

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-120 of 2022

Mrs. Aseem Khalid

Petitioner: In person

Respondents: Through Mr. Ali Safdar Depar, AAG

Date of hearing
& Decision: 06.02.2023

ORDER

Through this petition, the petitioner is seeking directions to the respondents to award promotion based on her seniority and length of service, *inter alia*, on the ground that she is possessing B.A, B.Ed, M.A, and M.Ed degrees and has been serving the Education Department, DMC East Karachi since last 25 years and was lastly promoted as JST in BPS-14. Per the petitioner, more than 11 years have lapsed, no promotion has been awarded to her despite good services, and her retirement is also expected on 27-1-2024.

2. Petitioner, who is present in person, has submitted that the respondent department fixed her pay in BPS-16 on 01.12.2019 however, no regular promotion has been awarded which is in direct conflict with Articles 4, 18, 25, 27, and 39 of the Constitution as well as Section 2(2) of the Sindh Service and Seniority Rules, 1973. She referred to Section 9 (2) (b) of the said Act of 1973, Rule 7 (2) of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, and submitted that she is entitled to be promoted to BPS-17 based on her educational qualification and length of service.

3. Mr. Ali Safdar Depar, learned AAG referred to the comments filed by the respondents and submitted that the promotion cannot be claimed as a vested right. As per learned AAG, no post is lying vacant in Education Department Gulshan-e-Iqbal Zone DMC (East). Learned AAG referred to seniority of J.S.T (BPS-14) maintained by the Department which shows the name of Petitioner is at Serial No.11 out of 12 officials among JST (BPS-14) and she is not entitled and eligible for the rank of BPS-17 as this rank is administrative rank. He added that as per Sindh Civil Servants Promotion Rules 1974 channel of promotion would

be cadre-wise. However, he agreed that the case of the petitioner for promotion to the next rank would be considered as per law.

4. We have heard the petitioner who is present in person and learned AAAG and perused the record with their assistance.

5. Principally, Promotion and seniority are not vested rights. Sections 8 and 9 of the Sindh Civil Servants Act, 1973 are very clear in its terms that seniority in a post, service, or cadre to which a civil servant is promoted shall take effect from the date of regular appointment of such civil servant to that post, service or cadre: Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post. Whereas, a civil servant possessing such minimum qualification as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rules for departmental promotion in the service or cadre to which he belongs. It is also provided that in case of selection post, based on selection on merit; and in the case of non-selection post, based on seniority-cum-fitness. From the above, it is clear that consideration for promotion and seniority is a vested right of a civil servant subject to the qualification enumerated under the law. So far as, section 4 (1)(b) of Sindh Service Tribunals Act, 1973 is concerned,

6. Consideration for seniority/promotion in terms of the ratio of the judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Tariq Aziz-Uddin in Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 143309-G of 2009, **2010 SCMR 1301** is the requirement of law laid down by the Honorable Supreme Court in the aforesaid cases, therefore, this Court is left with no option but to look into the case of the petitioner in the above terms and to see whether the petitioner has the requisite length of service to claim promotion to the post in BPS-17.

7. It appears from the record that the petitioner was appointed as a lady teacher by the Directorate of Education, KMC, Karachi vide appointment order dated 11.3.1985 and earned her promotion as Assistant Teacher (BPS-9) and thereafter she was awarded the post of Junior School Teacher in BPS-14 vide office order dated 17.02.2010. Petitioner is now claiming promotion in BPS-17.

8. The purpose of prescribing a particular length of service for becoming entitled to be considered for promotion to a higher grade, of course, is not

without logic as the officer/official who is initially inducted to a particular post needs to serve on the said post to gain experience to hold the next higher post and to serve the public in a befitting manner.

9. In principle, there are at least four discernable components of promotion decisions for purposes of a court exercising judicial review of the decision: (i) mandatory legal requirements, the failure to observe which can lead to procedural impropriety; (ii) objective criteria i.e. eligibility requirements that can be verified by the court based on available record; (iii) the subjective evaluation of the competence, fitness or potential of an employee that falls within the domain of primary decision-maker; and (iv) the reasoning of the decision-maker which if perverse or reflecting bias or malice or based on extraneous consideration can result in an illegal or irrational decision that can be reviewed by a constitutional court.

10. Given these components of a promotion decision, this Court would intervene and exercise judicial review of a such decision where (i) there is in breach of principles of procedural fairness or natural justice, (ii) where employment rules and criteria for promotion prescribed therein have been breached, or irrelevant and extraneous consideration have informed the decision leading to illegality, (iii) when the objective criteria regarding eligibility for promotion have been misapplied and such misapplication is evident from the record (i.e. miscalculation of years of service, etc.), and (iv) where discrimination or malice is floating on the surface for the record or the reasoning of the decision-maker is perversely leading to the conclusion, without the court indulging in any factual controversy, that the decision undermines the fundamental right of the employee to be treated under law and without discrimination.

11. In light of the above facts and circumstances of the case, the consideration of promotion of the petitioner is required to be looked at by the competent authority in line with the promotion policy as neither any seniority nor any promotion can be claimed or granted without fulfilling the promotion criteria under the relevant promotion policy/law as discussed supra.

12. The competent authority has to determine the eligibility of the petitioner and if she is found to be fit for promotion to the next rank under the policy decision, her case may be considered for promotion to the next rank in terms of the ratio of the judgment rendered by the Hon'ble Supreme Court of Pakistan in

the case of *Tariq Aziz-Uddin* in Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 143309-G of 2009, **2010 SCMR 1301**, within two weeks.

13. This petition is disposed of in the above terms along with pending applications, with no order as to costs.

JUDGE

JUDGE

Nadir*