

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-918 of 2018

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

Date of hearing: 11.12.2018.

Petitioner: Hamid Ali Khan through Mr. Faizan Hussain Memon, Advocate.

Res. Nos.1 & 3: Federation of Pakistan through Federal Secretary, Ministry of Overseas Pakistanis and Human Resource Development and Director General, Commercial Audit & Evaluation through Mr. Nishat Warsi, Deputy Attorney General for Pakistan (DAG).

Res. No.2: Employees' Old-Age Benefits Institution (EOBI) through Mr. Ali Asadullah Bullo, Advocate alongwith Mirza Owais, DDG (Law) EOBI, Shahid Altaf, DD (Law) EOBI and Abraiz Muzaffar, AD (Law) EOBI. .

O R D E R

The instant petition has been filed on the ground that the promotion of the petitioner from Grade-8 to Grade-9 has been stopped due to some audit objections.

2. Mr. Faizan H. Memon advocate has appeared on behalf of the petitioner and states that the audit objections raised by the audit department is misconceived and against the decision of the High Court and the Hon'ble Supreme Court of Pakistan given in the petition bearing C.P No.D-1698/2008 and CPLA No.677-K/2009 dated 01.04.2009 and 02.12.2009 respectively. While elaborating his view point, the learned counsel states that the said audit objections are an afterthought on the part of the audit department, since when the matter of the petitioner has already been decided up to the level of the Apex Court the audit department has no

jurisdiction to raise the said objections with regard to the qualification of the petitioner. He, therefore, states that since the audit objections are not in accordance with law, the same may be rejected and this petition may be allowed by directing the respondents to promote the petitioner from Grade-8 to Grade-9 in the EOBI department accordingly.

3. Mr. Ali Asadullah Bullo, learned counsel for the respondents No.2 states that the issues raised by the audit department were never the subject of the petition before this Court, which was upheld by the Hon'ble Apex Court. He states that since valid objections with regard to the qualification of the petitioner have been raised, hence, the same requires consideration and petitioner in view of the said objections raised by the audit department does not deserve to be promoted from Grade-8 to Grade-9 in the respective department.

4. Mr. Nishat Warsi, learned DAG, representing the respondents No.1 & 3, has supported the arguments of the learned counsel for the respondent No.2 and stated that in the audit objections the respondent No.3 has categorically mentioned that the petitioner has obtained irregular promotion in violation of the Board of Trustees' minutes dated 30.06.2004 and thus his promotion to Grade-7 was irregular and has also suggested appropriate action against not only the petitioner but also against the delinquent official, who has promoted him as well as a fresh enquiry in the matter. He, therefore, stated that the petitioner does not deserve to be promoted from Grade-8 to Grade-9 and this petition may, accordingly, be dismissed.

5. We have heard all the learned counsel at considerable length and have also perused the record.

6. It is seen that the matter revolves around disputed questions of fact, as the audit department has categorically noted that the promotion of the petitioner to Grade-7 was irregular what to say of his promotion to Grade-8

to Grade-9. In the said audit objections it was categorically recommended to the Chairman EOBI, with a copy to DG (F&A), to take appropriate action against the petitioner for misleading the management and the Courts and his promotion may be withdrawn and recovery be made in respect of his irregular promotion and other actions be taken against him. During the course of the proceedings it revealed that a representation has also been moved by the petitioner before the Chairman EOBI, which is pending adjudication. It is also noted that the Chairman EOBI after finding force in the audit objections has referred this matter to the Chief Financial Officer (CFO) of the Institute. We, therefore, are of the considered view that when audit objections have been raised with regard to the promotion of the petitioner, it requires a thorough investigation into the matter with regard to the averments made in the said audit objections. The petition bearing C.P. No.D-1698/2008 was disposed of, vide order dated 01.04.2009, with consent, by giving directions to the respondents that in the next DPC the petitioner's case for promotion from Executive Officer to Grade-7 may be considered in view of the terms of EOBI Board Resolution No.69 dated 30.06.2004, however, whether those parameters as per the said resolution were fulfilled by the petitioner or not were discussed in detail in the audit report dated 03.11.2015 which requires elucidation. In a constitutional petition, we cannot decide with regard to the factual aspects of the case that whether the parameters, as mentioned in the 69th Meeting of the EOBI, were fulfilled by the petitioner or not as the same requires detailed deliberation and examination of facts and evidences. In our view, the Chairman EOBI had quite rightly, on the audit objections, has referred this matter to CFO. We, therefore, under the circumstances, direct the Chairman EOBI to obtain factual details and other parameters as required for the promotion of the petitioner from the CFO and thereafter to decide the matter himself in accordance with law, after granting an opportunity of

hearing to the petitioner and keeping in view all the aspects of the matter. The Chairman, while deciding the matter, would be at liberty to go through the audit objections, findings of the CFO, averments of the petitioner, the judgments of the High Court and the Hon'ble Supreme Court, the parameters as mentioned in the 69th Meeting of the EOBI and other relevant aspects in accordance with law and thereafter through a detailed and speaking order decide the matter afresh strictly in accordance with law. The Chairman EOBI, while deciding the above matter, would also take up the matter of the representation filed by the petitioner and decide both these aspects in accordance with law. It is expected that the above exercise would be completed within a period of two months from the date of receipt of this order. With these directions the instant petition alongwith the pending applications stands disposed of.

JUDGE

JUDGE