

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Zulfiqar Ahmad Khan

C.P. No. D-1478 of 2018

Muhammad Izqar Khan  
Versus  
Federation of Pakistan & others

Date of Hearing: 19.11.2019

Petitioner: Through Mr. Abdul Salam Memon Advocate

Respondents No.1 to 3: Through Mr. Muhammad Nishat Warsi,  
Deputy Attorney General.

Respondent No.4: Through Mr. Asadullah Sheikh Advocate.

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- Petitioner's controversy is narrowed down to prayer clause 'C' as he seeks declaration to the extent of a letter dated 01.01.2018 issued by Section Officer in pursuance of summary of Ministry of Commerce for the Prime Minister, which summary relates to the appointment/promotion of General Manager to the post of Executive Director in State Life Insurance Corporation (SLIC).

2. Petitioner claimed to have been appointed initially on 02.04.1995 as Assistant General Manager which commensurate to his qualification. He was promoted to Deputy Manager in 2002 and then General Manager in 2008. He also held the charge for the post of Executive Director from time to time. In view of denial to the recommendations, by virtue of impugned order to the post of Executive Director, petitioner has preferred this petition.

3. In 160<sup>th</sup> meeting of the Board of Directors SLIC, while deciding Item No.4A, the Board considered the report of the Board Committee on organization of the Corporation for senior posts. In terms of Para 11 and

in pursuance of Committee's meeting dated 24.02.2001, which framed the recommendations, the proposal of reserving one post of Executive Director for Government servant and the remaining four posts of the Executive Directors to be filled by promotion from within the Corporation or by direct recruitment, as necessary, was resolved and consequently decision, as taken in 160<sup>th</sup> Meeting, was to be forwarded to the concerned Ministry.

4. Petitioner in pursuance of such Resolution, as forwarded to the concerned Ministry, and longstanding precedent, filed an appeal before the Federal Secretary Commerce Division to act accordingly. The Chairman of SLIC then addressed a letter to the Secretary, Ministry of Commerce with reference to letters dated 01.07.2015 and 03.07.2015, which relates to constitution of promotion committee for promotion of General Manager to the post of Executive Director in SLIC. The letter relates to the composition of Promotion Committee and hence responded by the Secretary Ministry of Commerce on 08.07.2015.

5. The Selection Board consisted of Secretary Commerce as Chairman and Chairman/Chairperson SLIC, with Additional Secretary Commerce and General Secretary Admin, Establishment Division. Together they formed Members of the Selection Board. Subsequently the General Secretary Admin Establishment Division, as proposed, was changed with the representative of the Establishment Division not below the General Secretary as member, which proposal was approved vide approval dated 15.07.2015 and consequently a notification of 28.07.2015 was issued.

6. On 29.07.2015 a notice was issued for the meeting of the Selection Board for the promotion of General Manager to the post of Executive Director SLIC to be held on 06.08.2015. Consequently, the Selection Board held its meeting on 06.08.2015 in the Ministry of

Commerce under the chairmanship of Secretary Commerce. It was, in response, suggested that in terms of Life Insurance (Nationalization) Order, 1972 (LINO) the said posts were to be filled by appointment after approval of the Prime Minister and not through promotion. It was further resolved in the meeting that though in decision of 160<sup>th</sup> meeting of SLIC, BoD decided to keep one post of executive director for the federal government and the remaining four vacancies to be filled by promotion from employees within the Corporation or direct recruitment, chairperson SLIC pointed out that BoD cannot override LINO Statute. Such inference was drawn from the Establishment Division Office Memorandum dated 10<sup>th</sup> May 1997.

7. In view of these facts since previously the General Managers were being considered for promotion as Executive Directors, the Selection Board recommended four senior most General Managers who have served over five years as Senior General Manager in the Corporation, to be appointed as Executive Directors SLIC in Grade M-II in order of seniority. This recommendation of the Selection Board was declined and the office of the Prime Minister has observed as under:-

*“In terms of State Life Directors (Remuneration) Rules, 1973 the post of Executive Director of the Corporation is meant for initial appointment. Therefore, proposal of the Ministry for promotion of General Managers to the post of Executive Director cannot be acceded to.”*

8. The State Life Insurance Corporation was requested to take further action in this regard. Aggrieved of this decision of the office of the Prime Minister, the petitioner has preferred this petition.

9. We have heard the learned counsel and perused the material available on record.

10. The only consideration while declining the recommendation of the Selection Board was that the State Life Directors (Remuneration) Rules, 1973 for the post of Executive Directors of the Corporation talks about

initial appointment and since the proposal of the Ministry was for promotion of General Managers to the post of Executive Director, therefore, it cannot be acceded to.

11. The State Life Directors (Remuneration) Rules, 1973 define “Executive Director” as the one appointed by the Chairman with the previous approval of the Federal Government as an Executive Director to work as a whole time officer. It is nobody’s case that at the time of approval from Federal Government or at the time when the recommendations were declined, “the Cabinet” (Federal Government) was not taken into consideration therefore, we would not comment on it. We would thus confine our observations to the extent of two laws relied upon and expound it. There is nothing like word “initial appointment” as mentioned in the impugned letter of the Ministry of Commerce & Textile, Commerce Division in the *ibid* rules. Thus, the word “initial appointment” is alien insofar as *ibid* Rules of 1973 are concerned.

12. The word “appointment” came under consideration on many occasions while dealing with service issues of the employees. There are in fact three modes of appointments; the first and the foremost is direct appointment; the second is by way of promotion; and third by way of transfer. So by no means the appointment by way of promotion or appointment by way of transfer could be excluded from the purview of appointment and appointment by initial or direct appointment could be made as the only recourse. Yes it is one of the way, but not the only way.

13. The consideration of the question, as narrowed down, is based on two pieces of legislation i.e. Life Insurance (Nationalization) Order, 1972 and the State Life Directors (Remuneration) Rules 1973. The controversy, which is summarized by the petitioner, is an impugned

letter of 01.01.2018 which declined the summary of the Ministry of Commerce by Prime Minister for the appointment of General Manager to the post of Executive Director SLIC.

14. There is no cavil to this proposition that ever since the creation of SLIC, the configuration of the executive directors has always been made on the basis of recommendation of the Board of Directors of SLIC in the ratio of 4 x 1 and there has never been an occasion when the posts of the executive directors of the Corporation were filled by way of initial appointment/direct recruitment.

15. Furthermore, there has always been a vacant post for the government servants and the selection of such person from the government has always been followed under the Office Memorandum No.6/4/96-R3 dated 10.05.1997 which procedure is meant for the civil servants however such rationale has never formed part of the procedure insofar as filling up remaining four posts of executive directors are concerned. Those were filled by promotion from within the Corporation or by direct recruitment, as may be necessary, and it was a prerogative of Board to operate independently and autonomously and the Chairman has to inform the ministry of the above decision.

16. The impugned letter has confined such discretion only to the extent of initial appointment, which is being termed as fresh appointment or recruitment. The definition of executive directors, as available under rule 2(b) *ibid* provides that Executive Director means a director of the Corporation “appointed” by the Chairman with the previous approval of the federal government as an executive director to work as a whole time officer. Thus, there is nothing to limit appointment by way of fresh/initial appointment in the aforesaid Rules.

17. Learned Deputy Attorney General laid emphasis on the letter issued by the Secretary to the Prime Minister in November, 2017 which

also highlighted the initial appointment in Para (i). His contention was that this is to be read in terms of Section 48 of the Life Insurance (Nationalization) Order, 1973. The letter provides that right course for the ministry was to initiate recruitment process of executive directors of the Corporation in accordance with procedure of appointment in autonomous/semi-autonomous bodies as provided in Establishment Division OM dated 10.05.1997, as referred above, read with Rule 2(b) of State Life Directors (Remuneration) Rules, 1973 and after having concurrence of SECP in terms of Regulation 2(2) of Insurance Companies (Sound & Prudent Management) Regulations, of 2012, though the letter suggested that the vacant posts of executive directors could be filled through deputation till such time the required amendment is inserted in the State Life Directors (Remuneration) Rules, 1973 in terms of Section 48 of Life Insurance (Nationalization) Order, 1973.

18. Section 48 of LINO, 1973 enables the federal government to make rules by notification in official gazette as appears to be necessary or expedient for carrying out the purpose of LINO 1972. Though the necessary amendments in the Rules were never brought, as it is nobody's case, yet we realized that the appointment of executive directors of SLIC was never an object of the subject instrument i.e. Life Insurance (Nationalization) Order, 1972 that could enable the federal government to make or alter/amend the rules by way of notification in the official gazette. None of the provisions was pointed out by the respondents' counsel/Deputy Attorney General that relates to the appointment of general manager to the post of executive directors of SLIC in the LINO 1972.

19. Thus, we are of the view that the impugned letter of 01.01.2018 issued in pursuance of the orders of the authority in response to a summary of Ministry of Commerce restricting the filling of the posts of

executive directors by way of initial appointment only is not sustainable under the law and resultantly to this extent petition is allowed.

Dated:

**Judge**

**Judge**