

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –7731 of 2019

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Javed Khan

Versus

Federation of Pakistan and another

Date of hearing : 10.12.2020

Date of judgment : 24.12.2020

Petitioner Javed Khan present in person.

M/S. Ayan Mustafa Memon and Hassan Qamar, advocates for respondent No.2.

J u d g m e n t

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioner is seeking direction to the respondent-Pakistan State Oil Company Limited (PSO) to annul the existing promotion policy issued vide Circular No.32/19, dated 30.10.2019 whereby new eligibility criteria for Promotion Test was issued, to deprive the competent, efficient, eligible and hardworking officers possessing Graduate degrees who are in the line of promotions to the next groups since last 5-10 years. Petitioner is further seeking direction to the management of PSO to promote him to the vacant position of Manager-Shares (Group-III) in the shares department of the Company without conducting his test/interview.

2. At the outset, Mr. Ayan Mustafa Memon, learned counsel for the respondent-Pakistan State Oil Company (PSO) objected to the maintainability of the instant Petition on the premise that respondent-company is a non-statutory company, having no statutory rules of service; hence the service matter of Petitioner is to be governed by the principle of `Master` & `Servant`. Reliance is placed by him on the case law decided by the Supreme Court of Pakistan and this Court in the cases of Managing Director M/s. PSO & Ors. V. Aijaz Ali Memon Civil Petition No.603-K of 2019 (Supreme Court of Pakistan), Syed Kashif Ali v. Federation of Pakistan & 02 others, C.P No. D-7655/2017, Pakistan International Airlines Corporation v. Tanweer-ur-Rehman & Others PLD 2010 SC 676. On merits, he referred to the counter affidavit filed on behalf of respondent-PSO and emphasized that the respondent-company having the domain to frame the policy of promotion can also by law, provide the qualification for promotion and appointment against a particular post and thus, appointment

against such a post through promotion or otherwise, cannot be claimed without fulfillment of the criteria and the requisite qualification. He pointed out that the basic qualification for promotion from IV to III (Manager) is 16 years of Education and career ratings, which the petitioner lacks, moreover the aforesaid qualification cannot be relaxed / condoned under the law as the same is across the board.

3. Petitioner, who is present in person, in reply to the aforesaid objection has submitted that this petition is maintainable under the law and invited our attention to the decision rendered by this Court in the case of *Bakht Siddique and 61 others vs. Federation of Pakistan and others*, **2017 PLC (C.S) 1192**. In the said decision the learned Bench had observed that Pakistan State Oil Company Limited is a `person` within the meaning of Article 199(1) (a) (ii), read with clause (5) of the Constitution, hence, Petition against respondent-company is maintainable. He pointed out that Respondent Company is a public utility company providing basic amenities to the public at large, therefore, was a body Corporate performing functions in connection with the affairs of the State, thus amenable to the Constitutional jurisdiction of this Court. He further submitted that the impugned promotion policy can be called in question under Article 199 of the Constitution. He averred that when any action of the public functionaries is based on malafide or coram-non-judice the same could be assailed through a Constitutional Petition by an aggrieved person; that the fundamental right of the petitioner as guaranteed by Article 10-A of the Constitution had been violated and he had been deprived of his due promotion by introducing the policy without resorting to the principles of due process of law, and this court can take cognizance under the Constitution; that the larger Bench of the Hon'ble Supreme Court has already held that the Constitutional Petition is maintainable against Pakistan State Oil Company Limited; that the concept of Master and Servant cannot be stretched to confer unbridled powers to the respondent-company so as to act whimsically, capriciously or in violation of the principles of natural justice and well settled norms of law and justice; therefore, the existing impugned Promotion Policy, Circulars issued by the Human Resources department and Promotion Tests conducted by the Human Resources department of PSO on the basis of said impugned promotion policy is an undue favoritism to specific class employees of PSO who are nearer to the higher management of PSO are liable to be set aside. He further submitted that on the one hand, the PSO conducted Promotion Test vide Human Resources, PSO's Circular No.20/20, dated April 17, 2020, circular No.42/20, dated September 25, 2020 (placed at Page-17 and Page 19 of Urgent

Application) which was also in violation of the status quo orders of this Court passed on October 16, 2020, and on the other hand the HR department of PSO issued a Circular No.43/20 dated October 18, 2020 (Page-23 of the Urgent Application) and based on said Circular, at present the HR conducting interviews of the officials of PSO who are nearer to the higher management of PSO and some other employees also who were failed and could not clear the Promotion Tests conducted on October 18, 2020. He further submitted that the Respondent-Company had transgressed the basic spirit of the law while exercising the powers not vested in them and this court is empowered under the Constitutional jurisdiction to protect the rights of any individual regarding fair trial as guaranteed under Articles 4, 10-A, of the Constitution as well as Section 24-A of the General Clauses Act, 1897; that the impugned promotion policy was unjustified; He lastly prayed for allowing the instant petition.

4. We have heard the parties at length, so also perused the entire material available on record and the decisions relied upon by the learned Counsel for respondent-company.

5. Firstly about the question of maintainability, references are being made to the decisions rendered by the Honorable Supreme Court in the cases of Ramna Pipe and General Mills (Pvt.) Ltd. v. Sui Northern Gas Pipe Lines (Pvt.), **2004 SCMR 1274**, Abdul Wahab and others Vs. HBL and others, **2013 SCMR 1383**, Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed and other connected appeals, **2013 SCMR 1707**, Khawaja Muhammad Asif v. Federation of Pakistan, **PLD 2014 SC 206**, Pir Imran Sajid and others Vs. Managing Director/General Manager Telephone Industries of Pakistan and others, **2015 SCMR 1257**, Pakistan Telecommunication Employees Trust vs. Muhammad Arif and others, **2015 SCMR 1472**, Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others, **PLD 2016 SC 377**, P.T.C.L. and others vs. Masood Ahmed Bhatti and others, **2016 SCMR 1362**, Muhammad Rafi and others Vs. Federation of Pakistan and others, **2016 SCMR 2146**, Muhammad Zaman, etc. versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad, **2017 SCMR 571**, Pakistan Defence Housing Authority Vs. Mrs. Itrat Sajjad Khan and others, **2017 SCMR 2010**, Messrs. State Oil Company Limited v. Bakht Siddique and others, **2018 SCMR 1181**, and Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others, **2019 SCMR 278**. For the reasons given in the aforesaid judgments, in our view, there can hardly be any doubt that respondent-Company is also a "person" within the meaning of Article 199(1) (a)

(ii) read with clause (5) thereof. Thus, in view of the above discussion, we do not find any substance in the claim of the learned counsel for respondent-Company that the jurisdiction to this Court is barred on the ground that the respondent-Company is not a "person" as discussed above.

6. A plain reading of Human Resource Circular 32/2019 shows the eligibility criteria for the promotion test, which is as under:

| Group | Qualification | Min Sve in GP | Ratings |
|---------------------|------------------------------|---------------|---|
| III to II (DGM) | 16 years of Education | 4 | .Minimum IE and 3VGs |
| IV to III (Manager) | 16 years of Education | 6 | .Minimum 2 VGs and 4 Gs in the last 6 years |
| | | 8 3 | . Minimum 1 VS and 5Gs in last 8 years . No F in the last appraisal .Minimum IE and 2 VGs |
| | | 5 | .Minimum 1 VG and 4Gs in the last 5 years |
| | | 7 | . Minimum 5 Gs in last 7 years . No F in the last appraisal .No US in the last 7 years |
| V to IV (Sr. Ex) | 14 years of Education or DAE | 2 | .Minimum IE and IVG |
| | | 4 | .Minimum IVG and 3G in the last 4 years |
| | | 6 | . Minimum 4Gs in last 6 years . No F in the last appraisal .No US in 5 years |
| VI to V (Ex) | 14 years of Education or DAE | 2 | .Minimum IE and IVG |
| | | 3 | .Minimum IVG and 2GS in last 3 years |
| | | 5 | . Minimum 3Gs in the last 5 years .No F in the last appraisal |
| VII to VI (Sr. Off) | 14 years of Education or DAE | 2 | .Minimum IE and IVG |
| | | 3 | .Minimum IVG and 2G in the last 3 years |
| | | 5 | .Minimum 3Gs in the last 5 years |

7. The main contention of the petitioner is that the aforesaid prescribed qualifications for promotion in different groups are against the principle of natural justice on the premise that the petitioner has experience/length of service in his cadre since last 10 years and eligible for promotion as per the earlier promotion policy of the respondent-Company issued before 2011 as the petitioner possessing Graduation and equivalent degree. His earlier promotion to Group-IV was/is based on his earlier performance evaluations, which were duly assessed and appreciated, and now through the impugned policy, he is deprived of further promotion to the next Group-III and the reasons assigned by the respondent-PSO as discussed supra are not justiciable under the law, thus liable to be annulled.

8. At this juncture, we asked the petitioner how he is aggrieved by the eligibility criteria for the promotion test which is across the board. He replied and referred to the appeal dated 05.11.2019 addressed to the Managing Director, PSO, and reiterated his preliminary objections on the aforesaid policy decision, and referred to the grounds raised by him in the memo of the petition and argued that the respondent-PSO cannot introduce a policy of promotion depriving the employees having 10 years / 14 years of education more particularly the promotion test cannot be allowed to be conducted by way of HR Circular as at the time of their initial recruitment in the company they successfully cleared their written test and interview and based on which they were appointed in PSO on regular basis thus the impugned policy cannot be acted upon in the case of the petitioner.

9. In our view, this is hardly a ground to call in question the promotion policy. During arguments, we have been informed that the requirement for promotion test and interview is not new and has been placed since last nine (09) years and it was earlier decided in October and November 2011, to apply and implement the requirement of written test and interview of those employees who are eligible for promotion, such decision was approved and enforced, and in pursuance of said policy, promotion test and interview were conducted in each promotion cycle in the year 2011, 2014 and 2016 and is also applicable for promotion cycle for the year 2020. The management of respondent-PSO has informed that the petitioner is not eligible for promotion and has raised frivolous objections to the holding of promotion test and interview for obvious ulterior motives. So far as the requirement of sixteen (16) years' education for promotion in Group-III that cannot be called in question by the petitioner in view of promotion policies introduced from time to time for the betterment of respondent-PSO.

10. We are of the view that in the seniority / promotion case no vested right / fundamental right can be claimed as the promotion depends upon various factors, which require consideration for the promotion of the employees.

11. It is a well-established principle of law that in service cases there exists two-pronged criteria for the promotion. One being eligibility and the other being fitness, while the former relates to the terms and conditions of service, the latter is a subjective evaluation made on objective criteria. No doubt in service matters, promotion depends upon eligibility, fitness, and availability of vacancy, and no one including the petitioner can claim promotion as a matter of right. 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.

12. It is a well-settled proposition of law that the Competent Authority is entitled to make policy / rules in the interest of exigency of service and to remove anomalies in Service structure / rules. It is the Service Rules Committee which has to determine the eligibility criteria for promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Respondent-PSO and interference with such matters by the Courts is not warranted as no vested right of a PSO employee is involved in the matter of promotion, or the rules determining their eligibility or fitness, and in PSO cases, the High Court has no writ jurisdiction to strike it down, except in cases in which policy framed is against the public interest. This proposition of law has already been settled by the Hon'ble Supreme Court in a plethora of judgments. Moreover, the petitioner has not been able to point out any case where other employees(s), having ratings equivalent to or lower than him, was/were promoted by the respondent-PSO. Thus, prima facie, it appears that the policy of the respondent is uniform and without any discrimination at least to the extent of the instant case.

13. In the light of the above facts and circumstances of the case, the instant Petition merits no consideration and is thus dismissed along with listed applications with no order as to costs.

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