

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 1326 of 2022 : Saleemuddin Memon vs.
Federation of Pakistan & Others

For the Petitioner : Mr. Yasin Ali, Advocate

For the Respondent : Mr. M. Arshad Khan Tanoli, Advocate

Mr. Syed Yasir Ali Shah
Assistant Attorney Sindh

Date/s of hearing : 03.11.2022

Date of announcement : 03.11.2022

ORDER

Agha Faisal, J. The petitioner, represented to have been regularized in service in Grade 17 and presently serving in Grade 18, has impugned an advertisement¹ (“Advertisement”) issued by his employer - respondent number 3 (“PQA”) for applications from eligible candidates for recruitment / appointment and sought that the post of Manager Mechanical (BPS-19) be excised therefrom and the petitioner be promoted and appointed to the said position. *Ad interim* orders are operating since the first date of hearing and no appointment to the said post has taken place thus far.

2. Per petitioner’s counsel, acting charge of the post of Manager Mechanical had been assigned to the petitioner and it was incumbent upon PQA to promote the petitioner to the next grade and assign the said post thereto on regular basis. It was insisted that in the manifest presence of the petitioner, there was no cause for his employer to advertise a post, for which only he was eligible in any event.

3. Respondent’s learned counsel demonstrated from the record² that the post of Manager Mechanical was not an exclusive promotion post and that fresh appointment could also be undertaken in such regard. The reference in the PQA Regulations to the ratio / quota was expanded upon vide reference to a quota allocation work sheet, placed on file along with PQA’s counter

¹ Dated 16.01.2022.

² Per serial number 52 of Schedule II to the Port Qasim Authority Employees Service Regulations 2011 (“PQA Regulations”).

affidavit, and it was shown that the allowance for promotion, per the quota / ratio, stood virtually exhausted presently, while that for direct recruitment remained preponderant³.

4. Heard and perused. *Admittedly*, the PQA Regulations contemplate appointment to the post of Manager Mechanical through promotion and direct appointment. No rejoinder was filed to PQA's counter affidavit, whereby it was unequivocally demonstrated that the promotion quota stood virtually depleted, whereas, that for direct recruitment remained preeminent. There is a plethora of case law deprecating the manning of regular posts by temporary / acting incumbents, yet the petitioner appears to have cemented his acting charge as Manager Mechanical by virtue of the subsisting *ad interim* orders.

5. *Prima facie* the Advertisement appears to seek an open competitive process for appointments and no case has been made out before us to require any post to be eliminated therefrom. Promotion is an issue rested upon fitness cum eligibility and ought not to be precipitated by unjustifiable recourse to litigation. While no appointment to the relevant post has been made thus far, presumably on account of the subsisting *ad interim* orders, however, counsel has been unable to demonstrate any right of the petitioner to be the sole candidate for such post, while excluding an open competitive recruitment process.

6. In view hereof, we are constrained to observe that the petitioner's counsel has been unable to set forth a case for the invocation of the discretionary⁴ writ jurisdiction of this Court, hence, this matter was dismissed vide our short order announced at the conclusion of the hearing in court earlier today. These are the reasons for the short order.

JUDGE

JUDGE

³ Reliance was placed upon *Pakistan vs. Azam Ali* reported as 1985 SCMR 386; *Nasimul Haque Malik vs. Sindh* reported as 1996 PLC (CS) 921.

⁴ Per *Ijaz Ul Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.