be noted that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, *but a classification which is arbitrary and is not founded on any rational basis* is no classification as to warrant its exclusion from the mischief of Article 25. (italics added)

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26. The Supreme Court in *Water and Power Development Authority v. Muhammad Jehangir* (SCMR 2007 page 1900) which is a similar case, revolving around discrimination based on required educational qualifications found that there had been no discrimination in cases where graduate and diploma holders had applied for the same job on the basis that the job required the applicant to be graduate.

“Consequently the respondent cannot be governed under the rules meant for Power Wing Engineers when under the Rules of Water Wing only graduated Engineers are allowed time scale promotion whereas the respondent was diploma holder, therefore, he could not be placed in time scale BS-18 and subsequent move-over BS-19.

10. Article 25 of the Constitution is not attracted in the instant case considering that discrimination stipulated under sub-Article (2) of Article 25 relates to making of distinction and difference between similar things. The case of discrimination would be where recourse had been made to different standard qua equally placed persons and parties. In the instant case there is reasonable classification with regard to cadre and different discipline of jobs of the employees doing or performing different/distinct functions therefore different qualifications with regard to the appointment and promotion have been laid down.”

27. This position in respect of discrimination on the basis of classification in respect of educational qualifications for particular posts has most recently been affirmed by the Islamabad High Court in the case of *Muhammad Asghar Zardari v. C.D.A.* (2008 PLC C.S. 1219)

“Any appointment of non-qualified engineers into the professional engineer work is a clear violation of the above law and the violators can be punished under the same law. The respondent No.1 cannot promote non-professional, non-registered and non-graduates who have Diplomas and B-Tech certificates which are not equivalent in any way to the professional engineering degrees against the posts specified for professional engineers. It is very clear that B-Tech (Hons) Degree and Diploma of Associate Engineering are not at par with B.Sc. (Civil Engineering), hence they could not be

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appointed against the posts specified for professional engineers
duly registered with the P.E.C”.

28. Based on the above authorities and the particular facts and circumstances in this case regarding the alleged discrimination in classification of the petitioners, it seems clear to the Court that the classification of BPS-16 to Diploma Holders and BPS-17 to Graduates is neither arbitrary nor founded on any unreasonable or irrational basis. In this case as explained by the Finance Ministry its decision was based on the type of educational qualification, which each Water Management Officer held. Accordingly, the court finds that the petitioners' have not been discriminated against.

29. These are the reasons for our short order dated 26.3.2009, dismissing this petition in limine.