

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1026 of 2017

Aurangzeb & another Petitioners

Versus

Federation of Pakistan & others Respondents

Date of hearing: 19.09.2017

Mr. Ali Asadullah Bullo Advocate for Petitioners.
Mr. Muhammad Aslam Butt, DAG along with
Mr. Majid Rasheed Deputy Director,
National Institute of Management, Karachi.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Through the instant Petition,
the Petitioners have prayed for the following relief(s).

- i. Declare the Impugned Promotion Notification dated 02.02.2017 passed by the Respondent No.3 in favor of Respondent No.5 as illegal, against the Regulations, in violation of the judgment of Hon'ble Supreme Court of Pakistan and set aside the same.
- ii. Direct the Respondents No. 3 and 4 to issue up gradation Notification of the post of I.T. Officer for the Petitioners from the date of its enforcement calculate and release the

difference of benefits of I.T. Officer from the date of its effect.

- iii. Direct the Respondents, not to threat the Petitioners in any way and they should act strictly in accordance with law.

2. Brief facts of the case are that Petitioners were appointed on contract basis as Computer Operator in BS-11 in the year 2008, in the department of Respondent No.3, which is a statutory body constituted under the National School of Public Policy Ordinance, 2002, having its own statutory service rules i.e. National School of Public Policy Service Regulations, 2014; that the contractual service of the Petitioners were regularized in the year 2008 and their names were inserted in the seniority list of Computer Operators BS-11; that in the year 2016 a meeting of Board of Governors of National School of Public Policy (NSPP) was held under the Chairmanship of Respondent No.2, wherein it was decided that 3 out of 9 posts of Computer Operators be upgraded in BS-16 and re-designated as I.T. Officer. It is added by the Petitioners that in fact under the law the posts of serving employees / Computer Operators/ Petitioners in BS-11 should have been upgraded, but the Respondent Nos. 3 and 4, convened a meeting of Departmental Promotion Committee (DPC), wherein the impugned promotion was granted to the Respondent No.5 by mentioning his post as Hardware Network Assistant (HNS) instead of Special Library Assistant. Petitioners averred that this exercise

was based on malafide intention only to accommodate the Respondent No.5, by circumventing the National School of Public Policy Service Regulations 2014, and judgments passed by the Honorable Apex Court on the subject issues and deprived the petitioners from the benefit of up-gradation of the post of Computer Operator as IT officer BS-16.

3. Upon notice, the Respondents filed para wise comments.

4. Mr. Ali Asadullah Bullo, learned counsel for Petitioners argued that the Respondents No. 1 to 4, malafidely blessed the private Respondent No.5, having no mandate and protection of law as he was appointed against the post of Special Library Assistant in BS-13; his cadre was surreptitiously changed as Assistant in BS-14. However, his service was regularized in that cadre in the year 2008. Per petitioner this exercise is against the basic sprit of service law; that the Respondents No. 3 & 4 in order to give unsustainable favour by illegally mentioning the post of Respondent No.5, as Hardware Network Assistant and promoted him against the post of I.T. Officer which was a upgraded post in BS-16; that the proceedings of Departmental Promotion Committee to the extent of awarding promotion to the Respondent No.5 against the upgraded post of Computer Operator is against the norms of law, equity and fairness; that it was prime duty of the Respondents No.1 to 4 that the Petitioners ought to have been adjusted against the upgraded posts of Computer Operator as I.T Officer in BS-16 from the date of approval and decision by the

Board of Governors of (NSPP) but such effect was not given and after filling of one post by way of promotion, the remaining two posts of I.T Officers are being filled in by blessing other blue eyed persons, which act is discriminatory, thus not sustainable under the law; that the petitioners cannot be deprived of the effect of up-gradation under the garb of (DPC) by encroaching upon the right of petitioners, which is protected by the law; that outsiders and back door entrant has no legal right to hold post of the petitioners; that the Respondents have failed to discharge their legal obligations and awarded undue advantage to the Respondent No. 5 with ulterior motive; that the Respondents were required to act strictly in accordance with law and give effect of up gradation of the posts of Computer Operators to the Petitioners as soon as it was decided and notified, but such duty was not performed by them, rather they attempted to take away the fundamental rights of the petitioners as guaranteed under Article 4, 9 18 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the Petitioners have valid legal right to be adjusted on the post of I.T Officer in BS-16, being the regular Computer Operators, therefore such impugned exercise of Respondents No. 1 to 4 is sketchy and not sustainable under the law; that the Respondents No. 1 to 4 are required to treat the Petitioners as I.T. Officers since the up-gradation of the post of Computer Operator and are also bound to grant them all the arrears of such post from the day of its enforcement; that the Petitioners are entitled to be treated as I.T Officers and cannot be forced to remain on the post of Computer

Operators BS-11, which is up-graded in BS-16; that due to the impugned action on the part of Respondents, the Petitioners are continuously suffering mental social and financial loss as they have not yet been given such effect; that the Official Respondents in that regard have violated their own jurisdiction and authority as well as powers conferred upon them by the relevant statutes, thus the impugned omission and commission on their part by not complying with the direction and approval of the statutory body are required to be dealt with in accordance with law. He lastly prayed for allowing the instant Petition.

5. The Respondent No.5 was present in the court on 03.07.2017 and he made categorical statement that since he has been promoted by the department (NSPP), he would not contest the case in his personal capacity and would be relying on the comments filed by the department in this regard.

6. Mr. Muhammad Aslam Butt, learned DAG, representing the Respondents No.1 to 4 has argued that it is clearly mentioned in the Office Order No. NSPP/ HR/ Bog / 2016 dated 05.08.2016 that the promotion against the three posts of I.T Officers (BS-16) be made according to the provisions of the NSPP Service Regulations 2014; that the Respondent No.5 is senior in age service/ grade, therefore, he was promoted as IT officer (BS-16) on seniority-cum-fitness basis on recommendations of the DPC.; that Respondent

No.5 was appointed as Special Library Assistant w.e.f. 21.06.2006, in NIPA Karachi, later on NIPA Karachi, became a constituent unit of National School of Public Policy (NSPP) and renamed as (NIM) and the organogram of NIM Karachi has also been revised, the following discrepancies were noticed:

- a. *Some posts which were available in old organogram are not available in new organogram.*
- b. *Some posts which were available in higher grade in old organogram are available in new organogram, but in lower grade.*

He further added that adjustment of all employees were made against the new organogram and the post of Special Library Assistant (BS-13) was not available in the new organogram and Respondent No.5 was working in IT section since his appointment, therefore, his cadre was changed and assigned a designation of Hardware Network Assistant vide Office Order No. 2/7/2007-NIM (admin.) dated 20.10.2007; that thereafter he has been promoted as IT Officer, (BS-16) in his cadre on seniority-cum-fitness basis as it is clearly mentioned in the Office Order No. NSPP / HR/ Bog/ 2016, dated 05.08.2016; that the promotion against the three posts of IT Officers (BS-16) be made according to the provision of the NSPP Service Regulations, 2014; that the Petitioners as well as Respondents No.5 were contract employees and their services were regularized w.e.f 01.07.2008 vide Office Order No. NSPP/DO/HR-II/89/08 and according to Clause 3 of this Office Order, the seniority of employees so regularized was required to be reckoned

form the date of regularization i.e. 01.07.2008, whereas their inter-se-seniority will be determined according to their ages and as laid down in Seniority Rules; that according to the combined seniority list of IT staff, the Petitioners are the junior most in the list, therefore in the presence of senior officials in IT cadre, the Petitioners have no valid legal right to claim the post of IT Officer. He lastly prayed for dismissal of the instant Petition.

7. We have heard the learned counsel for the parties and perused the material available on record.

8. In the first place, we would like to examine the issue of maintainability of the captioned Petition under Article 199 of the Constitution.

9. In pursuance of Section (3) of National School of Public Policy, Ordinance No. XCIX of 2002, NSPP was established. Section 17 confers powers upon Board of Governors of NSPP to prescribe Regulations. The same were framed vide SRO No. 70(KE) 2015, called as “National School of Public Policy Service Regulations, 2014.”

10. We are of the view that National School of Public Policy is a Body Corporate performing functions in connection with the affairs of the Federation and a statutory body having statutory service rules, as such, the High Court has jurisdiction to interfere in the subject affairs of NSPP under its constitutional jurisdiction.

11. The foremost question in the present proceedings is whether the up gradation to higher scale is equivalent to promotion. Whether an employee of the institution can be promoted on the upgraded post or only incumbents can be adjusted on the said post?

12. On merits, we have gone through the minutes of the meeting held on 01.01.2008, which considered appointment of the Petitioners as Computer Operator (BS-11) on contract basis for a period of two years against the vacant posts and subsequently posted in IT Section of National Institute of Management, Karachi. As per office Order dated 02.01.2009 the services of the Petitioners were regularized with effect from 01.07.2008 as Computer Operator in BS-11 and their seniority as per law is to be determined according to their ages as per clause 3 of the said office order.

13. Record reflects that the Respondent No.5, who was appointed against the post of Special Library Assistant (BS-13), was adjusted by Respondents No.1 to 4 on the post of Assistant (BS-14) in his own pay and scale (OPS). Besides, his service was regularized as Assistant in BS-14 and promoted as IT officer in BS-16 through Departmental Promotion Committee vide Notification dated 10.05.2016. As per NSPP Service Regulations 2014 the post of Assistant BS-14 can be filled by direct recruitment / transfer / deputation even by promotion from amongst the eligible employee of respective NIMs. Possessing the qualification and experience

mentioned in column No.5 of the Service Regulations, 2014; therefore, prima facie the adjustment of Respondent No.5 against the post of Assistant BS-14 on (OPS) is against the NSPP Service Regulation, 2014.

14. We have perused minutes of the meeting of the Board of Governors held on 18.02.2016, wherein the recommendations of the Executive Committee for up-gradation and re-designation of 3 posts of Computer Operator from BS-11 to BS-16, with nomenclature as I.T. Officer were approved and such Notification was issued on 05.08.2016. Learned counsel for the petitioner has drawn our attention that the Respondents No. 1 to 4 decided to remove purported anomalies by adjusting the staff to accommodate them. He further pointed out that three I.T officials have been adjusted against the posts as noted below:-

01.	Mr. Muhammad Aqil	Network Administrator (BS-16)	Steno typist (BS-14)
02.	Mr. Imtiaz Ali	Computer Operator (BS-16)	Mess Officer (BS-16)
03.	Mr. Sohail Anjum	Special Library Assistant (BS-13)	Computer Operator (BS-11)

15. Record further reflects that meeting of the Departmental Promotion Committee was held on 10.5.2016 to consider promotion cases of suitable employees of BS-1 to BS-16 and the case of Respondent No. 5 was considered against the post of I.T. officer in the following manner:-

“During the scrutiny of official record of the employees it was observed that Mr. Sohail Anjum was appointed against the post of Special Library Assistant (BS-13) but since his appointment he has been working in I.T. and he has qualification and vast experience of I.T. In the new organogram of NIM Karachi, the post of Special Assistant (BS-14) in his own pays and scale. According to his appointment his cadre is library, but he has no experience as well as qualification of Library. Now the BOG of NSPP in its 12th meeting held on 18.02.2016 has up-graded 3 posts of Computer Operator BS-11 to BS-16 with nomenclature of I.T. Officer.

Recommendation of the DPC:

Recommendations of the DPC are reproduced: “It is recommended that Mr. Sohail Anjum may be promoted as I.T. Officer (BS-16). The minutes of the meeting of BOG have been notified by NSPP vide U.O. No. 1/12/2016/Coord-NSPP dated 18th April, 2016. However, notification of his promotion to I.T. Officer shall be issued subject to receipt of formal notification for creation of posts of IT Officer by NSPP.”

Decision.

Recommendations approved.

16. We have gone through the Notification dated 05.08.2016, which was issued in pursuance of the decision of the Board of Governors of National School of Public Policy given in its 12th meeting held on 18.02.2016, whereby three, out of nine, posts of Computer Operators of National Institute of Management, Karachi were upgraded from BS-11 to BS-16 w.e.f. 18.02.2016 and nomenclature changed to I.T Officer. It is further mentioned in the Notification that promotion or recruitment against the three posts of I.T Officer (BS-16) be made according to the provision of NSPP Service Regulations, 2014.

17. As far as the factual context of the case is concerned that obviously trite and simple; three out of nine posts of computer operators have been upgraded. Contention of the learned counsel for the petitioner is that if post is upgraded the holder of the post is automatically promoted; contention of learned DAG is that only 3 posts have been upgraded and up gradation is deferent from promotion and for promotion the rules are being followed. However record reflects that posts have been upgraded not in terms of names of the incumbents but in terms of posts specified.

18. We are of the view that up gradation of posts does not mean automatic up gradation of the incumbents of these posts as well, if the department had decided to abolish the same posts and created new posts of IT officer, then the incumbents of the posts should have been considered on the upgraded posts, otherwise the appointment against the up graded post is required to be made in the manner prescribed in the Recruitment Rules for that particular post. As per seniority list of petitioners, produced by the learned DAG, which explicitly shows that petitioners are still working on the same post of computer operators.

19. Record reflects that the official Respondents promoted Respondent No.5 as I.T Officer (BS-16) w.e.f. 05.08.2016 against the upgraded post. The Notification dated 05.08.2016 issued by the Respondent No.5 clearly depicts that 03 posts of Computer

Operator (BS-11 to BS-16) were up graded and re-designated as IT Officer with condition that promotion or recruitment against the three posts of IT officer be made according to the provisions of NSPP Service Regulations, 2014; but the promotion of Respondent No.5 on the post of I.T Officer has been made by the DPC without framing the recruitment rules, if not earlier framed. It is well settled that the qualification is the prerequisite for the appointment by promotion on the post. No relaxation in qualifications can be made and only the candidates who meet the criteria can be promoted and not otherwise. Hence, at this juncture we cannot give sanctity to the process of promotion of Respondent No.5 on the upgraded post, in such a manner as initiated by the department, which is not in accordance with NSPP, Regulations, 2014.

20. Learned Deputy Attorney General has filed statement accompanying documents i.e. seniority list of Petitioners and Respondents No. 5 as under:-

(i) Sohail Anjum: (I.T. Officer BS-16), Inter, (short courses of computer such as EDP, DOS, Basic WordStar, dBase III+, with status of Network Administrator,

(ii) Mohan Lal: Computer Operator BS-11 (BE Computer System, M.A. Economics)

(iii) Aurangzeb: Computer Operator BS-11 (Master in Public Policy and Public Administration).

21. We have found that prima-facie; there are serious discrepancies in the service record of Respondent No.5 regarding his appointment, regularization, promotion and absorption, which needs serious attention. Three posts of Computer Operators were upgraded from BS-11 to BS-16 and the Respondent No.5 was promoted on the up graded post of I.T Officer in deviation from of Service Regulations, 2014. The cadre of the Respondent No.5 was changed, in violation of judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch Vs. Province of Sindh and others (2015 SCMR 456). Besides, Respondent No. 5 was wrongly adjusted as Assistant (BPS-14) on his own pay and scale (OPS) in violation of judgment of the Hon'ble Supreme Court rendered in the case of Province of Sindh Vs. Ghulam Farid & others (2014 SCMR 1189). The promotion of Respondent No.5 on the post of IT Officer has been made by the DPC without considering, the qualification for the post, actual aspect of the case and NSPP Regulations 2014. We are fortified by the guiding principles laid down by the Hon'ble Supreme Court, in the following cases.

- (1) Government of the Punjab through Chief Secretary, Lahore and others Vs. Abdul Sattar Hons and 29 others (2015 SCMR 915).
- (2) Asaf Faihuddin Khan vardog Vs. Government of Pakistan and others (2014 SCMR 676).
- (3) Secretary Economic Affaris Divisions, Islamabad and others Vs. Anwar ul Haq Ahmed and others (2013 SCMR 1687).
- (4) Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383).

- (5) Dr. Akhtar Hassan Khan and others Vs. Federation of Pakistan and others (2012 SCMR 455).
- (6) N.W.F.P. Public Service Commission and others Vs. Muhammad Arif and others (2011 SCMR 848).
- (7) Jahangir Sarwar and others Vs. Lahore High Court and others (2011 SCMR 363).
- (8) Government of Punjab through Chief Secretary, Punjab, Lahore Vs. Naseer Ahmed Khan through L.Rs. and others (2010 SCMR 431).
- (9) Muhammad Farid Khattak and others Vs. Chief Secretary, Government of NWFP and others (2009 SCMR 980).
- (10) Syed Mufeed Shah and another Vs. Principal Khyber Medical College, Peshawar and others (2006 SCMR 1076).
- (11) Watan Party through President Vs. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others (PLD 2006 SC 697).
- (12) Government of Pakistan Ministry of Railways through Secretary and others Vs. Jamshed Hussain Cheema and others (2016 SCMR 442)

22. Learned DAG has failed to justify the impugned action of the official Respondents.

23. In the light of foregoing, the Office Order dated 2.2.17 issued by Assistant Director (Admin) of National Institute of Management Karachi to the extent of promotion of Respondent No.5 is set aside. We disposed of the instant petition accordingly, with directions the Respondents No. 3 & 4 to fill up the upgraded posts

of I.T. Officers in BS-16 in accordance with Service Regulation of NSPP, 2014; if necessary they may make necessary amendments in the said Rules, within a period of three months.

24. The instant petition is disposed of in the above terms along with listed application(s).

JUDGE

JUDGE

Shafi /P.A