

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No.D-916 of 2018

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhary

Sub-Engineers/Staff

Welfare Association Sindh & others Petitioners

Versus

Government of Sindh and others Respondents

Date of hearing 06.11.2018

Mr. Rafiq Ahmed Kalwar, Advocate for the Petitioner

Mr. Ali Safdar Debar, Assistant Advocate General, Sindh

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Petitioners No. 2 to 8 are serving in the Works & Services department, Government of Sindh in different categories and pay scales i.e. Sub-Engineer in BPS-11, Draftsman in BPS-10, Tracer in BPS-05, Work Mistry/Darogha/ in BPS-05 and Road mate in BPS-02.

2. Basically the Petitioners are aggrieved by and dissatisfied with the impugned letter dated 26.04.2017 issued by Competent Authority of the Respondent-Works & Services Department Government of Sindh, whereby their representation for up-gradation of their posts i.e. Sub-Engineer from BPS-11 to BPS-16, Draftsman from BPS-10 to BPS-13, Tracer from BPS-05 to BPS-7 and Road mate from BPS-02 to BPS-7 was re-examined and regretted on the premise that the posts of Sub-Engineers and other

technical staff are not isolated posts as they have vertical moment of promotion in the next higher posts/ grades.

3. Mr. Rafiq Ahmed Kalwar, 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 without further promotion; that the posts of the Petitioners deserved to be up-graded in their respective higher scale. At this stage, we posted a question to the learned counsel as how the Petitioner No.1, who is an association is aggrieved person against the impugned letter dated 24.04.2017. Learned counsel in reply to the query submitted that Petitioner No.1 is a registered Welfare Association of Employee of the Respondent No.2 department and has been formed to promote the welfare of its members to safe guard and protect the genuine demands of its members before the Respondents, however, we have reservation on the aforesaid plea taken by the learned counsel for the Petitioner, in view of the provisions of Sindh Civil Servants (Conduct) Rules, 2008 as amended up to date. Learned counsel in support of his contention has relied upon the various Notifications and circulars as well Summaries (available at pages 43 to 141 of the memo of petition) issued by the different departments of the Government of Pakistan and Provincial Governments from time to time, with regard to the up-gradation of their posts and other ancillary issues. He next argued that the issue of up-gradation is not part of the terms of condition of the service of Civil Servants, which is distinct from promotion; therefore the Respondent-department is required to restructure the posts of the Petitioners by up-grading the same in next pay & scale. Learned counsel has further contended that the

illegal and mala fide acts of the Respondents are violative of the right to dignity as enshrined under Article 14 of the Constitution of the Islamic Republic of Pakistan 1973. On the aforesaid ground, the learned counsel pleaded discrimination and argued that the case of the Petitioners fall within the parameters contained in Article 25 of the Constitution. He further submitted that under Article 5 of the Constitution, it is the imperative obligation of the functionaries of the State to abide by the Constitution and the law because it has been held inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan. He lastly prayed for allowing the instant petition.

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.

5. Mr. Ali Safdar Debar, learned Assistant Advocate General has raised the question of maintainability of the instant petition and argued that the instant petition is not maintainable and prayed for dismissal of the instant petition.

6. 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).

7. We have considered the contention of the learned counsel for both the parties and have minutely gone through the material available on record with their assistance. 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.

8. To justify up-gradation, Respondent-department, 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).

9. On merit, perusal of the order dated 14.03.2017 passed by the Hon'ble Supreme Court in CMA No. 166-K of 2017 explicitly shows that issue of up gradation of the Petitioners was considered in the aforesaid matter and it was held by the Honorable Supreme Court as under:-

“We have gone through the comments submitted by the Chief Secretary, Sindh in which it has been conceded that a notification of up-gradation was issued on 04.08.2016 in which the post of Junior

Clerk BS-7 was upgraded to BS-11 and the post of Senior Clerk BS-9 was upgraded to BS-14. The grievance of the applicants is that they were appointed in BS-11 as Sub-Engineers. Many of them are Diploma holders in Engineering (non-graduate) and required to be upgraded in BS-16 after 10 years' service, as sub-Engineers have been denied their right/entitlement, though they are in service in the department beyond the required length of service. This has brought their vertical movement standstill. The post of Sub-Engineer, therefore, be upgraded to BS-16 as now they claim that they have been made equivalent to a Junior Clerk. The comments of the Chief Secretary on this issue are silent. How come junior clerical post could be upgraded equivalent to the post of Sub-Engineer in BS-11. Likewise post of Senior Clerk in BS-9 has been upgraded to BS-14 without examining the consequences. Let final order be passed by the Secretary concerned on the representation of the applicants within one month. If the applicants are still aggrieved, they could approach the appropriate forum for redressal of their grievance. This CMA is disposed of in the above terms.

10. We have noticed that in compliance of the aforesaid order, a statement was filed by the Respondents before the Honorable Supreme Court, which prima-facie reveals that the factual as well as legal position of the case that the Appointment & Promotion of Sub-Engineer are being made in accordance with procedure laid down in the Recruitment Rules notified on 06.05.2004 i.e. (i) 80% by initial appointment. (ii) 20% by promotion on seniority cum fitness basis from amongst the Daroghas/ Work Mistries in BS-05 possessing three years Diploma in the required discipline of Engineering from an Institute recognized by the Board of Technical Education, Sindh having at least five years' experience. Recruitment rules also provide that the Sub-Engineers are awarded high scale in BPS-16 to all Sub-Engineers (B.E) Graduate and Sub-Engineers (B.Tech/Hons) after completion of 05 years' service are awarded (BS-16) after concurrence of Finance department. All Sub-Engineers (Non-Graduate) 25% of the existing posts (BS-11) Diploma of Associate Engineer (D.A.E) Holders Sub-Engineers are awarded (BS-16) on seniority cum fitness basis, subject to 10 years' service

and passing of the prescribed departmental examination after concurrence of Finance department.

11. We have noticed that as per Recruitment Rules of the post of Assistant Engineer/ Sub-Divisional Officer (Civil/Electrical (BS-17) the Sub-Engineers are also availing the opportunity for promotion to the post of Assistant Engineer (BS-17).

12. Prima facie the Respondent department has rightly opined that the post of Sub-Engineer cannot be considered as an isolated post. The existing Recruitment Rules provide that the up-gradation of other technical posts, except from the post of Chief Draftsman (BS-17) of which only one post is sanctioned, the other posts are not isolated and have an opportunity to avail further promotion to the next higher posts/grade in accordance Recruitment Rules as under:-

S.No.	Name of posts	Method of appointment procedure with quota if any
1.	Chief Draftsman (BS-17)	By promotion from amongst the Circle Head Draftsman in the Regional and other subordinate offices in the W&S department.
2.	Circle head Draftsman (BS-16)	By promotion from amongst the Divisional Head Draftsman in the Regional and other subordinate officers in the W&S department.
3.	Divisional Head Draftsman (BS-13)	iii) 50% by initial recruitment. iv) 50% by promotion from amongst D/Men working in the office of Chief Engineer or S.E, Circle where the vacancy occur and incumbent must qualified as Draftsman.
4.	Draftsman (BS-10)	iv) 80% by initial recruitment v) 20% by promotion from amongst Tracer working in the regional offices or Circle where ever vacancy occur.
5.	Tracer (BS-05)	By initial recruitment.
6.	W. Mistry/Darogha (BS-5)	By initial recruitment

13. In our view, the aforesaid Recruitment Rules provide venue of promotion to the Petitioners. The Petitioners holding their respective posts, the venue of their promotion in high scale is available, therefore we do not agree with the pleas taken by him in the present proceedings, for the simple reason that Petitioners

have the chance of promotion under the Recruitment Rules as discussed supra, therefore the Petitioners cannot ask for up-gradation of their posts at this stage. So far as the plea of discrimination is concerned which 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 posts of the Petitioners, any fundamental right of the Petitioners had been violated/ infringed or they had any vested right for such up-gradation as per their choice.

14. In the light of above facts and circumstances of the case, we conclude that there is no illegality, infirmity or material irregularity in the impugned letter 26.04.2017 issued by the Respondent-department.

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),

JUDGE

Karachi

Dated:- 9.11.2018.

JUDGE

Shafi Muhammad /P.A