

IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D – 3603 of 2016

Date	Order with Signature of Judge(s)
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Before:
Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Shehnaz Zaidi, Petitioner, through : Mr. Arsalan Wahid, advocate.

Federation of Pakistan
& two others, respondents
through : Mr. Nishat Warsi, Deputy Attorney
General for respondent No.1 and
Mr. Zafar Imam, advocate along with
Mr. Zubair Shah Additional Collector
for respondent Nos.2 and 3.

Dates of hearing : 09.04.2021, 05.05.2021 &
20.05.2021

JUDGMENT

ADNAN-UL-KARIM MEMON, J. – Through the instant petition, primarily, the petitioner seeks actualization of her promotion as Librarian (BPS-16) in the Directorate of Training & Research (Customs Excise & Sales Tax), Karachi with effect from the date of recommendation of the Departmental Promotion Committee (DPC) vide minutes of the meeting dated 12.2.1985 (page 47) along with back benefits, an excerpt of the minutes of the meetings of DPC are reproduced as under:-

“Government of Pakistan
Directorate of Training
(Customs & Central Excise)

The Departmental Selection Committee met on 12.02.1985 in the office of Director to consider the appointment of Librarian (B-16) in Directorate of Training (Customs & Central Excise) Karachi. The Committee was presided by Mr. Syed Ali Rizvi Director and consisted of Mr. Muhammad Saeed, Deputy Director and Mr. Shahid Bashir, Principal.

The post of Librarian had been advertised in press and the call letter were issued to the candidates, whose application were received in the Directorate for test and interview.

After interview the Committee recommended the selection of Miss. Shahnaz Zaidi for the post of Librarian (B-16).”

2. As per pleadings of the petitioner, she was appointed as Cataloger (BPS-10) in the year 1981 and she remained in the same position till December 1983 and thereafter she was promoted to the post of Assistant Librarian (BPS-11)

in the year 1984 (Page 25). The statement dated 20.5.2021 filed on behalf of the respondents shows overwriting, which needs to be explained by the respondent-department, (page 33); and, since then she served on the aforesaid post in the same pay & scale and was treated as Librarian Assistant (BPS-11) rather than Librarian (BPS-16) as reflected in the minutes of meetings at (Page 47), however she was granted move over from BPS-11 in 1991 and subsequent move over from BPS-12 to BPS-13 in the year 1996 and her pay was also fixed in BPS-13 and finally she was again granted move over in BPS-14 in the year 1999 and she continued on the same post and pay scale as Librarian Assistant (BPS-12) till the age of superannuation in the year 2018 vide letter dated 9.12.2019. She being aggrieved by and dissatisfied with the aforesaid action of the respondents approached the learned Federal Service Tribunal (FST) by filing Service Appeal No.17 (K) (C.S.)/2015, which was disposed of vide order dated 09.03.2016 with directions to approach the forum available to her under the law and thereafter she approached this Court on 11.05.2016. The petitioner stood retired from the service in the year 2018 during the pendency of this petition.

3. Per learned counsel for the petitioner, the post of Librarian is in BPS-16, as per standardization of pay & scale and recruitment rules for Librarians working under the Federal Government departments (Page 49); however, she was not given the aforesaid scale and pay till her retirement in the year 2018. Learned counsel relied upon Serial No.7 of ESTACODE 2013 (Edition-1) wherein pay scales and recruitment rules for Librarians working under the Federal Government organizations have been laid down/standardized vide Finance Division and Establishment Division letters dated 21.11.1985 and 12.11.1985. He next argued that the Assistant Librarian is also entitled to be promoted in BPS-17 after qualifying service tenure, having M.Sc. in Library Sciences. According to the learned counsel the petitioner fulfilled the required education and experience. Learned counsel pointed out that the petitioner ought to have been given BPS-16 with effect from 01.01.1984 or with effect from 12.02.1985 as Librarian vide minutes of meetings as discussed supra when she was promoted from Cataloger to Assistant Librarian / Selected as Librarian BPS-16, but BPS-11 was given to her instead of BS-16, which act on the part of the respondent department is illegal, discriminatory and violation of the principles of natural justice. Learned counsel referred to the case of one Meerajuddin Qureshi, who was appointed in FBR as Librarian in BPS-16 in the year 1992, thereafter the post of Librarian was upgraded and consequently, he was given BPS-16 to 17 with effect from 2009, however, the said post was further upgraded from BS-17 to BS-18 but unfortunately, the petitioner was deprived of the benefits of the post of either Assistant Librarian or Librarian in BPS-16 and onwards. He lastly prayed for

allowing the instant petition. For the sake of convenience, an excerpt of up-gradation of the petitioner, Assistant Librarian from BS-12 to BS-16 is reproduced as under (Page-39):-

Group	Name of Post	BPS	Qualification / experience required	Type of Gov library
IV	Librarian / bibliographer / planning officer / Editor, National Bibliography/ Documentation Officer / Research Officer / Assistant Director	17	At least second class Master's degree in Library Science / information sciences. OR Graduate with Diploma in Library Science from a University or Bachelor of Library Science Plus 5 years post professional experience in B-16 otherwise 8 years if not in B-16. OR Second Class Master's Degree in relevant subject with Diploma in Library Science or Bachelor of Library Science.	1. National Library 2. Federal Deptt of Libraries. 3. Other libraries with 15,000 to 50,000 volumes
V	Assistant Librarian / Junior Librarian / Assistant Editor / Assistant Research Officer / Assistant Documentation Officer / Deputy Assistant Director.	16	At least second class Bachelor's degree with Diploma in Library Science or bachelor of library science preferably with experience.	1. National Library 2. Federal Deptt of Libraries. 3. Other libraries upto 15,000 volume.

4. On the contrary, the learned counsel for respondents No.2 and 3 has referred to the para wise comments filed on behalf of the said respondents and raised the question of maintainability of the instant petition on the ground that petitioner is not entitled to the relief as claimed by her on the ground that FBR had

submitted a proposal to the Establishment Division for up-gradation of the post of Library Assistant from BPS-11 to BPS-14 and Cataloger from BS-10 to BS-12 in the Directorate General of Training & Research (Customs), Karachi, however, the same post was upgraded in BPS-12. Per learned counsel, the post of Assistant Librarian is in BPS-16 and the post of Library Assistant is in BPS-11 now upgraded to BPS-12, therefore, petitioner being appointed as Library Assistant is not entitled to claim promotion / up-gradation in BPS-16 as Assistant Librarian. In support of his contention he relied upon the statement dated 20.5.2021 and referred to service book of the petitioner and other documents attached with his statement and argued that the petitioner is mixing up her post of Library Assistant (BPS-11) with the post of Assistant Librarian in BPS-16 which is not legally correct, as the aforesaid posts are altogether different in pay & scales and responsibilities/job descriptions, therefore, this petition on this score alone is liable to be dismissed.

5. Mr. Nishat Warsi, learned Deputy Attorney General has supported the stance of the petitioner and argued that the case of the petitioner is based on hardship as such she is entitled to proforma promotion against the post of either Assistant Librarian BPS-16 or Librarian in BPS-17, as per recruitment rules, as discussed supra and other ancillary benefits accrued thereon.

6. We have heard the learned counsel for the parties and have perused the material available on record.

7. The basic primordial questions which require our determination are whether the petitioner was promoted to the post of Assistant Librarian in (BPS-11 or 16); and/or Library Assistant (BPS-11); and/or Librarian in BPS-17 and whether any civil servant superannuating after the recommendations of the Departmental Promotion Committee, for promotion in higher rank, is entitled to proforma promotion?

8. To answer the aforesaid proposition, firstly, it appears from the record she was initially appointed as Cataloger in the respondent-department in the year 1981 and consequent upon the recommendation of the DPC she was promoted to the post of Assistant Librarian (BPS-11) with effect from 01.1.1984 vide Office Order dated 01.1.1984. We have scrutinized the service profile of the petitioner, which *prima facie* shows that she was forced to work as a Librarian Assistant in BPS-12 rather than Assistant Librarian in BPS-11 or Librarian in BPS-17 as per minutes of the meetings of DPC held on 12.02.1985, whereby she was recommended for the post of Librarian (BPS-16) till she attained the age of superannuation in the year 2018. Even the respondent-department is still adamant to show her as Library Assistant in BPS-12 rather than in BPS-16 / 17

vide letter dated 09.12.2019 after she stood retired from service and have avoided granting her benefits of the pay and scale of the subject post in BPS-16/17 for extraneous consideration, which act on their part is highly unjustified. Thus we are not convinced with the assertions of the learned counsel for the respondent-department that the petitioner was/is not entitled to the actualization of the post of Assistant Librarian (BPS-16) / Librarian (BPS-17). Perusal of the record reflects a contrary position which shows that vide minutes of the meeting of DPC dated 12.2.1985 she was selected for the post of Librarian (BPS-16) (page 47) for which the respondent-department has no account, thus, in our view, the petitioner could not be held responsible for such lapse on the part of the department.

9. To answer the second proposition, we are of the considered view that a civil servant is entitled to proforma promotion, once during his/her service his/her promotion is approved by the Competent Authority and in the meanwhile, if he/she superannuates, he/she is entitled to all benefits as admissible under the law. We are fortified by the decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of Iftikharullah Malih v. Chief Secretary and others (1998 SCMR 736) and Askari Hasnain v. Secretary Establishment and others (2016 SCMR 871).

10. To go ahead with the aforesaid proposition, essentially in service jurisprudence, appointment, promotion is of utmost importance. If these are made on merit under definite rules, instructions, etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil/government servant, therefore, the petitioner could not be precluded to ask for the actualization of her promotion as Assistant Librarian / Librarian as per the recommendation of the DPC held on 12.02.1985. The record does not reflect that the aforesaid minutes of the meeting were cancelled by the respondent department at any moment and in absence of this the aforesaid minutes were/are required to be actualized.

11. Prima-facie the above act of the respondent-department has not only deprived the Petitioner of her vested rights to be placed in higher pay & scale in BPS-16 /17 as outlined in the recruitment rules as well as in the minutes of the meeting of DPC, as discussed supra, but it has also caused her permanent loss of further promotion and pensionary benefit of higher grade as she could not be made to suffer on account of the departmental lapse. It is a settled principle of law that if service, benefits have accrued to an employee but for one reason or the other such benefits could not be awarded to such an employee, then,

irrespective of the fact of his/her having retired from service, the department concerned shall still have to consider her case for a promotion and to allow him/her benefits for such a promotion, even after retirement from service. In the present case, it has not been disputed before this Court that much before the retirement of the petitioner she was considered for promotion as Assistant Librarian (BPS-16) in the year 1984 and/or selected for the post of Librarian in the year 1985, but her pay scale in BPS-16 / 17 was delayed by the respondent department without any justifiable reason to compel her to work in BPS-12, till she attained the age of superannuation in the year 2018.

12. The concept of Proforma Promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his/her legitimate turn due to any reason but not a fault of his/her own then in such a situation, the monetary loss and loss of rank is remedied through proforma promotion. Even otherwise petitioner had met the criteria being eligible to be considered by the appointing authority in respect of the benefits of proforma promotion as discussed supra.

13. In the light of the above facts and circumstances of the case the instant petition is allowed in the terms whereby the Competent Authority of respondent-department is directed to take a fresh decision on the issue of proforma promotion of the Petitioner as Assistant Librarian in BPS-16 with effect from the date when she was promoted to the post of Assistant Librarian in the year 1984, and /or Librarian in BPS-17 when DPC recommended her case for selection as Librarian, strictly in accordance with law without discrimination with consequential benefits. The aforesaid exercise shall be undertaken within two (02) months' time from the date of receipt of this Judgment. Compliance report shall be submitted through MIT-II of this Court.

14. These are the reasons for our short order dated 20.5.2021, whereby we have allowed the instant petition.

JUDGE

JUDGE