

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Constitutional Petition No. D –2410 of 2021

Abdul Basit

Versus

Province of Sindh and 02 others

Date of hearing & order : 21.04.2021

Malik Altaf Hussain, advocate for the petitioner.

Mr. Samiullah Soomro, advocate for the respondent/ Workers Welfare Board Sindh.

Mr. Ali Safdar Debar, AAG along with Muhammad Bachal Rahupoto, Secretary, Sindh Worker Welfare Board, Shehla Kashif, Director (Admn.) and Khalid Hussain Khokhar, respondent No.3 present in person in C.P. No.D-2395/2021.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through the instant petition, the petitioner is seeking promotion to the post of Deputy Director (Finance) (BPS-18) in respondent-Workers Welfare Board Sindh (WWBS) on the ground that he despite being qualified for the promotion, his case has not been considered since the last couple of years, which adversely affects him. Primarily this petition was heard along with C.P. No.D-2395/2021 on 21.04.2021, however, the issue involved in this matter is altogether different, therefore, the same is being heard and decided separately.

2. Learned counsel for the petitioner has argued that the petitioner is working as Assistant Director (Finance) (BPS-17) since 05.9.2009 in the same grade; and, his case for promotion to the post of Deputy Director (Finance) (BPS-18).has not been considered by the Selection Committee. Learned counsel pointed out that under the recruitment rules, for promotion to the post of Deputy Director (Finance) is five years; and, he has the requisite length of service for consideration of his case for the higher grade, yet he has been deprived of his promotion in BPS-18. He asserted that the respondent-Board prepared the working paper for his promotion, however, for the reasons best known to them, the meeting could not be convened, forcing him to approach

this Court. He prayed for the direction to the respondent-Board to convene the meeting of the Departmental Selection Committee for consideration of his case for promotion to the post of the Deputy Director (Finance) BPS-18. He prayed for allowing the instant petition.

3. We have heard the learned counsel for the parties on the subject issue and perused the material available on record.

4. Perusal of record reflects that the service of the petitioner has been suspended vide notification dated 17.2.2021 (page 45) and learned counsel for the petitioner, at the outset, did not press the prayer clause (ii) & (iii) and the same factum was recorded by this Court vide order dated 09.4.2021. If this is the position of the case, we are of the view that in the seniority/promotion case no vested right/fundamental right can be claimed as the promotion depends upon the various factors, which require consideration for the promotion of the employees.

5. It is a well-established principle of law that, in service cases there exist two-pronged criteria for the promotion. 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 based on objective criteria. No doubt in service matters, the promotion depends upon eligibility, fitness, and availability of vacancy, and no one including the Petitioner can claim promotion as a matter of right. 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. 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 Respondent-Workers Welfare Board Sindh and the interference with such matters by the Courts is not warranted as no vested right of an employee is involved in the matter of promotion, or the rules determining his eligibility or fitness. Moreover, the petitioner has not been able to point out any case where another employee (s), having a rating equivalent to or lower than him, was/were promoted by the respondent-WWBS. Thus, *prima facie* it appears that the policy of the respondent is uniform and without any discrimination at least to the extent of the instant case.

6. Before parting with this order, we may observe that if the petitioner crosses the clog of disciplinary proceedings initiated by the respondent-WWBS and culminated into its logical conclusion then he may avail his remedy as provided under the law.

7. In the light of the above facts and circumstances of the case, the instant petition merits no consideration and is thus dismissed along with listed applications.

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