

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

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

**C.P. No. D-159 of 2022**

Sadam Hussain & 15 others  
Petitioners through : Malik Naeem Iqbal, advocate

Respondent 1 to 3  
Through : Mr. Ali Safdar Depar, AAG

Respondent 6 to 18  
Through : Mr. Sarfaraz Ali Metlo, advocate

Date of hearing  
& order : **23.02.2022**

**ORDER**

The petitioners are civil servants, seeking direction to the respondents No.1 to 3 to convene a meeting of the Departmental Promotion Committee ("**DPC**") for consideration of their case for promotion from Assistant Engineer (BS-17) to the post of Executive Engineer (BS- 18) in Public Health Engineering Department ("**PHED**").

Petitioners have also assailed the vires of recommendation made by the DPC in its meeting held on 06.1.2022, whereby the juniors of the petitioners were considered for promotion to the post of Executive Engineer BPS-18, in violation of Section 9 of the Sindh Civil Servants Act, 1973 and in principles of equity and fairness. Petitioners have averred that, they were appointed in the year 2018 as Assistant Engineers in PHED through a competitive process, whereas the private respondents being juniors to them, have been promoted to the higher positions, in deviation the seniority rules, which is the discriminatory attitude on the part of official respondents. Petitioners have admitted that they have not completed the required tenure of five years' service to claim regular promotion in BPS-18, however, they have asserted that the case of the private respondents is on the same analogy.

Malik Naeem Iqbal, learned Counsel for the petitioners has attacked the formation of the promotion committee and argued that despite lack of proper quorum, they continued with the process of promotion and considered the candidature of the private respondents for further promotion in the next rank by counting their previous service, rendered in the department towards their length of service, which is not permissible under the service jurisprudence; that failure of the official respondents to consider the case of the petitioners for promotion from the post of Assistant Engineer (BS-17) to the post of Executive Engineer (BS-18) in PHED on the basis of seniority-cum-fitness instead promoting the private respondents, who are much junior to the petitioners is illegal, malafide, in violation of section 9 of the Sindh Civil Servants Act, 1973 (**Act-1973**)

and offends the principles of equity and fairness; that meaningful and fair consideration for promotion of an eligible and suitable officer is a vested right and he cannot be deprived of such right without any plausible reason; that the petitioners have been deprived of their vested right without any justification causing serious prejudice to their seniority, prospects of promotion, and their right to serve against the higher post; that it is the statutory obligation of the official respondents to consider the eligible officers for promotion on seniority-cum-fitness basis in respect of non-selection posts; and, seniority cannot be violated that too in such an arbitrary and fanciful manner. Per learned counsel the private respondents at Sr. No. 39, 40, 67 to 79 as against the petitioners who are at Sr. No.12 onward of the Seniority List, have been promoted, which is malafide, motivated, and for extraneous considerations; that it is the fundamental right of the petitioners to be afforded equal treatment of law as envisaged by Article 25 of the Constitution, whereas, in the case of the petitioners, they are being treated differently than other similarly placed employees, which is a blatant violation of Article 25 of the Constitution and such act of the Respondents is not sustainable being void ab-initio; that unless appointed in BS-18 and above, no officer could claim the benefit of policy letter dated 27.02.1984 and any purported benefit given to the private respondents is malafide and illegal; that Rule 8-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 (**APT Rules-1974**) leaves no room for juniors to be promoted over and above seniors under the grab of the short length of service and the only senior-most officer could be appointed on acting charge basis; that consideration for promotion of eligible qualified officer is the statutory obligation of the official respondents and they cannot abdicate such duty on whims and wishes rather the respondents have to act under the law; that the Honorable Courts have consistently taken the view that authorities could not be allowed to exercise discretion at their whims, or in an arbitrary manner rather they were bound to act fairly, evenly, and justly and their exercise of power was judicially reviewable; that it is axiomatic that the matters relating to the terms and conditions of service, particularly the question of promotion should always be examined and decided objectively, rationally, and without any prejudice so that fair, reasonable, and judicious conclusions/decisions are free from any unfair inclination or bias could have emerged. Justice must not only be done, but must also be seen to be done. However, the petitioners have been deprived of their due right, which is not permissible under the law; that impugned act and omission on the part of the respondents are in express violation of Section 24-A of the General Clause Act, 1987, which provides that an authority vested with any power is bound to exercise the same justly, fairly, reasonably and for the advancement of the purpose being vested therein. The authority is also bound to mention the reasons for the non-consideration of the promotion; that denial of promotion to the petitioners is tantamount to depriving them of their livelihood (in the shape of benefits attached to higher post and status), which is against the constitutional obligation being imposed upon all the organs/ agencies about the determination of the rights of the petitioners.

Mr. Sarfaraz Ali Metlo, learned counsel for the respondents 6 to 18, has argued that the instant petition is barred by Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 4 of the Sindh Service Tribunal Act, 1973; that the

petitioners being appointed on 19-11-2018 do not have required (five year) length of service to become eligible for promotion, therefore, they cannot be considered for promotion; that the respondents 6 to 18 were already in Government service prior to their promotion in BS-17, being eligible were considered and promoted to BS-18 pursuant to order dated 21-09-2021 passed by this court in CP No.D-3548/2021 filed by respondents No.7 to 9 & 11 to 18; that for the civil servants who were appointed in BPS-16 or below, half of their service in BPS-16 and  $\frac{1}{4}$  of their service in BPS-15 and below has been counted as service in BPS-17 in computing required length of service for promotion in BS-18 in terms of para (iii) of first proviso of the Notification dated 27.02.1984 published in Sindh Government Gazette 1984 which specify qualifying length of service for promotion to BS-18 to 21 and method of computation for different categories of the civil servants; that on 06-01-2022 when meeting of DPC was held, the petitioners were ineligible for promotion for want of required 05 years length of service and have been working on posts in BPS-18 on OPS, despite of restraining orders dated 02-06-2021 issued by this Court in CP No.D 3518/2021 filed by respondent No. 7 & others. They seek to continue working on OPS by maliciously blocking the promotion of the private respondents who have been promoted by the Departmental Promotion Committee being eligible and fit; that the petitioners are fully aware that the DPC, to illegally appoint petitioners in BPS-18 on acting charge who were otherwise ineligible for promotion, was not held on 14-07-2021 due to stay order dated 13-07-2021 passed by this Hon'ble Court in CP No. D-3548/2021; that the DPC was held in response to notice for contempt of Court issued by this Court for compliance of directions dated 21-09-2021; that promotion is not right of a civil servant nor does the seniority, in absence of eligibility, confer the automatic right to be considered for promotion. Only eligible candidates are to be considered for promotion under seniority. The petitioners have not been ignored outrightly which is evident from their mention in the working paper but they could not be considered for promotion because they were ineligible for promotion for want of qualifying length of service. The private respondents were eligible and on being considered were found fit and have been promoted accordingly; that section 9 of the Sindh Civil Servants Act, 1973 provides that a civil servant shall only be eligible for the promotion if he/she possesses minimum qualification, which includes prescribed length of service. Therefore, persons who do not possess a qualifying length of service are not eligible for promotion to be considered for promotion; the petitioners have not been discriminated. They are not equal or similarly placed to the private respondents who were already in government service at the time of their promotion to BS-17; that Rule 8-A of APT Rules-1974 does not relate to promotion but appointment on acting charge in absence of eligible and suitable candidate. In the instant case eligible and suitable candidates have already been promoted in the meeting of DPC held on 06-01-2022. He prayed for dismissal of the instant petition.

Mr. Ali Safdar Depar, learned AAG, has supported the stance of learned counsel representing the private respondents and argued that the respondents 6 to 18 being already in Government service before their promotion, were eligible and considered for promotion in BS-18 according to the Notification dated 27.02.1984; besides that, this Constitutional petition is not maintainable before this Court, because of the specific bar

contained in Article 212(2) of the Constitution of Islamic Republic of Pakistan, 1973 and in the terms of the ratio of the judgment passed by the Honorable Supreme Court in the cases of Ali Khalilullah Kakar v. Provincial Police Officer, **2021 §CMR 1171** and Chief Secretary, Government of Punjab, Lahore, and others Vs. Ms. Shamim Usman **2021 §CMR 1390**.

We have heard the contentions of learned counsel for both the parties, perused the record and case-law cited at the bar.

Touching the question of maintainability, the prime contention of the respondents is that no employee has a vested right in promotion, that is the correct position of the law but where rules, regulations, and policy have been framed for regulating appointment and promotion, any breach or deviation for mala fide reasons or due to arbitrary act of the competent Authority, the aggrieved person would be entitled to challenge it. The Honourable Supreme Court in the case of Ch. Muhammad Insha Ullah and others v. Chief Conservator of Forests (P & E) and others (**PLD 1988 §C 155**), observed that "Even if, no vested right exists if a principle of policy is given effect to and the principle of policy is such which has not matured into a vested right, none can say that in the absence of the vested right, the principle of policy should not be recognized or enforced". Further, the Honorable Supreme Court in the case of Muhammad Sarwar Vs. The government of Punjab and others **1990 §CMR 999**, has held that all actions taken against civil servants concerning employment can be challenged on the ground of mala fide of law or mala fide of fact. Mala fide of law is involved where authority not competent has taken an action or the mandatory procedural requirements for taking the action or the jurisdictional requirements for it remain unsatisfied. Mala fide relates to those cases where personal bias, grudge, or vindictiveness is the prompting force for action ostensibly in proper form and content. The latter category of actions is as much violation of terms and conditions of employment as is the first category because public power is never entrusted or reposed in functionary to be exercised for achieving personal ends like unjust enrichment, vindictiveness, or revenge. Terms and conditions of service embrace bona fide discharge of public duties by the repository of public power.

Principally, Promotion and seniority are not vested rights. Sections 8 and 9 of the Sindh Civil Servants Act, 1973 are very clear in its terms that seniority in a post, service, or cadre to which a civil servant is promoted shall take effect from the date of regular appointment of such civil servant to that post, service or cadre: Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post. Whereas, a civil servant possessing such minimum qualification as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rules for departmental promotion in the service or cadre to which he belongs. It is also provided that in case of selection post, based on selection on merit; and in the case of non-selection post, based on seniority-cum-fitness. From the above, it is clear that consideration for promotion and seniority is a vested right of a civil servant subject to

the qualification enumerated under the law. So far as, section 4 (1)(b) of Sindh Service Tribunals Act, 1973 is concerned, it is settled that a civil servant may not be able to file an appeal to get seniority or determination of fitness for promotion but he can file an appeal to get meaningful consideration for his seniority/promotion in terms of the ratio of the judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Tariq Aziz-Uddin in Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 143309-G of 2009, 2010 SCMR 1301.

Because of the dicta laid down by the Honorable Supreme Court in the aforesaid cases, this Court is left with no option but to look into the case in its entirety on merits. Having said so the question involved in the present petition is whether the private respondents have the requisite length of service to claim promotion to the post of Executive Engineer (BS-18) in the PHED; and, whether the DPC considered the case of the petitioners along with private respondents for promotion under law and policy of the Government of Sindh as introduced in the year 1984 or otherwise. For ease of convenience, an excerpt of the notification dated 27.02.1984 issued by the Government of Sindh, Services General Administration Department (Regulation Wing), is as under:

**\*NOTIFICATION**

Karachi dated the 27<sup>th</sup> February 1984.

No.SOIX-REG(S&GAD)/11-81. - In pursuance of the provisions contained in proviso to rule 8 of Sind Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 and in supersession of this Department Notifications of even Nos. dated the 23<sup>rd</sup> April 1981 and 3<sup>rd</sup> January 1983, the Government of Sindh are pleased to direct that minimum length of service for promotion to various posts in Basic Pay Scales shall be as follows:-

For B-18	5 years in B-17
For B-19	12 years in B-17 and above.
For B-20	17 years in B-17 and above.
For B-21	22 years in B-17 and above.

Provided that:

i) where the initial appointment of a person not being a person in government service takes place in a post in B-18, 19, or 20, the length of service specified in this notification shall be reduced by the following periods,

<u>First appointment in</u>	<u>Reduced by</u>
B-18	5 years.
B-19	12 years.
B-20	17 years.

ii) Where the initial appointment of a person already in government -service takes place, on the recommendations of the Sind Public Service Commission, in a post in B-18,19 or 20, the length of service specified in this notification shall be reduced by the periods specified in para (i) of the proviso;

iii) where the first appointment of a person other than a person covered by para (ii) of the proviso was made to government service in B-16 or below, one-half of the service in B-16 and one-fourth in B-15 and below may be counted as service, in B-17 for computing length of service for the purpose of promotion only.

Provided further that:

a) Where posts have been upgraded from B-16 to B-17 purely by revision of pay scale without any change in the nature of duties and responsibilities and without any condition of higher academic qualifications, the service in B-16 may be reckoned in B-17 for the purpose of promotion to B-18 and above.

b) Where up-gradation to B-17 has been made conditional to possessing of higher academic qualification as prescribed minimum service for five years in B-16 and/or B-17 with the prescribed qualification shall be required for the purpose of promotion to B-18.”

The question arises that how the seniority of a civil servant is to be determined and the way he becomes eligible for the promotion are detailed in sections 8 and 9 of the Sindh Civil Servants Act, 1973 and Rules framed thereunder.

A perusal of Rule 10 of the Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975 reflects that the seniority of a civil servant shall be reckoned from the date of his regular appointment. Rule 8 of APT Rules-1974 provides that no promotion on regular basis shall be made in Basic Scale 18 to 21 unless the officer concerned has completed such minimum length of service as may be notified by the government. Rule 8-A of ibid rules provide that where the appointing authority considers it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned who is otherwise eligible for promotion does not possess the specified length of service, the authority may appoint him to that post on acting charge basis.

The above provisions leave no doubt in our minds that the seniority of a civil servant on the initial appointment to service, cadre, or post has to be reckoned from the date of his joining the post after being recommended by the Departmental Promotion Committee and not from a date prior thereto. Even Rule of the Seniority Rules empowers the Government to determine the seniority of the probationers after the confirmation of service/Final Passing out Examination. It is now well-settled that the seniority of a civil servant is always determined keeping in view his regular appointment to a post and, thereafter the continuous service in that particular grade.

It is also important to note that neither seniority nor promotion is the vested rights of a civil servant, therefore, neither any seniority nor any promotion could be claimed or granted without the actual length of service on account of vested rights. The purpose of prescribing a particular length of service for becoming entitled to be considered for promotion to a higher grade, of course, is not without logic as the officer who is initially inducted to a particular post needs to serve on the said post to gain experience to hold the next higher post and to serve the public in a befitting manner. It is also important to note that grant of seniority to a civil servant without the actual length of service virtually violates the entire service structure as a civil servant inducted in Grade-17 by claiming such benefit without any experience be directly posted in any higher grade, which is neither the intention of the law nor of the equity.

The competent authority while exercising powers conferred under Rule 8-A of the APT Rules-1974 promoted the petitioners to BS-18 on OPS showing them otherwise eligible for promotion but were short of the minimum required length of service. However, the private respondents later on completion of five years of mandatory service were regularized in BS-18, by counting their previous service rendered in BPS-16 and BPS-15 in line with notification 27<sup>th</sup> February 1984. We are mindful of the fact that the petitioners had cleared SPSC in 2018, in our opinion, seniority without the actual length of service could not be claimed. It may be observed that rule 8-A of Rules, 1974 ibid; indeed empowers the competent authority in the public interest to fill a post

reserved under the rules for departmental promotion after compromising the length of service, and subject to other concomitant conditions as set down in succeeding sub-rules of rule 8-A *ibid* by appointing such civil servant to a higher grade on "acting charge basis" but not on OPS basis. However, in the instant case, the petitioners at the relevant time even did not qualify to be considered for appointment to BS-18 on OPS/acting charge basis. In the case reported as *Director-General, Intelligence Bureau, Islamabad and others v. Amir Mujahid Khan and others* (2011 SCMR 389) the Honorable Supreme Court quite exhaustively dealt with the issue of the length of service for promotion to the higher grade, which is imperative criteria under Rule 8-B of Civil Servants (Appointment, Promotion, and Transfer) Rules, 1973, after discussing relevant rules, it was held as follows:

"It is an admitted fact that appellant/competent authority had not circulated seniority list till the length of service of the afore-said respondents was completed as required under the law. They were promoted subsequently on permanent basis; vide notification dated 11-8-2006 from the date of their assuming charge of the post of Deputy Director on acting charge basis. The sole question for our determination is that in such a situation whether these respondents regained original seniority on subsequent promotion so long the order of the DPC dated 18-8-2005 remains in the field. This fact brings the case of the afore-said respondents that they were considered and were not promoted on permanent basis due to lack of requisite length of service, therefore, they could not be granted seniority from the original date of their consideration for promotion. See *Abdul Ghani Chaudhry's case 1998 PLC (C.S.) 1278*. It is pertinent to mention here that respondents who were promoted on permanent basis as they had the requisite length of service in their grade as mentioned above."

Touching the issue of promotion, in principle, there are at least four discernable components of promotion decisions for purposes of a court exercising judicial review of the decision: (i) mandatory legal requirements, the failure to observe which can lead to procedural impropriety; (ii) objective criteria i.e. eligibility requirements that can be verified by the court based on available record; (iii) the subjective evaluation of the competence, fitness or potential of an employee that falls within the domain of primary decision-maker; and (iv) the reasoning of the decision-maker which if perverse or reflecting bias or malice or based on extraneous consideration can result in an illegal or irrational decision that can be reviewed by a constitutional court.

Given these components of a promotion decision, this Court would intervene and exercise judicial review of such decision where (i) there is in breach of principles of procedural fairness or natural justice, (ii) where employment rules and criteria for promotion prescribed therein have been breached, or irrelevant and extraneous consideration have informed the decision leading to illegality, (iii) when the objective criteria regarding eligibility for promotion have been misapplied and such misapplication is evident from the record (i.e. miscalculation of years of service, etc.), and (iv) where discrimination or malice is floating on the surface for the record or the reasoning of the decision-maker is perversely leading to the conclusion, without the court indulging in any factual controversy, that the decision undermines the fundamental right of the employee to be treated under law and without discrimination.

It has been explicitly held by the august Supreme Court that the question of what criteria to be applied while considering an employee for promotion falls within the domain of policy, which warrants no interference by the courts. The august Supreme Court in Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others vs. Hayat Husain and others, (2016 SCMR 1021) held the following:

"It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted and that no vested right of a Government employee is involved in the matter of promotion or the rules determining their eligibility or fitness, and the High Court has no jurisdiction by means of writ to strike it down as held by this Court in the case of The Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan (PLD 1960 SC 81), the relevant portion therefrom is reproduced herein below:-

"In our opinion the High Court made the above order without taking into consideration all the factors relevant to the case, namely, in the first place the taking out of the post of Deputy Superintendent of the category of class III, to which the petitioners belong amounted to abolition of the post and its upgrading on a higher scale of pay to a creation of the new post; appointment to which required a stricter test of efficiency by a competitive examination. Besides, all the Inspectors were given the right to sit in the examination for any number of times to qualify themselves for promotion. At the same time the pay scale of those, who could not succeed, was raised to the limit of Rs. 350, namely, the same pay as that of a Deputy Superintendent when it was a class III post. In the circumstances, it cannot be said that any rights of the petitioners were infringed, which they could enforce by a writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ."

The Sindh Civil Servants Act, 1973 and rules framed thereunder, provide that a civil servant, possessing such minimum qualification as may be prescribed, shall be eligible for promotion to a higher post, for the time being, reserved under the rules for departmental promotion in the service or cadre to which he/she belongs. The proviso has distinguished posts and has provided that such posts will be filled under the manner and subject to such conditions as may be prescribed in this regard. Promotion to a selection post is based on 'merit' and in the case of a non-selection post the criterion is 'seniority-cum-fitness'. It is well settled that in promotion matters, the overall assessment of an officer's performance during a year may completely depend on the subjective opinion of his Reporting Officer; and, the weightage required to be accorded to it to determine his fitness for promotion, which entail an objective assessment. In principle, the Courts cannot play the role of assessing body and sit in judgment over subjective evaluation; however, can examine whether the required objective criterion for promotion was followed or otherwise in a suitable case subject to grave illegality and perversity in the action of the authority having domain to the affairs. On the aforesaid proposition, we are fortified with the decisions of the Honorable Supreme Court in the cases of Khan M. Muti Rahman and others 2006 PLC (C.S) 564, and Tariq Aziz-Uddin in Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 143309-G of 2009, 2010 SCMR 1301.

In our view, to qualify for the promotion, the least that is expected of an employee is to have an unblemished record. This is the minimum expectation to ensure a clean and



efficient administration and to protect the public interest. An employee found not fit for promotion cannot be placed at par with the other employees, and his / her case has to be treated differently. While considering an employee for promotion his / her entire service record has to be taken into consideration and if his/her promotion is denied to him / her, such denial would not be illegal or unjustified under the service jurisprudence.

Coming to the main issue, primarily in promotion cases there are certain conditions/criteria for consideration for promotion in the next rank i.e. seniority-cum fitness, length of service, eligibility for the post and availability of the post; and, one being eligibility and the other being fitness, while the former relates to the terms and conditions of service, the latter is a subjective evaluation made based on objective criteria. It is for the Competent Authority, who could make appointments, determine seniority, eligibility, fitness and promotion, and other ancillary matters relating to the terms and conditions of the employees as prescribed under the Act and Rules framed thereunder. Besides the above, it is well settled now that where the departmental promotees were eligible and the vacancies were available in their quota, in that case, they will be given seniority over the direct recruits on the ground that the necessary exercise for their promotion was not carried out by the department within time and in the meantime appointments are made in the direct quota. This principle finds support from the judgment of the Honourable Supreme Court in the case of 'Government of NWFP and others Vs. Buner Khan and others' (1985 3CMR 1158).

It is also well settled that the prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the civil servants to be eligible for being considered for promotion. When qualifications for the appointment to a post in a particular cadre are prescribed, the same has to be satisfied before a person can be considered for the appointment. Seniority in a particular cadre does not entitle a Civil/public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor can it override in the matter of promotion to the next higher post. In our view, neither any seniority nor any promotion can be claimed or granted without fulfilling the promotion criteria under the relevant promotion policy/law. On the aforesaid proposition, we are fortified by the decision rendered by the Hon'ble Supreme Court in the case of 'Chairman FBR v. Muhammad Asfandyar Janjua and others' (2019 3CMR 349).

We have noticed that the respondents 6 to 18 being already in Government service before their promotion in BS-17, were held eligible and considered for promotion in BS-18 according to order dated 21-09-2021 passed by this court in CP No.D-3548/2021 filed by respondents No.7 to 9 & 11 to 18 and have been accordingly promoted to BS-18 by counting half of their service in BS-16 and ¼ of their service in BPS-15 and below as service in BPS-17 in computing required length of service for promotion in BS-18 in terms of para (iii) of the first proviso of the Notification dated 27.02.1984; that DPC was held to consider

the promotion of those who were eligible for promotion and there were more than 25 vacant posts out of 60 sanctioned posts of BS-18 in the respondent-department; that promotion is not right of a civil servant nor does the seniority, in absence of eligibility, confer the automatic right to be considered for promotion. Only eligible candidates are to be considered for promotion under seniority. The petitioners have not been ignored outrightly which is evident from their mention in the working paper but they could not be considered for promotion because they were ineligible for promotion for want of qualifying length of service. Prima-facie, the private respondents were eligible and on being considered were found fit and have been promoted accordingly.

We have also attended the factum of discrimination as raised by learned counsel for the petitioners, however, we do not see any malafide on the part of respondent-department to single out the petitioners for the subject promotion, and thus no case on discrimination point is made out. However, we make it clear that if the petitioners at any stage and point in time fulfill the criteria for promotion in the next rank as outlined in the promotion policy, the respondents shall give due consideration to the case of petitioners for promotion under law as they have not been declared ineligible yet, however, the only ground agitated by the respondents that the petitioners failed to meet the criteria for which this Court has already shown reservation to deal with such situation and it is for the respondents to decide under law.

Before parting with this order we have observed in many cases that civil/public servants who are facing NAB reference/criminal cases are being given promotion/postings, without finalizing the departmental proceedings and allowed them to retire from service and then raise the hue and cry that their pension shall be disbursed, this stance of the Government is shocking. In that scenario, primarily the parent department has to initiate departmental proceedings in time against the civil servant and culminate the same to its logical conclusion before his/her retirement from government service. In this background of the case, the Hon'ble Supreme Court of Pakistan in the case of *Province of Punjab through Conservator of Forests, Faisalabad, etc. v. Javed Iqbal* vide judgment dated 26.11.2020 passed in *CP No.1554-L to 1573-L of 2020* has held that the government must ensure that the cases of retired employees are fast-tracked so that they are concluded within the statutory time frame i.e. 02 years of his retirement, allowing the retired employees to enjoy their retired life and the government to save unnecessary expense and time in pursuing matters against retired employees. Because of the dicta laid down by the Honorable Supreme Court, we make it very loud and clear that in future, the Government of Sindh shall ensure that a civil servant who is facing NAB reference based on moral turpitude before the learned Accountability Courts shall not be allowed to carry out financial undertakings in any manner of whatsoever nature; and, their cases for posting and promotion in next rank shall be subject to the outcome of NAB reference and/or a criminal case filed against them based on moral turpitude; and, before the above NAB reference and/or criminal case conclude, the parent department shall initiate departmental proceedings against the officers facing such situation and culminate the proceedings, within time as prescribed under the law. In case of no compliance with the

above direction, the head of the department shall be held responsible for such a lethargic attitude; and, the appropriate order shall be passed against the delinquent officials.

In light of the above facts and circumstances of the case, we are of the considered opinion that the promotion policy issued by the Government of Sindh vide notification dated 27.02.1984 is still intact and is framed in the interest of expediency of service and the consideration of promotion of the private respondents is in line with the aforesaid policy. In our view, neither any seniority nor any promotion can be claimed or granted without fulfilling the promotion criteria under the relevant promotion policy/law as discussed supra.

Prima-facie the competent authority has determined the eligibility of the private respondents and found them to be fit for promotion in the next rank under the policy decision of 1984, and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted. Besides that, no vested right of petitioners is at the stake at the moment as they are short of the length of service to claim promotion in BPS-18. This petition is dismissed along with pending applications, with no order as to costs.

Let this order be communicated to the Chief Secretary, and head of the departments of the Government of Sindh, for compliance. Such compliance report be submitted by the Chief Secretary, Sindh, through MIT-II of this court, just after two months from the date of receipt of this order.

**J U D G E**

**J U D G E**

Nadir\*