

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-3525 of 2013

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Petitioners Through Mr. Ansari Abdul Latif Advocate.

Respondents Through Mr. Sheharyar Mehar, AAG.

Date of hearing 29.03.2017

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, petitioners are seeking following relief(s):-

- a) *Hold and Declare that the Promotions allowed/granted to Petitioner No.1/ Ghulam Rasool Saand from BS-7 to BS-8 and from BS-8 to BS-11 and from BS-11 to BS-16 are legal, bonafide, lawful based on Seniority cum fitness bases on the recommendations of legally constituted DPC/SLGB and with the approval of the then Competent authority in exigencies of service and none of his Promotions from BS-7 to BS-16 are "Out of Turn" nor ab-initio void.*
- b) *Hold and Declare that the Promotions availed by the Petitioners No.2 to No.5 from BS-7 to BS-11 are regular, baonafide, lawful based on Seniority-cum-Fitness bases, on the recommendation of legally and properly constituted DPC/SLGB and with the approval of the then Competent Authority in exigencies of service and none of their Promotions from BS-7 to BS-11 are "Out of Turn" nor ab-initio void.*
- c) *Hold and Declare that all the Petitioners No. 1 to 5 have been promoted on regular basis in exigencies of service and on merit so also in accordance with law and there is no any ambiguity or illegality or irregularity whatsoever in their Promotions till to date.*
- d) *Hold and Declare that SGA&CD so also Administrative Department went into serious Error and Mistake by dubbing the Promotions of all the Five Petitioners on regular bases as "Out of Turn" ab-initio void as such the impugned Notification No. So-III (SGA &CD) POL-7-43/2013 dated 2nd July, 2013 (Annexure-A) issued by the Chief Secretary/Respondent No 2 so also Order No. SLGB/SCUG/AO (Admn)/4 (5873/2013/2781/ Karachi*

dated 04th July, 2013 (Annexure-A1) issued by Administrative Department impugned in this Petition are liable to be declared redundant, set-aside and quashed to the extent of Names of Petitioner No.1, Petitioner No.2, Petitioner No.3, Petitioner No.4 and Petitioner No.5 from the said impugned Notification and order.

- e) *Direct the Respondents to delete the Names of all the five Petitioners from impugned Notification of SGA&CD and from order of Administrative Department and intimate in writing to the Petitioners that their names have been deleted from both impugned Notification/order.*

2. The relevant facts of the case as per averments of the parties are that the Petitioners were appointed in BPS-6 as Secretary Union Council in the year 1974 to 1977 in Sindh Councils Unified Grades Service (hereinafter referred to as "SCUG Service") Admin: Branch, in the Local Government Department (Sindh Local Government Board) (hereinafter referred to as "SLGB"). The Government of Sindh House Town Planning Local Government and Rural Development Department vide order dated 10.05.1988 placed all the posts of Secretaries Union Councils in BPS-7 with effect from 01.07.1987. The meeting of Sindh Local Government Board was held on 01.07.2010 to consider the promotion of officials of SCUG Service (Administration Branch) from BPS-07 to BPS-08 and the Board after careful examination of the service record, cleared and recommended the Petitioners for Promotion from BPS-7 to BPS-8 to SCUG Service (Administration Branch). The meeting of Sindh Local Government Board was again held on 01.10.2011 for considering promotion of officials of SCUG Service and after perusal of PERs recommended the Petitioners for Promotion from BPS-8 to BPS 11 and on the Board's recommendation and with approval of Competent Authority, the Petitioners were promoted against substantive vacant post

on regular basis from BPS-08 to BS-11 / vide Order No. SLGB/SCUG AO/ (UC-II) GEN/PRO/2011 4983/ Karachi dated 29th November, 2011 issued by the then Administrative Secretary / Respondent No.3. It is averred by the Petitioners that the Sindh Local Government Board convened the meeting on 08.11.2012 and the Petitioner No.1 was further promoted to BPS-16 vide order dated 11.1.2013. However, the Hon'ble Supreme Court, in Cr. Org. Petition No. 89 of 2011, took cognizance of the fact that various out of turn promotions were granted to civil/non civil servants/police officials and held that the same were against the injunctions of Islam and were unconstitutional. Pursuant to the Judgment, the Respondent No.1 issued Orders dated 02.07.2013 and 4.7.2013 whereby officers/ officials of SCUG Service, including the Petitioners, were demoted to their original grades. Hence, the Petitioners stood demoted from BPS-11 and BPS-08 to BPS-16. The Petitioners, through the instant petition, claim that they were demoted illegally and by misconstruing the Judgment and without being provided an opportunity of hearing to the Petitioners, vide office Orders dated 02.07.2013 and 4.7.2013.

3. Upon notice, the Respondents filed comments and controverted the allegations, leveled by the Petitioners in the memo of the Petition.

4. Mr. Ansari Abdul Latif learned counsel for the Petitioners has contended that the Petitioners have more than 30 years regular Sindh Councils Unified Grades Service at their credit and all Promotions allowed to them were bonafide, legal, lawful and strictly in accordance

with law on Seniority-cum-Fitness basis and there was no politics involved in their promotions from BPS-7 to BPS-08 from BPS-8 to BPS-11 so also in case of the Petitioner No.1 from BPS-11 to BPS-16 purely, exclusively and solely on merit, Seniority cum-Fitness basis so also on the recommendation of SLGB/DPC with the approval of the then Competent Authority and there is no ambiguity in any of their promotion but the SGA&CD so also Local Government Department being their Administrative Department went into serious mistake and error by dubbing their regular, lawful, legal and bonafide promotions as “Out of Turn”) ab-initio void under the shadow of Hon’ble Supreme Court Judgment/ Order passed in Criminal Original Petition No. 89 of 2011 dated 12th June, 2013; that the Hon’ble Supreme Court of Pakistan nowhere in its Judgment/order dated 12.06.2013 has directed that the regular, lawful and bonafide promotions of Civil Servants made on the basis of Seniority-cum-Fitness so also on the recommendations of lawfully constituted Selection Boards/ Departmental Promotion Committees as well as Competently approved by the Competent Authority be dubbed as “Out of Turn”, ab-initio void and nullified by the SGA&CD so also by Administrative Departments in Government of Sindh but the Spirit behind the Judgment/Order dated 12.06.2013 of the Hon’ble Supreme Court is to revert, discharge and dispense the services of those Civil/ Corporate Servants, who were inducted in the service without due process of law and without observing legal and codal formalities or were promoted to the next Higher Grades “ Out of Turn”, promoted without Merit, through back door, under Political influence by infringing the service rights of other Servants in disregard and flagrant

violation of the Sindh Civil Servants Act, 1973 and the Rules thereunder or Deputations, who were malafidely absorbed over and above the serving Civil Servants by affecting their promotion and Seniority Rights or who were allowed to serve on Higher Post in OPS and such other illegally and politically favored Civil Servants have been directed to go back to their Parent Departments, whereas the Hon'ble Supreme Court of Pakistan in its Judgment/Order has not touched the legally as well as bonafidely appointed, so also promoted the Civil/Corporate Servants of Government of Sindh but the SGA&CD instead of applying its judicious mind or seeking opinion from the Law Department in the Government of Sindh or having legal opinion from the Office of the learned Advocate General Sindh misunderstood and misinterpreted the Judgment/ Order of the Hon'ble Supreme Court of Pakistan, Suo moto on its own by dubbing the Petitioner's above-named lawful/legal banafide promotions, which were made on the basis of Seniority-cum-Fitness basis and strictly according to law the recommendations of legally constituted Board/DPC with the approval of Competent Authority and dubbed it as "Out of Turn", ab-initio void and in the case of the Petitioners the Administrative Department pointed out the correct, legal and lawful position of the Petitioner's Promotions through a Note just obeyed the SGA&CD malafide Notification and in pursuance of it cancelled /recalled/rescinded the lawfully made promotions of the Petitioners above-named, which is a case of mockery, mismanagement and inefficiency on the part of the concerned official Respondents, which are liable to be declared redundant and quashed in the cases of all the above named five Petitioners to meet the ends of justice.; that

recalling/rescinding/withdrawal of Promotions of the above named regular Civil/Corporate Servants on the basis of misinterpretation of the Hon'ble Supreme Court Judgment/Order by the Respondents are patently illegal, unlawful, malafide based on no cogent reasons as such are liable to be set aside and duly granted promotions of the Petitioner No.1 in BPS-16 and other Four Petitioners in BPS-11 restored and retained to meet the ends of justice. The learned counsel for the Petitioners has relied upon the Case of Contempt Proceedings against the Chief Secretary, Sindh & others [2013 SCMR 1752] and Ali Azhar Khan Baloch and Others Vs. Province of Sindh & others [2015 SCMR 456]. He lastly prayed for allowing the instant petition.

5. Mr. Sheharyar Mehar, AAG, has argued that the Petitioner No.1 is a BPS-08 official of SCUG Service; that he is not a Civil servant and his services are governed under the Sindh Unified Grade Service Rules 1982 and promotion is regulated on Seniority cum Fitness basis; that his promotion from BPS-08 to BPS-11 and BPS-11 to BPS-16 was not in accordance with the rules and it was hit by the orders of the Hon'ble Supreme Court of Pakistan passed in Criminal original petition No. 89 of 2011; that their promotion orders along with others were rescinded; that the Petitioners promotion from BPS-08 to BPS-11 was not in accordance with the Rules. The learned AAG has relied upon the order dated 17.08.2016 passed by this Court in C.P. No. D-5235 of 2015 and argued that on the issue of up-gradation of the post of Secretaries Union Councils in Sindh, a Summary was moved to the Chief Minister Sindh, and it was proposed that the Secretaries Union Councils had a

cause for up-gradation as their chances of promotion even after rendering more than 20 years of service to higher grade posts were very bleak. Therefore, a Service Structure Committee was constituted to consider future prospects of Secretary, Union Council; that after deliberation the Competent Authority recommended up-gradation of the post of Secretary, Union Council and thereafter the matter was placed before the Board in its meeting dated 13.7.2006. The Board vide item No.01 of the minutes of the meeting resolved as under:

- “a) 1108 posts of Secretary Union Council (BS-7) SCUGS (Admn Br) throughout the province be placed in BS-8 with immediate effect and the tier of BS-7 be done away with.**
- b) The Next channel of promotion of Secretary Union Council would be from BS-8 to BS-11 on seniority-cum-fitness basis.**
- c) Qualification and ratio of appointment/recruitment/promotion shall be as under:”**
(-----)

It is further stated that the channel of promotion of Secretary Union Council is from BS-8 to BS-11 on seniority-cum-fitness basis. Learned AAG relied upon copy of order dated 24.06.2016 issued by the Secretary to Government of Sindh, Local Government Department (Sindh Local Government Board) and argued that all Secretaries of Union Councils belonging to Sindh Councils Unified Grades Service have already been placed in Basic Pay Scale 08 w.e.f. 01.07.2016 and all the posts of Secretaries of the Union Committees belonging to Sindh Councils Unified Grades Service have been placed in Basic Pay Scale 11 w.e.f. 01.07.2016. After issuing this notification, now they are in Basic Pay Scale 08; that the next channel of promotion is from BPS 08 to BPS-11. He lastly prayed for dismissal of the instant Petition.

6. We have heard the learned counsel for the Petitioners and learned AAG Sindh, representing the Respondents and perused the material available on record with their assistance as well as the decisions relied upon the learned counsel for the Petitioner.

7. Perusal of the record shows that all the Petitioners were appointed in BPS-16 as Secretary Union Council in the years 1974 to 1977 in Sindh Councils Unified Grades Service (Sindh Local Government Board). Subsequently, vide Order dated 14.09.2010, Petitioners were promoted from BPS-7 to BPS-8. And then vide order dated 14.1.2012, the Petitioners were further promoted from BPS-8 to BPS-11, however the Petitioner No.1 was further promoted to BPS-16 vide order dated 11.1.2013. In the pleadings, the Petitioners have also claimed that their names were recommended by the Sindh Local Government Board for promotion from BPS-7 to BPS-11 and the Petitioner No.1 in BPS-16 and the same is evident from the minutes of the meeting dated 01.7.2010, 1.10.2011 and 1.11.2012, which are available at pages 83-117.

8. It is noted that the Hon'ble Supreme Court, in Cr. Org. Petition No. 89 of 2011, took cognizance of the fact that various "Out of Turn" promotions were granted to Civil servants/police officials and held that the same were against the injunctions of Islam and were unconstitutional. The same matter is reported in the case of the Contempt Proceedings against the Chief Secretary Sindh and others (2013 SCMR 1752). Pursuant to the Judgment, the Respondent No.1 issued an Order dated 02.07.2013, whereby 126 officers/ officials of the

SCUG Service, including the Petitioners, were demoted to their original grades. Hence, the Petitioners stood demoted from BPS-11 and BPS-16 to BPS-08. The Petitioners, however, claim, that they were demoted illegally and by misconstruing the Judgment and without being provided an opportunity of hearing. Consequently, vide Orders dated 02.07.2013 and 4.7.2013 (impugned letters) the Petitioners were in receipt of the impugned letters whereby they were informed that they stood demoted to their original Grade i.e. BPS-8 on the ground that their “Out of Turn” promotions were against the rules/policy and the Judgement of the Hon’ble Supreme Court.

09. A bare perusal of the material placed on record reveals innumerable anomalies in the promotions granted to the Petitioners. Firstly, we failed to understand that when the “Out of Turn” promotion of the Petitioners, pursuant to the Judgement, had been reversed vide Order dated 02.7.2013, whether this Court can decide the matter of “Out of Turn” promotions when the same was conclusively determined by the Hon’ble Supreme Court, which in our view, tantamount to circumventing the directions of the Hon’ble Supreme Court. In addition, the minutes of the meeting held on 01.7.2010, 1.10.2011 and 1.11.2012, reveal that the Petitioners were recommended by the Board in the three meetings in three years that the Petitioners be promoted from BPS-8 to BPS-16, therefore, we have failed to understand as to how they could be directly promoted from BPS-8 to BPS-11 and BPS-16 within a short span of three years. The aforementioned recommendation of the Board, to the extent of the Petitioner’s case, is against the policy/rules of promotion

and also misleading so far as it tries to prove that the Petitioners were seniors to all.

10. We have noticed that the summary for the Chief Minister was floated by the Secretary Local Government Department for up-gradation the post of Secretary Union Council/ Union Committee from BPS-08/07 to BPS-11 and the next promotion will be in BPS-11/ SCUG (Admin Branch). The Competent Authority approved the Summary vide order dated 11.10.2017 and endorsed the view of the Finance Department that Administrative Department may frame a service structure/ recruitment rules with the consultation of SGA&CD to create avenue for the promotion of Union Councils Officials which will be on permanent footing.

11. We are of the considered view that in service cases there exists a two pronged criteria; One being eligibility for promotion and the other being fitness for promotion, while the former relates to the terms and conditions of service, the latter is a subjective evaluation made on the basis of objective criteria. No doubt in service matters, the promotion depends upon eligibility, fitness, length of service and availability of vacancy and no one including the Petitioners can claim promotion as matter of right. It is for the Competent Authority, who could make appointments, determine seniority, eligibility, fitness and promotion and other ancillary matters relating to the terms and conditions of the employees as prescribed under the Act and Rules framed there under.

12. During the course of arguments, when the counsel for the Petitioner was asked to satisfy this Court as to how the Petitioners were granted backdated promotion/seniority and “Out of Turn” promotion and whether under the recruitment rules the Petitioners can be promoted from Secretary Union Council BPS-8 to BPS-11 and the BPS-16, the learned counsel for the Petitioners tried to convince us that under Sindh Councils Unified Grades Service Rules 1982 provides that Petitioners were initially appointed in BPS-6, their post was upgraded in BPS-7 thereafter the Petitioners were promoted in BPS-8 and after that regular promotion of the Petitioners took place.

13. We are not convinced that under Sindh Councils Unified Grades Service Rules 1982, there is a Provision of the promotion of the Petitioners. The relevant portion of the Rules, 1982 is reproduced, as under:

Administrative Branch

| | | | |
|----|----------------|--|---|
| 4. | Basic Scale 16 | Graduate from a recognized University | (a) Not less than thirty per cent by initial recruitment; and (b) Remaining vacancies by promotion on the basis of seniority subject to fitness from amongst the members of the service in the Administrative Branch in (Basic scale) 11. |
| 5. | Basic Scale 11 | Intermediate from a recognized University or Board. | (a) Not less than thirty per cent by initial recruitment, and (b) Remaining vacancies by promotion on the basis of seniority subject to fitness from amongst the members of the service in (basic scale) 8 of the Administrative Branch. |
| 6. | Basic Scale 8, | Matriculation or equivalent qualification from a recognized University or Secondary Board. | (a) Thirty percent of total vacancies by initial recruitment, and (b) Remaining seventy percent by promotion on the basis of seniority-cum-fitness from amongst the members of the service in Basic Scale 6 of the Administrative Branch. |
| 7. | Basic Scale 6 | Matriculation or equivalent qualification from a recognized University or Secondary Board | By initial recruitment. |

14. Record reflects that the Sindh Councils Unified Grade Service Rules, 1982 were framed through notification dated 31.01.1983, in the light of Section 103 of Sindh Local Government Ordinance 1979. Whereas the appointments of the Petitioners were made in the year 1974 to 1977, which prima facie show that there is no service structure of the posts of Secretaries Union Councils. Record further reflects that the post of Secretary Union Council was initially in BPS-6, thereafter through office order dated 10.05.1988 the said post was placed in BPS-7 with effect from 01.07.1987.

15. Perusal of the order dated 17.08.2016 passed by this Court in Constitution Petition No. D-5235 of 2015, which is clear in its terms that the post of Secretary Union Council was placed in Basic Pay Scale 08 with effect from 01.07.2016 and all posts of Secretaries of Union Committees belonging to Sindh Councils Unified Grades Service have been placed in BPS-11, with effect from 01.07.2016, therefore the question arises as to how the Petitioners claim that they were promoted from BPS-8 to BPS-11 and from BPS-11 to BPS-16 through the Departmental Promotion Committee held in the year 2010 to 2012. It is a well settled law that the promotion can only take place when there is recruitment Rules available for the post to claim promotion, since their post was upgraded in BPS-8 and further placed in BPS-11 by the Notification dated 24.06.2016 issued by the Secretary to Government of Sindh (Sindh Local Government Board), therefore the question of holding DPC for the Petitioners for promotion from BPS-8 to BPS-11 and from BPS-11 to BPS-16, prima-facie is "Out of Turn" promotion as provided

under Section 9-A of the Sindh Civil Servants Act, 1973, which Provision has been declared unconstitutional by the Hon'ble Supreme Court of Pakistan in the case of Contempt Proceedings against the Chief Secretary Government of Sindh in Cr. Original Petition No. 89/2011 (2013 SCMR 1752). In the light of the Judgment passed by the Hon'ble Supreme Court as discussed supra and also the material available on record, we have failed to find any substance in the argument of the learned counsel for the Petitioners since the same is not corroborated with any law or cogent material.

16. We are of the view that the initial reversal Orders dated 2.7.2013 and 4.7.2013 were made in pursuance of the Judgment, hence, if the Petitioners were aggrieved by the same, the competent forum available to them was to file a review before the Hon'ble Supreme Court. However, a bare perusal of the record reveals that the Petitioners found a way of going around the Judgment and attempted to nullify the same by filling the instant Petition. The Competent Authority has held that their promotions from BPS-8 to BPS-11 and from BPS-11 to BPS-16 were "Out of Turn" and hence, against the rules and policy as well as against the spirit of the Judgment, therefore, the said promotions stood withdrawn. As such, we found that the claim of the Petitioners that their promotions were reversed wrongfully is not tenable in the eyes of law.

17. We also do not find any merit in the claim of the Petitioners that the Judgment is not applicable to their service. Suffice to say that

the Hon'ble Supreme Court In the case of Ali Azhar Khan Baloch & others (supra) has held at Paragraph No. 121,

“That the impugned judgement is only applicable to Civil Servants and does not cover non-civil servants. We, with respect, disagree with the contentions of the learned Counsel. The impugned judgment would be equally applicable to the Government Servants, employees of any statutory or non-statutory organization controlled by the Sindh Government, who were wrongly absorbed in different Cadres, Services, Posts of the Government Departments, Statutory Organizations against their Service Rules.”

18. Therefore, in our view the aforesaid Judgment is fully applicable to the case of the Petitioners. It is now well settled law that once the employees are de-notified in compliance of the Judgment of the Honourable Supreme Court, the employees, if aggrieved' have to approach the Honourable Supreme Court by filing review rather than filing Constitutional Petition. It is also a well settled principle of law that when the Hon'ble Supreme Court takes cognizance of a matter particularly in the cases of “Out of Turn” promotions declaring the same to be unconstitutional, this Court cannot interfere with such a finding.

19. Resultantly, the Petitioners are already retired from the service of the Local Government Board in their actual grade as such no relief can be granted to them at this stage. We have noticed that the acts of members and Chairman Sindh Local Government Board, who convened the Departmental Promotion Committee for granting promotion to the Petitioners, is clear violation of the law and Judgment dated 12.06.2013 passed by the Hon'ble Supreme Court of Pakistan in Cr. Org.

Misc. No. 89 of 2011. (2013 SCMR 1752). The “Out of Turn” promotion cannot be granted to the Petitioners, as the same is unconstitutional.

20. The instant Constitutional Petition, thus is not maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, therefore, the same is dismissed. The listed applications are also disposed of accordingly.

JUDGE

JUDGE

Shafi Muhammad P.A