

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-3525 of 2016

Abdul Latif Narejo & others Petitioners

Versus

Employees Old Age Benefits Institution and others Respondents

Date of hearing: 22.11.2017

Mr. Abdul Salam Memon, Advocate for Petitioners.

Mr. Manzoor Hameed Arain, Advocate for Respondents No. 1 to 5.

Ms. Masooda Siraj, Advocate for the Respondents No. 6 to 9.

Mr. Abdul Jalil Zubedi, AAG.

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. To direct the respondents that the petitioners are eligible to be given due promotion when they completed 15 years of service in the respondent's Institution according to 48th meeting dated 15.12.1998 duly passed by respondents and promotion of other officers through 48th meeting by way of ignoring the petitioners are clear discrimination and respondents cannot discriminate amongst the employees of its own Institution. All citizens are alike and are entitled of equal treatment.
- ii. To declare that institution cannot deviate its own Rules and Regulations or any procedure as devised under the statutory Regulations and is under obligation to abide with and recruit the officers/officials after adopting the methodology as provided in the procedure and respondent No.2 cannot ratify his own decisions in

discriminatory way after remaining it in practice such a long time and cannot benefit some officers and deprive others is null and void.

- iii. To direct the respondents, as petitioners are also entitled for the benefits which they received in the shape of recurring financial loss and same may be paid to the petitioners by promoting them from the due date as already mentioned above.

2. Brief facts of the case are that Petitioners were appointed as Executive Officers on different dates during 1987 to 1989 in the Respondent's Institution (EOBI). Petitioners added that as per decisions of the Board of the Respondent's Institution, the posts of the Petitioners were up-graded in pay grade 7 equivalent to BPS-17 w.e.f.1998. As such as per decision of the Board of the Respondent's Institution, Petitioners were eligible for promotion as Assistant Director on completion of 15 years. Per Petitioners Board of Trustees (BOT) in pursuance of Regulation 10 of the Employees Old Age Benefits Institution (Employees Service) Service Regulation, 1980 prescribed methods, qualifications and other conditions of service for various posts, which include the post of Assistant Director also and all appointments and promotions were made according to this procedure. They contend that the Board of Trustees of the Respondents' Institution in its 48th meeting held on 15.12.1998 decided as under:-

“ In the light of above directives, the Chairman, EOBI, being the Appellate Authority has given an opportunity of personal hearing to the petitioners of Sindh High Court on 06.02.2015 and to the petitioners of Lahore High Court on 01.04.2015 respectively and after going through the whole facts it was decided that the matter nay be placed before BoT for its concurrence and approval to the extent that these Officers may be upgraded as Assistant Director with effect from the date of their completion of 15 years' service as E.O. in

this regard, list of such officers is placed as Annex. 'G' for kind perusal. No financial impact is involved as they were already given next higher pay scale on completion of their 10 years' service as EO."

He continued and stated that as per BOT decision, the petitioners should have been promoted as Assistant Directors from the date they completed 15 years' service as they were eligible otherwise.

3. Mr. Abdul Salam Memon, the Counsel for the Petitioners averred that the Human Resource Department of the Respondent Institution, in disregard of the decision of BOT and their own practice in past based on the prescribed rules and procedure, promoted the Petitioner No.1 w.e.f. 12.09.2006, petitioner No.2 w.e.f. 19.12.2009, Petitioner No.3 w.e.f. 19.12.2009, Petitioner No.4 w.e.f. 09.09.2006 and the Petitioner No.5 w.e.f. 19.12.2009, which has affected their seniority. He further averred that in pursuance of the above referred BOT decision, the Departmental Promotion Committee (DPC) in its meeting held on 13.07.2004 out of 25 Executive Officers approved up-gradation of 23 of them as Assistant Directors, who completed 15 years of service as Executive Officers as on 31.12.2003, which include the Petitioners No. 01,03 and 04 also. The petitioner's No. 02 and 05 completed 15 years' service as Executive Officers respectively. But, while upgrading the Petitioners, the Respondent institution has ignored the date of completion of 15 years' service by them as Executive Officer. The Counsel for the Petitioners contended that before this petition, they filed C.P. No. D-764/2014 in this Court with the

prayer that they should be given seniority according to the decision taken by the Board of Trustees in its meeting held on 15.12.1998 discussed supra. The Petitioner further contended that they placed on record a letter dated 25.3.2015 written by the Deputy Director General HR Department to Secretary BOT for up-gradation of Assistant Director on completion of 15 years' service as Executive Officer as per decision of 48th BOT meeting held on 15.12.1998, which was duly approved by the Chairman BOT for further necessary action. The letter was taken on record by the Court. The Counsel for the Respondents No. 02 and 03 conceded and requested the Court for 45 days' time for convening a meeting of the Board of Trustees (BOT) for deciding the issue and further requested that the petition be disposed of in these terms and the learned Counsel for the Petitioners agreed to this proposal and the petition was disposed of by the Court accordingly vide order dated 04.11.2015; but it has not been implemented. The Counsel for the petitioners placed reliance on the case of **Mir Hassan Vs. Province of Sindh and 3 others (2017 PLC (CS) 864)**, **Chief Commissioner, Inland Revenue and another Vs. Muhammad Afzal Khan (2014SCMR 1687)** **Irfan Khan Bangash Vs. Government (2015YLR719 Peshawar)**, **Muhammad Ayoub Zafar Vs. Province of Sindh and 4 others (2001 YLR 2885 Lahore)** **Hussain Muhammad Vs. Vice Chancellor Islamic College, Peshawar and 4 others (2015CLC 500 Peshawar)**, **Pakistan Railways Vs. Safdar Ali and others (2004 PSC 261 SC 261)** **Chairman Selection Committee and others Vs. Wasif Zamir Ahmad and another (1997 SCMR 15)** **Pakistan through**

Secretary Ministry of Finance Vs. Muhammad Himayatullah Farukhi (PLD 1969 SC 407), Mst. Mehmood Arif Vs. District Coordination Officer and 3 others (2013 PLC (C.S) 492) and Government of NWFP and others Vs. Buner Khan and others (1985 SC 1158).

4. Upon notice the respondents filed para-wise comments.

5. Mr. Manzoor Hameed Arain, learned counsel for Respondent's No. 1 to 5 contended that the petitioners were provided personal hearing by the Competent Authority, in which it was decided that the matter may be placed before the Board of Trustees for redressal of their grievances. Accordingly, the matter was placed before the BOT of EOBI in its 111th meeting held on 01.02.2016, the decision of which is reproduced as under:-

“The Board did not agree to the proposal and decided that the matter may be referred to HR committee of the BOT and present it before its next meeting.”

Per learned Counsel for the Respondents, the recommendations of the HRD Committee were placed before the Board of Trustees in its 112th meeting held on 07.04.2016, wherein no decision was taken in the matter and the HR Committee was reconstituted. The Counsel for the Respondents further averred that the BOT in its 70th meeting held on 16.08.2004 stopped any further up-gradations with the following observations:-

“The Institution should propose to revised the structure of the organization in accordance with the latest needs and to ensure reasonable promotion prospects for deserving officers”

He has further contended that the HR Committee with inputs given by Mr. Muhammad Iqbal, Member is of the considered opinion that after BOT approval to restructuring of EOBI, the issue should not be brought for discussion either before the BOT or referred to HR Committee and should be considered closed. He continued and stated that as there was order dated 04.11.2015 passed by this Court in CP. No. 764 of 2014 regarding up-gradation of Executive Officers as Assistant Directors, the matter was placed before 111th BOT meeting, which deferred the matter for next (112th) meeting held on 07.4.2016, which reconstituted the HR Committee. Having explained as such, the Counsel for the Respondents referred to 70th meeting of the BOT, held on 16.8.2004, which did not approve the proposal for up-gradation and decided as under:-

“The pros and cons of up-gradation were discussed and it was decided that the Institution should propose to revise the structure of the organization in accordance with latest needs and to ensure reasonable promotion prospects for deserving officers”

He has further contended that the matter was then referred to the HRD Standing Committee and the matter remained under consideration with the HRD Committee until 72th Board meeting, in which the report of the HRD Committee was finally discussed that the Board of Trustee of EOBI in its 33rd meeting held on 14.04.1993 approved a policy, whereby if an Executive Officer is not promoted as Assistant Director on completion of 10 years service as EO, he would be allowed next higher pay scale not up-

gradation and this worked like move over scheme of the Government. Following the same policy the Petitioner namely Mr. Abdul Lateef Narejo was allowed the next higher pay scale on completion of 10 years of service along with other 22 such officers vide office order No. 201/1999 dated 05.07.1999 and there was no justification for promotion as Assistant Director under this policy as such his contention is unfounded. He continued that the BOT in its 48th meeting approved up-gradation of Executive Officer on completion of 15 years' service as Executive Officers along with the post on fulfillment of other conditions of promotion and as per this policy, 53 Executive officers, who completed 15 years of service up to 30.06.2002 were upgraded as Assistant Director in four batches and thereafter the policy of up-gradation was discontinued. He submitted that the Petitioners did not complete 15 years service as Executive Officers as on 30.06.2002 and Wilayat Ali Baloch, the petitioner No.4, was promoted as Assistant Director with effect from 09.09.2006 and was granted promotion increment also from that date. It is further added by learned counsel that the Provisional Seniority List circulated vide OM No. P/C-66-G (Seniority) 201411947 dated 10.11.2014 was purely "Provisional" to invite objections from all concerned officers, which is still under observations and not finalized. Hence, contention regarding fake seniority list is not tenable and the Petitioners did not file their objections against Probationary officers and the BOT in its 70th meeting approved their induction under Probationary Officers' Induction Scheme for direct recruits in pay grade 7 with 03 years probation period, subsequently reduced to one year. He further

stated that employees EOBI meeting the requirements were also eligible to compete in the recruitment process in this regard. Learned counsel for Respondents has placed reliance upon the case of **Alyas Qadeer Tahir Vs. Secretary M/O Education and others (2014 SCMR 997), Government of Pakistan Vs. Jamshed Hussain Cheema and others (2016 SCMR 442), Landirengo Pakistan (Pvt). LTD Vs. Federation of Pakistan (2013 MLD 601), Safdar Ali Nasir Vs. Chairman Technical Education And Vocational Training Authority (TEVTA) And 5 others (2016 PLC 497), AzraJamali And others Vs. Federation of Pakistan through Secretary, M/o Commerce And other (2017 PLC (CS) 533)**. He lastly prayed for dismissal of the instant petition.

6. Mrs. Masooda Siraj, learned counsel for Respondent No. 6 to 9 has contended that the Respondent No.2 had filed CPLA No. 677-K/2009 in the Hon'ble Supreme Court of Pakistan, which was dismissed by the Apex Court vide Order dated 03.12.2009; that Respondent No.2 failed to comply with the Order dated 15.06.2009 passed by this Court in C.P. No. D-1698/2008, therefore the Respondent Nos. 6 to 9 along with other Petitioners have filed an application for Contempt of Court against the Respondent No.2, who personally appeared before this Court and ensured to comply with the Order dated 15.06.2009 passed by this Court. Learned counsel states at the bar that the instant petition has become infructuous as Board of Trustees has already taken cognizance in respect of the Order passed in Writ Petition No. 29711/2013 of Lahore High Court and C.P. No. D-764/2014 Order

dated 09.11.2015 passed by this Court. Learned counsel has further contended that up-gradation of Respondent Nos. 6 to 9 as Assistant Director on completion of 15 years' service as Executive Officer is as per decision of the 48th BOT meeting held on 15.12.1998; that this Agenda was referred by 111 BOT to the HR Committee and the Committee apprised that 48th BOT meeting held on 15.12.1998 approved up-gradation of EO/DEO as Assistant Directors provided they have completed 15 years' service as EO/DEO.

7. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

8. The basic grievance of the Petitioners is that the Respondents Nos. 6 to 9 were upgraded as Assistant Director on completion of 15 years' service as Executive Officer as per decision of the 48th BOT meeting held on 15.12.1998 and the Petitioners are also entitled for the similar treatment.

09. Perusal of record shows that the Respondent No.1 called the petitioners for personal hearing, considered their grievance and prepared working paper and in para No. 8 whereof gave the following remarks:-

“In the light of above directives, the chairman, EOBI being the Appellate Authority has given an opportunity of personal hearing of the petitioner of Sindh High Court on 06.02.2015 and to the petitioners of Lahore High Court on 01.04.2015 respectively and after going through the whole facts it was decided that the matter may be placed before BOT for its concurrence and approval to the extent that these officers may be

upgraded as Assistant Director with effect from the date of their completion of 15 years service as E.O. In this regard, list of such officers is placed as Annex "G" for kind perusal. No financial impact is involved as they were already given next higher pay scale on completion of their 10 years service as E.O.

10. Perusal of Order dated 4.11.2015 passed by this Court in C.P. No. D-764/2014 explicitly shows that the subject petition was disposed of on the statement of Respondents' Counsel on the basis of letter dated 25.03.2015 issued by the Respondent-Institution, relevant extracts of the order dated 4.11.2015 are as under:-

"Counsel for the petitioner places on record a letter dated 25.03.2015, issued by the DDG, HR department, EOBI, Head office Karachi. This letter was written by DDG to the Secretary Board, BOT, EOBI for up-gradation of AD on completion of 15 years' service as Executive officer as per decision of the 48th Board of Trust meeting held on 15.12.1998, which was duly approved by the Chairman for further necessary action. This letter is taken on record, when the learned counsel for the Respondent No. 2 and 3 was confronted to this situation, he conceded that his letter was issued and he requests that at least 45 days' time may be given to the Respondents No. 2 and 3 to convene a meeting of Board of Trustees for deciding the issue and the petition may be disposed in these terms, learned counsel for the Petitioners agrees to the proposal. The petition is accordingly disposed of."

11. In view of the order dated 4.11.2015 discussed supra, which prima-facie shows that the Respondents have not considered up gradation/promotion of the Petitioners from the post of Executive Officer to the post of Assistant Director as per decision of the 48th Board of Trust meeting held on 15.12.1998 and in view of this reference to decision of the BOT in its 70th meeting is not relevant.

12. In view of this Court order dated 04.11.2015 we are not impressed and convinced with of the assertion of the learned counsel for the Respondent-Institution.

13. The case law relied upon by the learned counsel for the Respondent-Institution is distinguishable in facts and circumstances of the case before us.

14. Looking through the above perspective and keeping in view the factual position of the case, we firmly infer that the Petitioners ought to have been considered for up-gradation/promotion of the Petitioners on completion of 15 years of required service in the Respondent's Institution as decided by the BOT in its 48th meeting held 15.12.1998. The explanation offered by the Respondents is a clear negation of order dated 04.11.2015 passed by this Court and not acceptable.

15. In the light of above facts and circumstances of the case, the instant Petition is hereby disposed of in the terms, whereby the Competent Authority of Respondent-Institution (EOBI) is directed to implement the Order dated 4.11.2015 passed by this court in C.P. No. D- 764/2014 within a period of one month from the date of receipt of this judgment.

Karachi
Dated 18.12.017

JUDGE

JUDGE

