

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-5681 of 2021

Muhammad Sohail

Petitioner: Through Syed Shoa-un-Nabi, advocate

Respondent No.1: Through Mr. Abdul Jalil Zubedi, AAG

Respondent No.2&3: Through Ms. Saima Anjum, advocate

Date of hearing
& Decision: 24.01.2023.

ORDER

Through the captioned petition, the petitioner is seeking direction to the respondents to consider his case for promotion to Homeopathic Doctor in the Medical Department.

2. The case of the petitioner is that he was initially appointed as a worker in BPS-1 but later in the year 1998 promoted as Head Mali in BS-5 in Parks & Recreation Department, DMC (East) Karachi. Petitioner averred that despite holding the degree of B.Com and was malafidely ignored such right of promotion to the next rank, while the persons junior to him were promoted which is apathy on the part of respondents.

3. Syed Shoa-un-Nabi, learned counsel for the petitioner, contended that under the policy decision of the Government of Sindh made in the year 16, the District Municipal Committee (DMC) west upgraded certain posts and the petitioner also deserved the same benefit by allowing his promotion to BS-11. Per learned counsel, the petitioner is a qualified and registered Homoeopathic Doctor, who applied to respondents for his promotion and appointment as Doctor in Medical Department DMC East, however, nothing has been done till today. The learned counsel argued that the respondent Department was bound to finalize the issue of promotion of the petitioner before his retirement. The petitioner has been serving the respondent Department since 1998 and he by all means was entitled to promotion with all other pecuniary benefits from the date when his juniors were promoted.

4. Ms. Saima Anjum, learned counsel for the respondents, denied the allegations leveled by the petitioner for promoting the juniors of the petitioner and contended that departmental proceedings need to be initiated to investigate the matter that, being in service, the petitioner was engaged in private practice without intimation to the department. According to counsel, promotion cannot be allowed to the petitioner because the post of the homeopathic doctor has to be filled through the initial appointment and not by promotion and this matter relates to terms and conditions of service thus the jurisdiction of this court on the subject is limited. Learned counsel submitted that the petitioner failed to avail of departmental remedies, which are equally efficacious to the petitioner. Learned counsel argued that quackery in all forms and manifestations is illegal, a quack is a person who pretends to provide healthcare services without the required registration of the PMDC, Council for Tibb, and Council for Homoeopathy and Nursing Council. These are the relevant federal authorities that register and license a practitioner in the respective field. Without this registration and licensing a person cannot practice in that field and if he or she does then they fall under the definition of a quack. Besides petitioner is a government servant and cannot be allowed to such practice. She lastly prayed for the dismissal of the instant petition.

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

6. We are of the opinion that the employee who gets a promotion depending upon their specialty and availability of vacancies in such specialty should not be allowed to march over seniors. It is a well-settled principle that eligibility itself is not the benchmark for promotion, rather the most vital yardstick is fitness, which can be judged from the service record which includes ACRs, qualification, length of service in a particular grade/scale, integrity, knowledge, and proficiency in the work/assignments, all of which are essential dynamics for weighing and appraising the merits for promotion to the post which is a quite common procedure and practice articulated under the law for considering the promotions on merit. The question whether a person is legally qualified for appointment or promotion to a particular post and grade is relatable to the factum whether he possesses the requisite qualifications for consideration, whereas the question of fitness pertains to the competency of the person concerned, which is to be decided by the competent authority and in the present case, petitioner wants promotion as Homoeopathic Doctor in the Medical Department of respondents, which requires certain qualification, whereas the petitioner is working as Head Mali in the respondent department, the question arises as to

how a Head Mali could be promoted to the post of Homoeopathic Doctor and without the required qualification and registration with the Council for Homoeopathy and Nursing Council, this court is not in a position to direct the respondents to promote head Mali to the post of Homoeopathic Doctor which is a different cadre.

7. In the wake of the above discussion, we do not find any justification in the case of the petitioner to keep his case alive on the dock of the court file. This petition is found to be misconceived and is dismissed accordingly.

JUDGE

JUDGE

Nadir*