

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-8567 of 2018

Mahmood Zamir Farooqui
Petitioner through : Mr. Abdul Salam Memon, advocate

Respondent No.1
Through : Mr. Muhammad Nishat Warsi, DAG

Respondent 2 to 4
Through : Mr. Ghulam Rasool Korai, advocate

Date of hearing
& order : **15.02.2022**

ORDER

The grievance being voiced by the petitioner in this petition is that he should be considered for promotion in BPS-19 with effect from the date when the subject post in the higher grade fell vacant.

2. The petitioner was inducted into service as Deputy Secretary (BS-18) on a contract basis for two years in the Port Qasim Authority (PQA) on 5.3.2009, his service was regularized vide office order dated 27.10.2010. He was promoted as Secretary (BS-19) vide office order dated 19.3.2018 with immediate effect.

3. Mr. Abdul Salam Memon, learned Counsel for the petitioner, has submitted that petitioner could be considered for promotion to the post of Secretary (BS-19) not from 19.3.2018; but from the date of completion of five years as Deputy Secretary (BS-18) and when the vacancy occurred in the light of ratio of the judgment passed by the Honorable Supreme Court in the case of *Khalid Mehmood Vs. Chief Secretary, Government of Punjab and others, 2013 PLC (CS) 786*. Therefore, he is entitled to be awarded promotion to the post of BS-19 retrospectively. He further averred that the petitioner is entitled to be treated equally under the law as provided under Articles 4, 5, 9, 18, and 25 of the Constitution. Learned counsel cited the names of employees who were given a promotion from the date when the vacancy occurred. Learned counsel further referred to the letter dated Nil 6 of 2018 and submitted that respondent-PQA is involved in illegal appointments which have caused heartburning of the petitioner whose promotion was due when the subject vacancy occurred, however, on account of the inaction on the part of respondent-PQA he has been deprived of his due right of promotion. He requested to allow the captioned petition as prayed.

4. Mr. Ghulam Rasool Korai, learned Counsel for the respondent-PQA, has raised the question of maintainability of the instant petition on the plea that promotion is not a

vested right under Service Jurisprudence and it takes place from the date it is notified and not with retrospective effect. He prayed for the dismissal of this petition.

5. Mr. Muhammad Nishat Warsi, learned Deputy Attorney General, supported the contention of the learned Counsel for Respondent-PQA.

6. We have heard the learned Counsel for the parties and perused the material available on record and case-law cited at the bar.

7. On the issue of promotion of the petitioner in BPS-19, we are fortified by the established principle of law that in service jurisprudence there exist two-pronged criteria for promotions, one being eligibility for promotion and the other being fitness. In service matters, the promotion depends upon eligibility fitness, seniority, and availability of vacancy in that cadre. We have noticed that the mandatory eligibility criteria for promotion to the post of Secretary, PQA BPS-19 on the general cadre as per revised PQA Employees Service Regulations, 2011 as under:

- a) Atleast 05 years service in BPS-18 or 12 years service in BPS-17 and above.
- b) As per Rules-26(2-b) of Revised PESR-2011, the promotion to the non-selection posts requires fulfillment of criteria of seniority, qualification, and fitness.
- c) Required Qualification: Atleast 2nd Class Master's Degree in Administrative/Social Sciences/MBA.
- d) Mandatory Promotional Training/Course: As per Regulations-27 of Revised PQA Employees Service Regulations-2011, successful completion of mandatory promotional training/course as prescribed vide promotion policy/guidelines dated 06.04.2016.
- e) Completion of PER's.

8. The contention of the Petitioner, being eligible for promotion to BPS-19 from the date when the vacancy occurred is also devoid of substance and merits no consideration. This principle has also been settled by the Honorable Supreme Court through a plethora of judgments, more particularly in the case of Muhammad Zafar Ali and others v. Asim Gulzar and others, **2015 SCMR 365** has held that the appointments are always prospective, notwithstanding a vacancy occurring earlier. The Hon'ble Supreme Court of Pakistan in the case of Khushi Muhammad and 3 others v. The General Manager (now Vice-Chairman), Pakistan Western Railway, Headquarters Office, Lahore and others, **PLD 1970 SC 203** where it was held as under:

"it would be against all notions of natural justice that persons who join service in a grade first should be relegated to a junior position as against those who join later, merely because they fill vacancies which were deemed to be reserved for them. The ration of 50:50 between the direct recruits and the departmental promotees merely related to the policy of their recruitment to the grade and is not to be extended to the fixation of their seniority or their confirmation inter se."

9. We are of the considered view that the petitioner's claim is untenable and the petition is devoid of merit, which is dismissed.

JUDGE

JUDGE