IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4859of 2013

Khalil Ahmed Jalil and others ..... Petitioners

Versus

Federation of Pakistan & others ..... Respondents

Date of hearing: 26.02.2018

Syed Shoa-un-Nabi, Advocate for Petitioners.
Mr. Mazhar Jafri, Advocate for Respondent No.2 & 3.
Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J: Through the instant petition, the petitioners are seeking promotion from the post Assistant Manager to the post of Deputy Manager in Pakistan Steel Mills in the light of Promotion Policy/Circular dated 02.06.2009.

2. Brief facts of the case narrated by the petitioners in memo of the petition are that they were appointed in the Respondent-Company/Pak Steel (MTC) as Assistant Manager in year 1985 on various dates vide appointment letters and were placed under training for a period of two years and pursuant to that they worked and subsequently promoted as Assistant Manager in Pakistan Steel Mills / Respondent-Company. Petitioners have submitted

that the Respondent-Company introduced a promotion policy dated 02.06.2009 for career planning of juniors officers / HSW cadre and as per aforesaid promotion policy the required criteria of promotion to the next rank i.e Deputy Manager was fixed and the same policy was amended vide letter dated 20.12.2010. Petitioners have asserted that they have completed 21 years' service in HSW-1 and in terms of the policy referred to hereinabove the Respondent-Company has promoted a large numbers of Assistant Managers as Deputy Managers in different departments, but the Petitioners, who have fulfilled the criteria as prescribed under the policy, which is one plus one equal to two years training yet not promoted. Petitioners have submitted that they belonged to Engineering cadre and are qualified MTC Artisan, thus were entitled for the promotion as Deputy Managers. Petitioners have submitted that two identical matters / Petitions bearing C.P. No.D-2487 of 2013 & Suit No. 59 of 2012 were allowed by this Court vide order dated 19.09.2016 and 27.03.2013 and their case is on the same footing.

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

4. Syed Shoa-un-Nabi, learned Counsel for the petitioners relying upon the order dated 19.09.2016 passed in C.P. No. D-2487 of 2013 by the Division Bench of this Court, argued that the Respondent-Company constituted Departmental Promotion Committee (DPC) for promotion of the Petitioners. The promotion criterion prescribed in the promotion policy, includes one year MTC training and one year on the plant. He further submitted that as per this promotion criterion, case of the petitioners merit to be

considered for promotion to the next rank i.e. Deputy Manager PSC-3. The Counsel continued and stated that the Respondent Company (Pak Steel) by issuing the circular dated 02.06.2009, complied with the directives of this Court contained in the order dated 19.09.2016 passed in C.P. No. D-2487 of 2013 and asserted that similar treatment should be given to the Petitioners. He lastly prayed for allowing the instant petition.

5. Mr. Mazhar Jafri, learned Counsel for the Respondent-Company raised the issue of maintainability of the instant Petition and argued that the Respondent-Company has no statutory rules of service, as such its employees would be governed by the principle of Master and Servant and Constitution is not maintainable. He further asserted that the Petitioners failed to invoke appropriate jurisdiction at the relevant time and approached this Court on 21.11.2013 and remained indolent. Learned Counsel in support of his contention relied upon unreported case of PIA Corporation vs. Syed Suleman Alam Rizvi and others (Civil Appeal No. 213-K of 2010). He lastly prayed for dismissal of the instant petition.

6. We have considered contention of the learned Counsel for the parties and have minutely gone through the material available on record.

7. Firstly, we would address the question of the jurisdiction of this Court with regard to maintainability of the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan,

1973. The similar issue of maintainability was raised by Pakistan Steel Mills in the case of Syed Muhammad Shoaib & others vs. M/s Hadeed Welfare Trust & another. This court, after hearing the parties, discarded the said objection of maintainability of Petitions against Pakistan Steel Mills, our view was affirmed by the Honorable Supreme Court of Pakistan in Civil Petitions No.121-K of 2017 and 122-K of 2017 by M/s Hadeed Welfare Trust & another Vs. Syed Muhammad Shoaib & others respectively wherein the Honorable Supreme Court has maintained the Judgment dated 15.12.2016 passed by this Court against M/s Hadeed Welfare Trust (A subsidiary of Pakistan Steel Mills).

8. It is relevant to note that the Government is regulator and dispenser of special services and it has power to create jobs, issue licenses, fix quotas, grant leases, enter into contracts and provide variety of utility services and basic amenities to the people. Such entire entrepreneurial activities are at times carried out through companies created under the statutes or under the Companies Ordinance, 1984. The test to determine whether such company is a "person" amenable to judicial review has been generally classified by the Courts as the "Functional Test". If the functions of these companies/institutions have an element of public authority or if they are performing public or statutory duties and carrying out transactions for the benefit of the public at large and not for private gain or benefit, then their action will be amenable to judicial review. The Honorable Supreme Court in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383), held that

two factors are the most relevant i.e. the extent of financial interest of the State/Federation in an institution and the dominance in the controlling affairs thereof. And in the case of Salahuddin Vs. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), the Honorable Supreme Court laid down similar test to assess whether a body or authority is a person within a meaning of Article 199 of the Constitution. The aforesaid view was further affirmed in Aitcheson College, Lahore through Principal v. Muhammad Zubair (PLD 2002 SC 326). The Honorable supreme court in the case of Pakistan International Airlines v. Tanweer-ur-Rehman (PLD 2010 SC 676), reiterating the earlier view, the Honorable Supreme Court laid down a similar three pronged test.

9. As per the profile of Pakistan Steel Mills, it is a State Enterprise. The Government owns the majority of shares. The Chief Executive of the Company is nominee of Government of Pakistan and has been delegated with such powers by the Board of Directors as are necessary to effectively conduct the business of the Company. In view of the above background and status of Respondent-Company, the same can ordinarily be regarded as a 'Person' performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution, thus, the High Court has an entry point to exercise judicial powers in the subject affairs of Respondent-Company under the Constitution. Our view is supported by the decision rendered by the Honorable Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Ltd Vs. Sui Northern Gas Pipe

Lines (Pvt.) Ltd. (2004 SCMR 1274). The aforesaid view was further affirmed in the cases of Pakistan Defence Housing Authority & others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), Pir Imran Sajid and others Vs. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257).

10. In the light of aforesaid judgments passed by the Honorable Supreme Court, the objection about the maintainability of the instant Petition has no force and is accordingly rejected.

11. On merits, we have examined the circular dated 02.6.2009 issued by the Respondent-Company for carrier planning of junior officers HSW, clause (d) of para 3 pertains to up-gradation/ promotion of junior officers and anticipated group of HSW-1 and Petitioners case for promotion as Deputy Manager, who claim to have completed 21 years of service required from the date of placement of in HSW-1 / Junior officers before 1992, while for Assistant Manager's promotion, two years MTC Artisan training is required. Per learned counsel for the Petitioners, the case of the Petitioners falls within the category of Deputy Manager (PSE-III) / HSW-III. Per Petitioners that now two years training is required for them, while the Respondent-Company was insisting that Petitioners completed one year training instead of two years, therefore, they were not considered for promotion.

12. We have noticed that this Court has already taken a view and decided the matter of similar kind vide order dated 19.09.2016 in C.P. No. D-2487 of 2013 as under:-

> ***"Learned counsel argued that the case of petitioners fall within the category of Deputy Manager (PSE-III) / HSW-III therefore, petitioners are of the view that no two years training is required for them while the Respondent No.3 was insisting that petitioner completed one year training instead of two years, therefore, they were not considered for promotion. On last date of hearing, we partly heard the arguments and learned counsel for the Respondents requested for time to call concerned officer from the H.R Department. Today, Khalid Mahmood, Deputy Manager (A & P) Department, Pakistan Steel is present and he submits that the Management principally agreed to constitute DPC for the promotion of present petitioners as per laid down policy which includes one year MTC training and one year plant practical. He further submits that on this laid down criteria, the cases of all the petitioners will be considered for promotion as Deputy Manager PSC-III as per Promotion Policy/ Circular issued by the Administration & Personal Department of Pakistan Steel on 02.06.2009. The Manager Admin & Personal further submits that for this exercise, at least six months time is required. Since the controversy has been resolved, therefore, the above exercise may be completed within four months. The compliance report shall also be submitted through M.I.T II of this Court. Petition is disposed of along with pending applications.***

13. We have also noticed that in the light of decision rendered by this Court in the above referred matter, this Court passed another order dated 20.01.2017 in C.P. No. D-842 of 2014 and disposed of the lis by consent of the parties with the following observations:-

> ***"After arguing the case at some length, by consent, the instant petition is disposed of in the following terms:-***
>
> ***The cases of petitioners would be considered for promotion as per 2009 Policy within three months from the receipt of this order and no discrimination would be made in this regard with the petitioners.***
>
> ***The petition stands disposed of in the above terms."***

14. During the course of arguments, learned counsel for the Petitioners has produced a copy of Notification dated 01.02.2018 for the promotion of the officials of Respondent-Company as Deputy Manager. We have gone through the said Notification dated 01.02.2018 and are of the considered view that the Petitioners have been given discriminatory treatment for no plausible reason, whatsoever, given by the Respondent-Company.

15. In light of the facts and circumstances of the case discussed above, we conclude that the Petitioners case is similar as decided by this Court in the aforesaid petitions as such the Petitioners have made out their case for indulgence of this Court for relief as prayed for.

16. This Petition is disposed of with direction to the Competent Authority of Respondent-Company (Pakistan Steel Mills) to consider the case of the Petitioners for promotion as per policy dated 02.06.2009 within three months from the receipt of this Judgment without any discrimination with the Petitioners.

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

18. These are the reasons of our short order dated 26.2.2018, whereby, we have allowed the instant Petition.

JUDGE

JUDGE

Karachi
Dated:-27.02.2018

Shafi Muhammad / P.A