

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-4045 of 2012

Mst. Taj Rani Petitioner

Versus

Federation of Pakistan and another Respondents

Date of hearing: 11.12.2017

Mr. Malik Naeem Iqbal Advocate for the Petitioner.
Mr. Ch. Muhammad Ashraf Khan Advocate for Respondent Bank.
Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

ORDER

ADNAN-UL-KARIM MEMON, J:- This Petition was disposed of by this Court vide order dated 05.12.2013 with the following observation(s):-

“The Petitioner is the mother of Zaheerudin and widow of piouddin, who was the employee of National Bank of Pakistan in Grade-III. On 01.06.1998, he expired due to cardiac arrest. The case of the Petitioner is that the Respondent No.2 has its Policy to accommodate and give employment on Deceased’s Son Quota. It is also the case of the Petitioner that she moved application to the Competent Authority, but application was not considered. Hence, she has prayed that her son’s case may be considered and he may be given job on Deceased’s Son Quota. The Respondent No.2 has filed comments, in which though they have opposed the Petition, but it is stated that if the Petitioner’s son meets criteria, could apply for appointment on a suitable post and whenever an appropriate vacancy will be available he will be considered.

With the consent of learned counsel for the parties, this petition is disposed of with the directions to the Petitioner and her son to make fresh application for his appointment and they will also attach previous

applications, if any, send to the Respondents for consideration. On humanitarian ground, Mr. Ch. Muhammad Ashraf Khan, learned counsel for the Respondent submits that whenever this application will be filed, the Respondents will consider the case of the Petitioner's son and if he will fulfill the criteria, he will be appointed. Mr. Ch. Muhammad Ashraf Khan, learned counsel for the Respondent further submits that the application will be considered immediately when recruitment of First Batch will be made. This Petition is disposed of in the above terms."

2. On 18.11.2015 Petitioner filed an application being CMA No. 35951/2015 under sections 3 and 4 of Contempt of Court Ordinance 2003 read with Article 204 of the Constitution of Islamic Republic of Pakistan 1973, for initiating contempt proceedings against the alleged contemnor for deliberately flouting order dated 05.12.2013 passed by this Court. Counter affidavit to the application (CMA No. 35951/2015) was filed by the Respondent-Bank and denied the allegations of the Petitioner on the ground that in compliance of the Order dated 05.12.2013 passed by this Court, the Respondent-Bank vide letter dated 11.01.2014 conveyed the status, criteria and consideration for employment to the Petitioner; that Respondent-Bank had announced 300 vacancies, after short listing 6937 candidates, they were called for written test held on 05.01.2013 wherefrom 4919 candidates appeared in the test and only 225 vacancies were to be filled through test followed by interview, whereas 75 vacancies were of clerical cadre as well as based on Son/Daughters/Spouses of Deceased NBP Employees; that the Respondent-Bank issued interview calls to the candidates, who secured the required marks to be eligible for interview; that due to stay order granted by learned Bench of NIRC the Respondent-Bank could not conduct the interviews and after vacation of the said order again issued the interview calls,

meanwhile the learned Bench of Peshawar High Court vide judgment dated 01.12.2015 passed in Writ Petition No. 3328/2014 directed Respondent-Bank to prepare a seniority list of deceased's son/ daughter, thereafter make appointment on the basis of seniority list, who otherwise are qualified or eligible to a post commensurate to their qualification against first available vacancy, thus again process of interview was cancelled by the Order dated 05.05.2016 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition for Leave to Appeal No. 201 of 2014; that Respondents-Bank has taken full efforts to comply with the order passed by this Court, strictly in accordance with law, rules and policy.

03. Mr. Malik Naeem Iqbal, learned counsel for the Petitioner has contended that the impugned action is illegal, unlawful, unconstitutional and in violation of principles of natural justice and as per the policy announced by Respondent Bank; that Respondent Bank is duty bound to accommodate the son of deceased employee/Petitioner; that husband of Petitioner died during service of the Bank, therefore no cogent reason has been agitated by the Respondent No.2 to refuse to appoint the Petitioner's son on deceased quota; that such refusal is in violation of the aforesaid Order passed by this Court; that son of the Petitioner fulfills the qualification, regarding the age and education, therefore the Respondent No.2 failed to consider the son of Petitioner for employment as per the policy in vogue; that the impugned office order is in sheer violation of fundamental rights of the Petitioner as envisaged under the Constitution as such is void ab-initio. Learned counsel has further contended that the Respondents are bound to act justly, fairly, while exercising powers conferred upon them especially in the matter pertaining to son quota.

4. Mr. Ch. Muhammad Ashraf Khan, learned counsel for Respondent Bank has contended that in compliance of the Order

dated 05.12.2013 passed by this Court Respondent Bank has finalized the seniority list of deceased's son/daughter. Per learned counsel the case of the Petitioner does not fall within the ambit of policy laid down by the Respondent Bank; that in compliance of the aforesaid Order passed by the Hon'ble Supreme Court, the Respondent Bank had followed the policy and also implemented the judgment of the Hon'ble Supreme Court; that case of the Petitioner's son will be considered as per seniority list of deceased employees son/daughter as well as Provincial Quota/seniority basis, that is to be commenced w.e.f 2004 onwards, whereas in the subject petition, Petitioner's father passed away in the year 1998 therefore, the case of the Petitioner does not fall within the merit/seniority list; that the Respondent Bank recommended the case of the Petitioner for appointment but he failed in the test conducted by the Respondent-Bank; that it is the policy of Respondent-Bank that wherever any such post become vacant for such category, the candidates amongst the seniority list will be given preference for filling up the said posts over other / external candidates in order to comply the judgment of Hon'ble Supreme Court of Pakistan supra. Learned counsel in support of his contention has placed reliance upon the compliance report dated 26.10.2017 filed by the Respondent Bank and argued that as per annexure RR/1, which is an application of Muhammad Salahuddin Son of Peauddin (deceased employee) which will be considered by the Respondent-Bank as and when the recruitment process is initiated. He prays for dismissal of the listed application.

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

6. We are cognizant of the facts that this Court disposed of the instant Petition by consent of the parties vide Order dated 05.12.2013 that whenever deceased's son applies for the post in the Respondent-Bank it will be considered in accordance with law when recruitment of first Batch is made. Per learned counsel, the

Respondent-Bank recommended the case of the Petitioner for appointment, but he failed in the test conducted by the Respondent-Bank with further assertion that the case of the Petitioner does not fall within the ambit of policy laid down by the Respondent-Bank. During the course of arguments the learned counsel for Respondent-Bank has stated that the Respondent-Bank is still stands to its statement that the case of the Petitioner's son shall be considered, subject to fulfillment of policy criteria.

7. It is well settled proposition of law that the Respondent-Bank is entitled to make policy to determine the eligibility criteria of deceased quota and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Respondent-Bank and the interference with such matters by the Courts is not warranted as no vested right of Petitioner is involved in the matter of appointment of deceased son without determining the eligibility for appointment on the subject posts and policy framed by the Respondent-Bank.

8. The commitment made before this Court by the learned counsel for the Respondent-Bank that the case of deceased's son, on deceased quota will be re-submitted for consideration for appointment as per seniority list of deceased's son/daughter, strictly in accordance with law as and when the recruitment process is initiated by the Respondent-Bank for appointment against sons/ daughters quota.

9. In view of the facts and circumstances of the case and for the reasons alluded as above, we are satisfied with the explanation offered by the alleged contemnors that substantial compliance of the Order dated 05.12.2013 passed by this Court has been made in its letter and spirit, therefore, at this juncture, no case for initiating contempt proceedings is made out against the alleged contemnors. Thus, we are not inclined to proceed with any further on the listed application bearing CMA No.35951/2015, having no merits, is accordingly dismissed.

JUDGE

JUDGE

Shafi Muhammad P.A