

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-4620 of 2018

Petitioners: Through Syed Shoa-un-Nabi, Advocate.

Respondent: Through Mr. Shehryar Mehar, AAG.

Date of hearing: 25.10.2018

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant petition, Petitioners have asked for up-gradation / time scale promotion in higher scale in BPS-18-19 on the basis of their length of service, which is more than 25 years in BPS-17.

2. Briefly the facts of the case are that Petitioners were appointed as Research Officers in BPS-17 in the year 1992 on Ad-hoc basis for a period of six months in the Respondent-Department. Petitioners have submitted that their services were regularized under Section 3 of Sindh Civil Servant (Regularization of Ad-hoc Appointments) Act 1994 i.e. 28.07.1994 vide Notification dated 25th July 1996. Petitioners have submitted that there are four sanctioned posts of Research Officer in BPS-17 in the Respondent department and there is no further avenue for promotion to BPS-18 and onwards. Per Petitioners the post of Research Officer in BPS-17 is an isolative post, however one post of Research officer was upgraded to BPS-18 against which one

colleague of the Petitioners was posted and subsequent thereto, he was promoted to BPS-19 while the Petitioners are still serving in BPS-17. Petitioners have submitted that they have been serving in the Respondent department since more than 25 years without promotion. Petitioners have voiced their concern that either four posts of Research Officer in BPS-17 may be upgraded to BPS-18 or in the alternative the post of Research Officer may be considered for further promotion to the next higher grade in some other cadre of the Finance Department.

3. Syed Shoa-un-Nabi, learned counsel for the Petitioners has contended that the Petitioners have been serving in the Respondent-department for a long time on the same pay & scale. Learned counsel has contended that the post of the Petitioners deserves to be up-graded in BPS-18-19. Learned counsel in support of his contention has relied upon the Notifications dated 07.06.2010, 18.04.2011, 21.03.2013, 11.07.2016 and 25.05.2018 issued by the Respondent department from time to time with regard to the up-gradation / higher grade on the basis of time scale. He has further argued that the issue of up-gradation is not part of terms of condition of service of Civil Servants, which is distinct from promotion; therefore the Respondent-department is required to restructure the post of Research Officer by up-grading the post in BPS-18-19.

4. Upon query by this Court as to how the instant petition is maintainable, in view of Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973. He replied to the query that the issue relating to up-gradation of Civil Servants can be decided

by this Court in its Constitutional jurisdiction and the bar contained under Article 212(3) of the Constitution would not be attracted, therefore this Court can hear and decide the matter on merits. In support of his contention, he relied upon the cases of Chief Commissioner Inland Revenue and another Vs. Muhammad Afzal Khan and others (2014 PLC (C.S) 829, Regional Commissioner Income Tax Northern Region, Islamabad and another Vs. Syed Munawar Ali and others (2016 SCMR 859) and argued that the present case of the Petitioners is akin of the aforesaid cases, as such similar relief can be given to the Petitioners. He lastly prayed for allowing the instant petition.

5. So far as the issue of maintainability of the instant petition is concerned, we are of the considered view that this Court can entertain the aforesaid petition under Article 199 of the Constitution. We are fortified by the decision rendered by the five Member Bench of the Hon'ble Supreme Court of Pakistan in the case of Regional Commissioner Income Tax, Northern Region, Islamabad and another Vs. Syed Munawar Ali & others (2016 SCMR 859) quoted supra.

6. Mr. Shehryar Mehar, learned Assistant Advocate General, Sindh has argued that the post of Research Economist (BPS-18) has been created in the Respondent department in order to create space for the promotion of the Petitioners; that the Recruitment Rules for promotion of Research officer BPS-17 to Research Economists (BPS-18) of Finance Department had also been forwarded to the Service, General Administration and Coordination Department, Government of Sindh vide Finance Department letter

dated 09.01.2018. He has further contended that the Recruitment Rules Committee No.1 of Service, General Administration and Coordination Department, Government of Sindh will approve the draft Recruitment Rules which will redress the grievance of the Petitioners. He lastly prayed for dismissal of the instant petition.

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

8. We are of the considered view that for up-gradation of the post, the following conditions are pre-requisite:-

i) Firstly up gradation is restricted to the post and not with the person occupying it.

ii) Secondly up gradation of posts does not mean automatic up gradation of the incumbents of these posts as well, in fact the appointment against the up graded post is required to be made in the manner prescribed in the Recruitment Rules for that particular post.

iii) Thirdly up-gradation cannot be made to benefit a particular and individual.

9. To justify up-gradation, Finance department, Government of Sindh is required to establish that the Department needs restructuring, reform or to meet the exigency of service in public interest, in absence of the aforesaid pre-conditions, up-gradation is not permissible under the law. Our view is supported by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456).

10. On merit, perusal of the statement of the Respondent department explicitly show that they have drafted the Recruitment Rules for the post of Research Economist in BPS-18, which is to be filled by promotion from amongst the Research Officers in BPS-

17 having at least 5 years' experience on seniority-cum-fitness basis. The aforesaid Draft Recruitment Rules have been sent to the Recruitment Rules Committee for consideration vide letter dated 09.01.2018.

11. In view of this aspect of the case, we are of the opinion that the officials holding the post of Research Officer in BPS-17 in the Respondent department, the venue of their promotion in BPS-18 has been created by drafting the aforesaid Recruitment Rules which are under process for approval. At this juncture the learned counsel for the Petitioners has raised the issue of discrimination by not upgrading the aforesaid post in BPS-18-19.

12. To appreciate the above factum of the case, we are of the considered view that the principle of law enunciated in the case of Chief Commissioner, Inland Revenue and another (ibid), are quite different and in view of the peculiar facts and circumstances of the present case while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we do not agree with the submissions of the learned counsel for the Petitioners for the simple reason that Petitioners have the chance of promotion under the proposed Recruitment Rules as discussed supra, therefore the plea of discrimination is of no avail to them. It is well settled now that policy decisions of the Government regarding up-gradation of post or otherwise could not be challenged in a writ jurisdiction of this Court on the purported plea of discrimination, when Article 25 of the Constitution itself provides a provision for such discrimination on the principle of reasonable classification. Additionally Petitioners have failed to show that due to non-up-

gradation of the post of Research Officer any fundamental right had been violated/ infringed or they had any vested for such up-gradation as per their choice.

13. The case law cited by the learned counsel for the Petitioners are distinguishable from the facts and circumstances of the present case.

14. In the present case there is a venue of promotion of the Petitioners as suggested by the Respondent department through their statement that Draft Rules for the aforesaid post is under process, therefore the Petitioners cannot ask for up-gradation of the post of Research Officer at this premature stage.

15. Looking through the above perspective and keeping in view the factual position of the case, the instant Petition is found to be meritless thus is dismissed along with the listed application(s), however before parting with the case in hand we deem it appropriate to direct the Respondent to expedite in finalizing the Recruitment Rules for the post of Research Economist in BPS-18 in Finance Department, Government of Sindh as suggested in the comments. We expect that the aforesaid exercise would be completed within a period of two months from the date of receipt of the decision rendered by this Court.

JUDGE

JUDGE