

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Adnan-ul-Karim Memon
Justice Mrs. Kausar Sultana Hussain

Constitutional Petition No.D-3972 of 2021

(Dr. Rukhsana Iftikhar v. Province of Sindh and 02 others)

Mr. M.B. Khatian and Mr. Taveer Aftab, advocates
for the petitioner

Mr. Ali Safdar Depar, AAG

Date of hearing &
Order : **18.04.2022**

ORDER

Adnan-ul-Karim Memon, J. Petitioner seeks actualization of promotion with effect from the date of recommendation of Departmental Promotion Committee {DPC} held on 19.09.2012 of Sindh Local Government Board, inter-alia on the ground that the issue of promotion of the Petitioner falls within the purview of fundamental rights and that the same cannot be denied as provided under the Constitution. Petitioner has also cited various reasons whereby her case for the actualization of promotion was not considered by the department with the retrospective date when all her colleagues were promoted from the aforesaid date, and she finally retired in 2019. Petitioner has asserted that despite several representations made to the Respondents to consider her case for promotion during her tenure of the service as done with the junior officers who were already considered; the representations of the Petitioner were ignored in violation of the statutory Rules, 1982. Petitioner lastly submitted that her case for the actualization of promotion in BBS-19 is required to be considered from the date recommendation of DPC without discrimination. Petitioner also raised her voice of concern that her retirement benefits have not been issued since her retirement in the year 2019, which needs to be awarded to her by counting her promotion from the date of recommendation of DOC in the year 2012.

2. Mr. Ali Safdar Depar has candidly conceded the legal position of the case and submitted that the petitioner had already been promoted in BBS-19, so far as her case for the actualization of promotion with effect from the date recommendation of DPC, needs to be looked into by the competent authority under the law and her pensionary benefits if any shall be released within a reasonable time. Be that as it may, the record reflects that the petitioner was appointed as lady Doctor BPS-17 in Sindh Local Government Board in 1987 and subsequently, she earned promotion in BPS-18 and lastly she was promoted BPS-19 in the year 2012. However that promotion was withheld by Sindh Local Government Board, and finally, petitioner was considered in BPS-19 in the year 2017, and the petitioner retired from service in the year 2019.

3. 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 further consider her/his case for such a promotion and to allow him/her benefits of such a promotion, even after retirement from service. Promotion is generally advancement in rank, which is granted based on acquiring extra qualifications or enhancement of skills or awarded in lieu of longstanding services of the employee as a token of satisfaction and appreciation over services rendered by him. No doubt promotion is not the vested right of a civil/public servant but where a civil/public servant is fully qualified for the promotion and there is no tangible clog in his/her service record, he/she has a right to expect that his/her case will be considered for promotion under law, rules, regulations and eligibility criteria/policy formulated for regulating promotion by the Government.

4. In view of what has been discussed above, the instant petition is disposed of with a direction to the competent authority of Respondents to actualize the promotion of the petitioner with effect from the date of recommendation of DPC held on 19.09.2012 if there is no impediment under the law. As far as the pension of the petitioner is concerned, we are shocked to know that for several years the payment of pension to the petitioner has been withheld by the respondents, which has been a source of tremendous hardship. Prima facie, the petitioner has a qualifying length of service to her credit and she gave various reasons to claim the interest on the delayed payments. It is well-settled law that no pension granted or continued to the pensioner is liable to seizure by the department under Pension Act, 1871, and the rules, framed thereunder. Learned counsel for the petitioner has pointed out that a certain amount of the pension of the petitioner has been withheld without assigning any cogent reason. In our view pension benefits cannot be stopped on account of any charges; and, is violative of the law laid down by the Honorable Supreme Court in the case of *Haji Muhammad Ismail Memon* (PLD 2007 SC 35). Thus, the competent authority of respondents is liable to release the withheld pensionary benefits of the petitioner with profit and pay the withheld pension amount and other ancillary benefits to the petitioner to which she is entitled under the law within two weeks from the date of receipt of this order. The competent authority of the respondent is also directed to recalculate the pensionary benefits of the petitioner and increases accrued thereon the withheld pensionary benefits with effect from 22.7.2019 to date.

J U D G E

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