

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-3380 of 2019

Mumtaz Ali Bhutto

Petitioner through : Malik Altaf Hussain, advocate a/w M/s. Viver Kumar and Kaleemullah, advocate.

Respondents

Through : Mr. Ali Safdar Debar, AAG along with representative of the respondent department

Date of hearing

& order : **18.01.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. Through the captioned petition, the petitioner is seeking the declaration to the effect that he is/was entitled to proforma promotion against the post in BS-18 which was negated to him while deferring in the Departmental Promotion Committee (DPC) meeting held on 06.3.2014, *inter alia*, on the wrong notion that he was facing some departmental proceedings and was not fit for regular promotion. Petitioner has averred that actually, during his tenure of service, he had remained under suspension but that lasted only up to 27.11.2013 i.e. about six months before the convening of DPC meeting when he had already been relieved from suspension and was posted as Headmaster, but the Education Department wrongly took him as suspended and deferred his promotion in the DPC held on 06.3.2014, whereas he had already been relieved from such suspension about six months ago which fact was not taken into consideration by the competent authority and in the meanwhile, he stood retired from Government Service on attaining the age of superannuation i.e. 60 years with effect from 31.12.2015 vide notification dated 10.5.2016.

2. Malik Altaf Javed, learned counsel for the petitioner, on the question of maintainability, argued that since petitioner stood retired from Civil Service; and, he is no more a civil servant, this constitutional petition is maintainable. On merits, he invited our attention towards the DPC meeting held on 6.3.2014 whereas he was deferred for want of Annual Confidential Reports (ACRs). He prayed for a direction to the competent authority of respondents to grant him proforma promotion in the light of the beneficial provision of law contained in Rule-7(A)(3) of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974. Learned counsel relied upon the opinion of the Law Department dated 08.9.2017 as well as the notification dated 09.11.2017 issued by the respondent-department, whereby the benefit of Rule-7A(1)(2) of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 had already been given to the colleagues of the petitioner for pensionary benefits. Learned counsel further argued that the colleagues of the petitioner have been cleared for proforma promotion in BPS-18 with effect

from the date of the meeting of DPC, which was scheduled on 6.3.2014 but the petitioner could not be promoted due to fallacious reasons, his case was deferred on account of no fault on his part, in the meanwhile petitioner reached the age of superannuation as such he could not be held responsible, therefore, the petitioner ought to have been given the proforma promotion from the date of the meeting of DPC; that act of the respondents is also discriminatory as in similar situation, the promotion was granted to other colleagues after retirement. He asserted that the denial of the aforesaid financial benefits by the respondents was unjust, malafide, discriminatory, unfair, and unlawful, and liable to be discarded. In support of his contention, he relied upon the case of Ch. Azhar Hussain V. Secretary to Government of Punjab LG&CD Department, Lahore and two others, **2016 PLC (CS) 693**. He lastly argued that proforma promotion after retirement is permissible under the law.

3. Learned AAG has opposed this petition with vehemence on account of laches that the petitioner stood retired from service in the year 2016 and now he has filed the petition in the year 2019, thus this petition is suffering from laches, and liable to be dismissed.

4. We have heard learned counsel for the parties on the subject issue, perused the material available on record and case-law cited at the bar.

5. We find that it has not been disputed before this Court that much before the retirement of the petitioner, a working paper was prepared by the respondent-Education Department about his promotion in BPS-18, for DPC but his matter was deferred for want of ACRs, though the respondent-department sent a letter dated 23.8.2013 to Additional Chief Secretary Education and Literacy Department Government of Sindh along with ACRs with the assertion that no departmental/Anti-corruption proceedings were pending against him, however, his case for promotion was deferred by misconceiving the things, and in the meanwhile, Petitioner attained the age of superannuation. In principle, preparation of ACR / PER relates to the Efficiency and Discipline of a civil / Government servant, which is the function of the reporting officer. Prima-facie the evaluation reports play a vital role in considering the case of promotion. The prime object of maintaining ACR/PER is to assess whether the officer under consideration is entitled to promotion or not, and such assessment, in addition to his / her performance and eligibility, would also include whether or not he/she has been awarded any major or minor penalty. The DPC, which is held to finalize the decision about promotion based on the above assessment, is required to make an overall assessment of the performance of the civil servant based on a working paper prepared by the department concerned. Therefore, preparation and presentation of ACRs is the duty of the department concerned and not of the civil / Government servant for the simple reason that ACRs are confidential documents to which the officer concerned cannot have any access. The law only requires that if any adverse remarks are made in ACRs, the officer concerned should be informed so that he/she may be able to improve his / her performance to make up for the deficiency. However, the promotion depends upon eligibility, fitness, and availability of vacancy. Prima-facie the petitioner cannot be made to suffer on account of the departmental lapse. On the aforesaid proposition, our view is supported by the decision of

the Honorable Supreme Court of Pakistan in the case of Secretary School of Education and others v. Rana Arshad Khan and others, **2012 SCMR 126**. Besides the above, the respondents have also produced the copy of the order dated 11.2.2019 duly approved by the competent authority, under which proforma promotion was allowed to other retired Headmasters in BPS-18, therefore, the petitioner also successfully makes out a case of discrimination against him in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. On the aforesaid proposition, we are fortified by the decisions of the Hon'ble Supreme Court rendered in the cases of Dr. Syed Sabir Ali v. Government of Punjab through Secretary Health Punjab and others, **2008 SCMR 1535**, Federation of Pakistan and others v. Amir Zaman Shinwari, Superintending Engineer, **2008 SCMR 1138** and Dr. Muhammad Amjad v. Dr. Israr Ahmed, **2010 SCMR 1466.**, and Askari Hasnain V/S Secretary Establishment and others, **2016 SCMR 871**

6. In the circumstances of the case, we are inclined to entertain the request of the petitioner in the matter.

7. We, for the aforesaid reasons, and in the given circumstances hold that the petitioner is entitled to the benefit of rule 7A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, thus the respondents are required to grant him a proforma promotion in BPS-18.

8. The upshot of the above discussion is that this petition is allowed and the competent authority/respondents are directed to allow the case of the petitioner for proforma promotion in BS-18 by way of circulation with effect from the date of the minutes of DPC. As the petitioner has already stood retired, therefore, his proforma promotion will not affect the seniority of any person already in the service and he would be entitled to his emoluments and pensionary benefits. The aforesaid exercise shall be undertaken within one month.

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