

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 632 of 2021

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Anan Iqbal Chaudhry

Petitioner: Altaf Hussain through Mr. Nazeer Ahmed Bhatti,
Advocate.

Respondent: HESCO through Mr. Muhammad Arshad
S. Pathan, Advocate for whom Mr. Safdar Ali Leghari,
Advocate is holding brief.

Date of hearing & decision: 07.12.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- This Court has been asked, inter alia, to consider that the Senior Selection Board was not justified in not considering the case of the petitioner for promotion in BS-20 in its meeting held on 27.2.2020; and, the petitioner is entitled to proforma promotion, after attaining the age of superannuation on 14.2.2020.

2. Per learned counsel for the petitioner, the petitioner having superannuated, retired from service on 14.2.2020, whereas his promotion was due much before his retirement, but was not considered on the ground that he stood retired from service.

3. At this stage learned counsel representing the respondent-Hesco has questioned the very maintainability of the instant Petition and submitted that the petitioner is not entitled to claim proforma promotion on the premise that the competent authority had already declined the same vide order dated 9.2.2021; that earlier the petitioner filed CP No. D-514 of 2020 and the PEPCO in compliance with the aforesaid order declined the request of petitioner for promotion. He prayed for dismissal of the instant petition.

4. At this stage, we confronted him with the fact that the proforma promotion of the petitioner was declined after his retirement in the year 2021 vide letter dated 9.2.2021 and earlier, the Senior Selection Board meeting was postponed and held its meeting on 27.2.2020 when the petitioner stood retired from service on 14.2.2020; however, learned counsel insisted that the petitioner is not entitled to proforma promotion.

5. We have heard the parties and perused the material available on record.

6. To commence with the preliminary objection as discussed supra, on the subject issue, the only remedy lies with this Court under Article 199 (1) (a) (ii) of the Constitution, which provides that on an application of an aggrieved person, the court can make an order “declaring that any act done or proceedings taken within the territorial jurisdiction of the Court have been done or taken without lawful authority and is of no legal effect”. Again under Article 199(1)(c), this Court can make an order giving such directions to any person within the territorial jurisdiction of this Court for enforcement of fundamental rights conferred under the Constitution. These are loud reminders of the jurisdictional expanse enjoyed by this Constitutional Court. Worth adding that this Court under Article 199 of the Constitution at all times equipped with the jurisdiction to probe into any public wrong affecting the public at large, when the same is brought before it through a petition. In the present case, the petitioner is a retired Public servant who could not approach for proforma promotion under Section 4 of the Federal Service Tribunal Act, 1973. In our view, the petitioner can invoke the jurisdiction of this Court for enforcement of his fundamental right, therefore the objection to the jurisdiction of this Court is uncalled for and is hereby rejected.

7. Perusal of record reflects that the promotion of the petitioner was declined vide order dated 09.02.2021. An excerpt of the order is reproduced as under:-

“1. In compliance of the Honourable High court of Sindh, Circuit Court, Hyderabad order dated 16.09.2020 in the titled petition, the appeal of Mr. Altaf Hussain Mirani, the then Superintending Engineer HESCO, Hyderabad for promotion as Chief Engineer (BPS-20) has been considered at length by examining all the relevant record but it is regretted to convey that his appeal is not justified/covered under the established rules/procedure, due to the following reasons:-

i. No doubt, his name was included into the list of candidates for promotion to the rank of CE (BPS-20) and all concerned formalities were requested to provide PERs for the year 2019 vide letter No. 299-313/MDP/D(CM)/SSB-20/ Record dated 08.01.2020 (Annex-A).

ii. The meeting of SSB was firstly scheduled for 27.01.2020 and again on 03.02.2020 but it could not take place due to other important official preoccupations of the Convener as well as Members of the Board.

iii. The appellant retired from service on attaining the age of superannuation on 14.02.2020 and due to consistency with previous correspondence, his name remained intact due to oversight in the list of candidates for interview issued vide letter No.1913-14/ MDP/D(CM)/SSB-20/Interview dated 21.02.2020 (Annex-B).

iv. The omission was timely rectified and his name was deleted while issuing the final list of candidates for interview vide letter No. 2051-52/MDP/D(CM)/SSB-20/Interview dated 25.02.2020 (Annex-C).

v. The meeting of SSB was held on 27.02.2020 and the name of the appellant was not considered due to his retirement on attaining the age of superannuation on 14.02.2020.

vi. No junior was promoted as Chief Engineer prior to his turn and inclusion of his name in the list of candidates does not confer any absolute right for promotion.

vii. In accordance with PEPCO O.M bearing No. GM(HR)/HRD/A-598/16255-79 dated 05.05.2010 (Annex-D), the promotion of only such officers/officials can be ordered, who expires or superannuates after the recommendation of the Selection Board and before issuing of the notification in exemption of assumption of the charge of the higher post.

2. In view of aforementioned facts, the appeal of the officer for promotion as Chief Engineer (BPS-20) after his retirement is devoid of merit being not covered under the relevant rules.”

8. The pivotal point involved in the present case is whether the Petitioner is entitled to be considered for proforma promotion in BPS-20 after his retirement in the year 2020?

9. The concept of Proforma Promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own. On the aforesaid proposition, we are fortified by the decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of Iftikharullah Malih Vs. Chief Secretary and others (1998 SCMR 736) and Askari Hasnain Vs. Secretary Establishment & others (2016 SCMR 871).

10. We have considered the matter, and found that the petitioner was wrongly prevented to get the next promotion and discharge the higher responsibilities as a result of which he was not only deprived of his legitimate right of promotion but also caused permanent loss of pensionary benefit of the higher grade for the simple reason that respondent No.2 issued notification dated 30.1.2020 intimating that the meeting of PEPCO Senior Selection Board which was scheduled to be held on 3.2.2020 was postponed and next date would be communicated to all concerned in due course and later on the respondent No.2 issued a joint letter dated 21.2.2020 mentioning therein time and venue, intimating the petitioner and four other officers for their interview on 25.10.2020 through video link to promote them as Chief Engineer BPS-20 and such information was also communicated by the HESCO. In the meanwhile petitioner attained the age of superannuation on 14.2.2020 thus it could be not said that the petitioner was responsible and it was his fault; however, primarily it was the fault of department to delay in

convening the meeting of Senior Selection Board and his case was already under consideration but due to delay on the part of respondent department the petitioner suffered, therefore, we are of the considered view the petitioner is fully entitled to the benefit of proforma promotion in the light of judgments passed by Honourable Supreme Court referred hereinabove.

11. In view of the above, we direct the competent authority of respondent-company to consider the case of the petitioner for proforma promotion in BS-20; and/or as per his entitlement under the law and complete the process within one month. This petition is accordingly allowed with no order as to costs.

JUDGE

JUDGE

Karar_hussain/PS*