

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

**Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon**

C.P No. D- 910 of 2019

Abdul Sami Memon & 08 othersPetitioners

Versus

Federation of Pakistan
& 05 othersRespondents

Date of hearing: 20.08.2019

Date of Judgment: 20.08.2019

Mr. Abdul Samad Memon, Advocate for the Petitioners.

Mr. Sanaullah Noor Ghori, Advocate for Respondents No.3 to 6.

Mr. Muhammad Nishat Warsi, DAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Basically, the Petitioners are seeking direction to the Management of Pakistan Steel Mill to convene Departmental Promotion Committee Meeting for their promotion in next rank as Deputy Chief Engineer / Deputy General Manager (PSE-V) as per Service Rules and Regulation of Pakistan Steel-2004, on the premise that, initially they were appointed in PSE-II in different years i.e. 1986 to 1990, lastly i.e. on 25th March, 2011, they were promoted as Superintending Engineers/Managers in PSE-IV. Petitioners claim that on account of their meritorious services and after earning good reputation in the organization, they are entitled for further promotion in PSE-V. Petitioners have also prayed for issuance of writ of quo warranto against private Respondents No.3, 4, and 5, working on Additional charge basis, as Acting Deputy Chief Engineers, in their respective Departments, to vacate the aforesaid posts which they are holding with effect from 2015 up to December 2018 on the grounds that the said posts are for officers in higher rank; whereas, Respondents No. 3, 4, and 5 have been unlawfully posted as In-charge of different departments of Pakistan Steel Mill (PSM), which is in violation of the Judgment passed by the Honorable Supreme Court of Pakistan .

2. Mr. Abdul Samad Memon, learned Counsel for the Petitioners has argued that the Respondent No.5 issued 06 Office Memorandums dated 27th December, 2018 (*available at Page-23 to 33 of Memo of Petition*) and made the private Respondents as Acting Deputy Chief Engineers/Incharge in their respective departments which is in violation of Pakistan Steel

Officers' Service Rules and Regulation amended up to 31st December, 2004; that the Petitioners have completed their length of service i.e. seven years for promotion in the next grade i.e. PSE-V; that the private Respondents have been posted as Acting Deputy Chief Engineers/In-charge with effect from 2015 up to 27th December, 2018 in their respective departments, which is clear violation of the Rules and Regulations of Pakistan Steel Mill; that as per regulation, the Acting Deputy Chief Engineers have not only been blessed with the benefits of additional charge of higher post i.e. Acting Deputy Chief Engineer for more than six months but are enjoying all perks, privileges, benefits and facilities for an unlimited period of time; that the Respondent No.6 issued Circular dated 20th September, 2010 and the same was approved by Respondent No.3 in their meeting held on 28th August, 2010 and amended the length of service to aggregate 17 years for promotion as Deputy Chief Engineer / Deputy General Manager in PSE-V which is against the law. He lastly prayed for allowing the instant Petition.

3. Mr. Sanaullah Noor Ghori, learned Counsel appearing for Respondents No.3 to 6 has argued that the Petitioners have no locus standi to file the instant Petition which even otherwise is suffered from laches for long period as the Petitioners have remained silent for long time i.e. 2015 to 2019; that Respondent No.3 did not violate any law nor misused his lawful authority as the Memorandum dated 27.12.2018 had shifted the working arrangement in PSM due to severe and non-availability of the incumbents and said arrangement was made as a stopgap arrangement; that the petition is not maintainable against Respondent No.2 having no statutory rules of service; Petitioners have knowingly neglected and failed to approach the proper forum within statutory period; that the petition contains serious disputed and controversial facts as such the remedy if any lies before the learned Civil Court; that Pakistan Steel Mill is not functional since 2015 and by now is running without any Chairman and as a stopgap arrangement, one Senior Officer of PSM is looking after the affairs of the Chairman PSM Office. He prayed for dismissal of the instant Petition.

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

5. 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 Shoab & 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 Mill, view of bench of this Court 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 Mill). 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 Wabab 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 *Salabuddin 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. Tanveer-ur-Rehman* (PLD 2010 SC 676), reiterating the earlier view, the Honorable Supreme Court laid down a similar three pronged test.

6. 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-Pakistan Steel Mill, 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-Steel Mill under the Constitution. Our view is supported by the decision rendered by the Honorable Supreme Court in the case of Ramma 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 Javid 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).

7. 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.

8. On merits, we have examined the case of the Petitioners, whether they are eligible and entitled to be considered for promotion in the next rank, as agitated by them. For consideration of promotion in the next rank, the Petitioners have to show that they are eligible and fit for promotion in the next rank. The promotion of a public servant depends upon eligibility, seniority-cum-fitness and availability of vacancy. 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 thereunder. Record reflects that the case of Petitioners was considered for promotion to the Grade of Superintending Engineer (SE) (PSE-IV) vide Office Memorandum dated 25.3.2011 and for next promotion as Deputy Chief Engineer /Deputy General Manager (PSE-IV) the Respondents issued Circular dated 20th September, 2010 whereby amendment in Pakistan Steel Officers' Service Rules and Regulations was brought in the following manner:-

From	To	Qualifying period from the date of induction
AXEN/A M	XEN/D.M	05 years aggregate experience
XEN/DM	S.E/Manager	10 years aggregate experience
S.E/Manager	D.C.E/D.G.M	17 years aggregate experience

This amendment will come into force w.e.f. 28.08.2010 i.e. the date of approval of Board of Directors.

9. The learned Counsel for the Petitioners has emphasized that as per Rule 2.33 & 34 as discussed supra, Petitioners are entitled for promotion as Deputy Chief Engineer/Deputy General Manager in PSE-V which is equivalent to Grade BPS-20. To appreciate the aforesaid contention and for the sake of convenience, an excerpt of the Rule 2.34 of Chapter-II of Pakistan Steel Officers' Service Rules and Regulation amended upto 31st December, 2004 is reproduced as under:-

Prescribed length of service for consideration of promotions to various grades.

ENGINEERING/NON-ENGINEERING CADRE

CADRE	PROMOTION TO THE POST	MINIMUM QUALIFYING SERVICE IN THE GRADE	PROMOTION CRITERIA
Special Grade Mistry Technical Assistant PG-VII	Junior Technical Officer/Junior Executive Officer	05 years	Seniority-cum-fitness
Junior Technical Officer/Junior Executive Officer	Assistant Technical Officer/Assistant Executive Officer	05 years	
Assistant Technical Officer/Assistant Executive Officer	Technical Officer/Non-Technical Officer	05 years	
Technical Officer/Non-Technical Officer	Assistant Manager	07 years	
Assistant Manager	Deputy Manager	07 years	
Assistant Manager/ Deputy Manager	Manager	12 years	
Manager	Dy General Manager	07 years	Selection post. Best out of best formula will be applied. The selection Board will comprise of Executive Directors/Chairman, Pakistan Steel and Chairman will be the competent authority to approve
Manager/Dy General Manager (Selection Post) (Diploma Holder will not be promoted beyond the post of Manager)	General Manager (Selection Post)	10 years	
General Manager (PSMC-III)	Executive Director / Principal Executive Officer (Selection Post) PSMC-II	05 years	Selection post. Best out of best formula will be applied. Promotion will be made on recommendation of Board of HR Committee and will be approved by the Board of Directors

10. At this stage, we confronted the learned Counsel for the Petitioner with the aforesaid amendment which is in force w.e.f. 28.8.2010, whereas the Petitioners were promoted in PSE-IV in the year 2011 and the length of service for further promotion in PSE-V is seventeen years aggregate experience, which the Petitioners are lacking. He replied that since the Petitioners were appointed w.e.f. 1986 to 1990 in PSE-II, they have length of service to be promoted in next rank. We are not satisfied with the aforesaid assertion of the learned Counsel for the petitioners on the premise that even if the Petitioners have the length of service for further promotion as agitated by the learned Counsel, then there are other conditions/criteria for consideration of promotion in the next rank i.e. PSE-V i.e. seniority-cum-fitness and subject to availability of post, which the Petitioners have to cross the threshold as discussed supra. In our view, neither any seniority nor any promotion can be claimed or granted without actual length of service on account of vested rights. We are fortified by the decision rendered by the Hon'ble Supreme Court in the case of *Chairman FBR vs. Muhammad Asfandyar Janjua and others* (2019 SCMR 349).

11. We have also examined the stance of the Respondent-Pakistan Steel Mill. Besides, in our view, the reasoning as put forwarded by the Respondents is tenable in law for the simple reason that if the officer does not possess requisite qualifications, experience and length of service to qualify for regular appointment/promotion in a department, then the

competent authority to appoint the Public servant on acting charge basis and current charge basis, if a post is required to be filled through promotion, then only the most senior public servant eligible for promotion, but does not possess the required length of service, appointment of eligible officer may be made on acting charge basis after observing all the codal and procedural formalities. The main reasoning of posting of the private respondents on the aforesaid post being In-charge of the departments, prima facie, is a stop-gap arrangement due to precarious condition of Pakistan Steel Mill as agitated by the learned Counsel representing the Pakistan Steel Mill.

12. In the light of foregoing and keeping in view the circumstances of the present case, we are of the considered view that a writ of quo warranto is not available to one set of Civil/Public Servants against another set of Civil/Public Servants and if a colleague is allowed to challenge another colleague's appointment, there would be no end to this; there will be anarchy in the Service structure. Reliance is safely placed on the cases of Dr. Azeem ur Rehman v. Government of Sindh (2004 SCMR 1299) and Ali Hassan Brohi v. Province of Sindh and others (SBLR 2015 SC 221).

13. We have noticed that Petitioners if claiming issuance of a writ of quo warranto must satisfy this Court, inter alia, that the office in question is a Public office and is held by an usurper without legal authority, which leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not, which the learned Counsel for the Petitioners has failed to demonstrate before this court. However, we are cognizant of the fact that relief is not to be denied to the litigants on technical consideration, however, insistence is placed on initiating proceedings promptly and within a reasonable time to avoid the question of laches as the instant Petition is hit by laches for almost 08 months and Writ of quo warranto would not be a remedy for a person to air his private vengeance. Petitioners have not been able to show themselves as an 'aggrieved person' in terms of Article 199 of the Constitution of Islamic Republic of Pakistan to agitate any bona fide grievance, therefore they have no case at all to invoke the Constitutional Jurisdiction of this Court, through the instant writ petition. we are fortified with the decisions rendered by the Honorable Supreme Court in the cases of Pakistan Tobacco Board and another vs. Tahir Raza and others [2007 SCMR 97], Province of Sindh and others vs. Ghulam Fareed and others [2014 SCMR 1189], Sarwar Ali Khan vs. Chief Secretary to Government of Sindh [PLD 1994 SC 233] and Syed

Noorul Hasan vs. The Secretary, Ministry of Industries Government of Pakistan, Islamabad and others
[1987 SCMR 598].

14. Adverting to the main contention of the learned Counsel for the Petitioners with regard to their promotion, it is well settled law that for promotion to selection posts in BPS-19 and above an employee must fulfill the following conditions as prescribed from time to time by the Government:

- (i) Quality Service.
- (ii) Eligibility threshold (minimum score/marks in CRs)
- (iii) Qualifications as prescribed by Methods of Appointment and Qualification (MAQ)
- (iv) Relevance of Experience.
- (v) Quality or output of work and integrity.
- (vi) Training etc.

15. In the above perspective, whether this Court has the jurisdiction in the matter to strike down rules relating to Civil/Public Servants regarding their appointment and promotions and amendments made therein. The stance of the Petitioners is that amendment in the relevant provisions of the Rules was quite unjustified as the rational in the amendment is against the service rules of PSM 2004. In our view, the Competent Authority of PSM is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Respondent-PSM and the interference with such matters by this Court at this stage is not warranted until it is shown that the aforesaid amendment is ultra vires to the Constitution, however, in the present matter no vested right of petitioners are involved in the matter of promotion or the rules determining their eligibility or fitness, and this Court has no jurisdiction by means of writ to strike it down as held by the Hon'ble Supreme Court in the case of *The Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan* (PLD 1960 SC 81), the relevant portion therefrom is reproduced herein below:-

"In our opinion the High Court made the above order without taking into consideration all the factors relevant to the case, namely, in the first place the taking out of the post of Deputy Superintendent of the category of class III, to which the petitioners belong amounted to abolition of the post and its upgrading on a higher scale of pay to a creation of the new post; appointment to which required a stricter test of efficiency by a competitive examination. Besides, all the Inspectors were given the right to sit in the examination for any number of times to qualify themselves for promotion. At the same time the pay scale of those, who could not succeed, was raised to the limit of Rs. 350, namely, the same pay as that of a Deputy Superintendent when it was a class III post. In the circumstances it cannot be said that any rights of the petitioners were infringed, which they could enforce by a writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ." (Emphasis supplied)

16. On the aforesaid proposition, we seek guidance from the judgment rendered by the Hon'ble Supreme Court in the case of Muhammad Hayat and others v. Federation of Pakistan and others (2016 SCMR 1021). In the present case, the entire claim of the Petitioners is refuted by the Respondent-Pakistan Steel Mill on the premise that for promotion to the higher grade in BPS-20, 17 years' service aggregate in grade 19 is qualifying service for promotion as per amendment brought in the service Rules 2004, whereas the petitioners have no qualifying service for promotion in BPS-20 as they were promoted in BPS-19 in the year 2011, which explicitly shows the lack of qualifying service, for promotion in Grade-20, 17 years' service in Grade-19 is requirement of law and petitioners do not meet the said criteria. It is well established principle in service jurisprudence that prescribed length of service for promotion to BS-19 is 12 years in BS-17 and above. Besides Petitioners filed the instant petition on 09.02.2019, which also suffers from laches; therefore, they are not entitled for the relief claimed in the instant petition. Besides on merit, the petitioners have no case for further consideration.

17. In the light of the above facts and circumstances of the case, we do not find any merit in the captioned Petition, which is dismissed along with all the pending application(s).

JUDGE

JUDGE