

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Irfan Saadat Khan, J.
Agha Faisal, J.

CP D 3429 of 2021 : Akhtar Hussain Abro vs.
Province of Sindh & Others

For the Petitioner : Mr. Malik Naeem Iqbal, Advocate
Barrister Faizan Hussain Memon

For the Respondents : Mr. Ali Safdar Depar
Assistant Advocate General Sindh

Dates of hearing : 15.12.2021 & 17.12.2021

Date of announcement : 20.12.2021

JUDGMENT

Agha Faisal, J. The petitioner seeks consideration for promotion premised upon the assertion that he has remained duly entitled in such regard, however, the respondent is denying the said opportunity thereto in derogation of the law; hence, this petition.

2. Per learned counsel, the petitioner qualifies for promotion in all respects, including length of service, seniority and service record, yet opportunity of being considered for promotion is being denied to him unlawfully. It is contended that despite existence of vacancies since July 2020, the promotion process is being delayed without justification and with *mala fide* intent. Learned counsel placed reliance on authority¹ of the Superior courts to demonstrate that the petitioner could not be deprived of any lawful benefit accrued thereto in such regard, therefore, the petition ought to be allowed.

3. Learned Additional Advocate General articulated no cavil to the eligibility or fitness of the petitioner to be considered for promotion, however, rested the entire defense on the submission that the pertinent rules were in the process of being revised and once notified, the terms governing the post to which the petitioner would have been entitled to, if promoted, would stand

¹ *Government of KPK & Others vs. Hizbullah Khan & Another* reported as 2021 SCMR 1281; *Secretary Establishment Division vs. Aftab Ahmed Manika & Others* reported as 2015 SCMR 1006; *Suo Motu Case No.16 of 2011* reported as PLD 2013 SC 443; *Muhammad Zahir Raja vs. Federation of Pakistan & Others* reported as 2012 SCMR 971; *Muhammad Iqbal & Others vs. Executive District Officer Revenue & Another* reported as 2007 SCMR 682; *Unreported Judgment in Civil Petition No.3455 of 2020 (CDA & Others vs. Shabir Hussain and Others)*.

altered. It was however, admitted that no new rules have been notified as of date.

4. Heard and perused. It is observed that the respondents have no cavil to the eligibility of the petitioner to be considered for promotion, however, the opportunity is being denied merely on account of some changes in the rules that may take place in the future. In such regard, the scope of this determination is ring-fenced to decide whether any entitlement of a person can be curtailed in view of some event that may transpire in the future.

5. It has recently been held by the august Supreme Court in *Hizbullah Khan*² that while the relevant promotion rules were in the field, cases for promotion could not be kept pending on the premise that new rules were being finalized. In this context *Gulzar Ahmed CJ* illumined as follows:

“7. In presence of the rules, the department's response that his case has been kept pending till finalization of new service rules, was ex facie illegal and also unjustified. When matter of promotion is placed before the DPC, the DPC is required by law to consider the case of the employee put up for promotion and in doing so, it has to consider the case of employee for promotion fairly, justly and honestly.

8. The DPC's action of not considering or taking decision for promotion of respondent was, thus, not sustainable in law.....”

6. The same ratio has been reiterated in *Shabbir Hussain*³, wherein it has further been amplified that any amendments in the rules could ordinarily have prospective effect.

7. While the eligibility and fitness of the petitioner is not under scrutiny before us, it is trite law that consideration of the same is prerogative of the relevant departmental promotion committee. Admittedly, the consideration for promotion is being delayed to await some new innovation in the relevant rules. Learned AAG has remained unable to assist us with any law to sanction the denial of the opportunity for consideration of promotion in view of any rules that may crystalize in the future.

8. We remain bound by the law enunciated by the august Court that in the presence of existing rules a case for consideration for promotion could not be kept pending, merely on the premise that new rules are being finalized. As a consequence hereof the respondents' premise, for denial of an opportunity to the petitioner to be considered for promotion, cannot be sanctioned by us.

² Per *Gulzar Ahmed CJ* in *Government of KPK & Others vs. Hizbullah Khan & Another* reported as 2021 SCMR 1281.

³ Per *Muhammad Ali Mazhar J* in unreported Judgment dated 01.12.2021 in *Civil Petition No.3455 of 2020 (CDA & Others vs. Shabir Hussain and Others)*

9. In view of the reasoning and rationale herein contained, the respondents are hereby directed to consider the petitioner's case for promotion in the upcoming departmental promotion committee, to be convened expeditiously and preferably within two weeks. The case of the petitioner may be considered in accordance with the prevailing law, rules and regulations. This petition is allowed in the terms herein contained.

JUDGE

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