

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

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

C.P. No. D- 2606 of 2022

(Saiqa Imdad v. Province of Sindh and 02 others)

Mr. Imtiaz Ali Solangi, advocate for the petitioner

Mr. Abdul Jalil Zubedi, AAG

Date of hearing
& Order:

17.02.2023

ORDER

ADNAN-UL-KARIM MEMON, J. – Through this Petition, the Petitioner has sought the following relief: -

a. To declare that the petitioner's right of consideration for promotion as Accountant (BS-17) accrued well before amendment in rules and she cannot be deprived of her accrued right and her deferment by DPC is illegal, malafide, arbitrary, discriminatory, irrational, without jurisdiction and in violation of principles of natural justice, equity and fairness and set aside the same.

b. To direct the respondents to convene meeting of DPC for consideration of case of the petitioner for promotion to the post of Accountant (BS-17) forthwith.

2. The case of the petitioner is that she was appointed as Sub-Accountant (BS-11) in the year, 2011, subsequently, the post of Sub-Accountant was upgraded from BPS-11 to BPS-14. Petitioner claims that she has more than 11 year's meritorious service at her credit and has qualified Departmental Examination of "Subordinate Treasury Accounts Service" conducted by Sindh Public Service Commission (`SPSC`) on 22nd March 2018. Petitioner has averred that she is eligible for promotion to the post of Accountant (BS-17) as per recruitment rules in vogue. However, she has not been considered for promotion as per recruitment rules discussed supra. Petitioner has submitted that the meeting of Departmental Promotion Committee (`DPC`) was convened on 13th February 2020 to, inter-alia, consider the cases of promotion of Assistant Sub-Accountant (BS-15) to the post of Accountant (BS-17), however, the case was deferred for unknown reasons. Petitioner further submitted that rules apply prospectively and if a right is created in favor of an employee under old rules, it cannot be taken away on any ground, and if any amendment is brought in the rules, which deprive a civil / public servant of his/her right is to be construed prospectively. She added that the reason assigned for deferring the case of the petitioner is not sustainable and the respondents are depriving her right without any justification. As per petitioner, she applied to the competent authority yet no response was given. It is emphasized that the promotion

of the Petitioner ought to be granted with effect from the date when the Sindh SPSC declared her eligible for the post of Accountant (BPS-17).

3. Mr. Imtiaz Ali Solangi learned counsel for the petitioner has submitted that decision of the DPC for deferring the case of petitioner for promotion due to the amendment in the recruitment rules is illegal, malafide, without jurisdiction, motivated, discriminatory, and in violation of principles of natural justice, equity, fairness and due process of law. That the vacancies were available before amendments in rules and the petitioner was entitled to promotion on such vacancies at the relevant time when the vacancy accrued, but the department did not promote her without offering any plausible explanation. He further submitted that the petitioner's right for consideration for promotion accrued on 22nd March 2018 when she qualified requisite departmental examination and such right cannot be taken away by giving rules retrospective effect; as subordinate legislation cannot take effect retrospectively. He next argued that the newly notified rules will not apply in the case of the petitioner and at the time of the meeting of DPC, the administrative department failed to prescribe any departmental training in Finance & Accounts, hence, the same cannot be insisted now. Learned counsel argued that the new condition in rules is discriminatory since in the cases of other identically placed officials, no requirement of departmental training was/is prescribed and they are being promoted on qualifying departmental examination. The learned counsel asserted that it is a well-settled principle of law that rules apply prospectively and if a right is created in favor of an employee under old rule, it cannot be taken away; that the failure of the respondents to promote the petitioner to the next higher grade due to amendment in the rules tantamount to taking away her right already accrued under old rules, which is not permissible. He further argued that the petitioner had an unblemished service record and the failure of the respondent to convene a meeting of DPC for a long time, particularly when a vacancy for the next grade exist, is illegal, unlawful, unconstitutional, and against the principles of natural justice. It is urged that meaningful and fair consideration for the promotion of an eligible and suitable officer is a vested right and he cannot be deprived of such right without any plausible reason. Learned counsel submitted that the petitioner has been deprived of her vested right without any justification causing serious prejudice to her seniority, prospects of promotion.

4. Learned AAG has refuted the assertion of the petitioner on the analogy that the petitioner's case for promotion as Accountant (BPS-17) was placed before the Department Promotion Committee (DPC) on 7.4.2022 and found the petitioner's

candidature fit for promotion, however, on acting charge basis under the provision of rule 8-A of the Sindh Civil Servants (Appointment, Promotions & Transfer) Rules, 1974, for the reason that petitioner lacks 05 years' length of service. At this stage, learned counsel for the petitioner submitted that her promotion was required to be made from the date when she qualified for the departmental examination conducted by SPSC in 2018.

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

6. Petitioner was initially appointed as Sub-Accountant (BS-11) in 2011, subsequently the post of Sub-Accountant (BPS-11) was upgraded to BPS-14 vide policy decision made by the competent authority on 25.5.2012 and thereafter petitioner was promoted to the post of Assistant Accountant (BPS-15) on regular basis vide office order dated 26.10.2020 in terms of the recruitment rules notified on 12.02.2020.

7. We have noticed that the promotion to the post of Accountant (BPS-17) has been made by the DPC on the upgraded post of Assistant Accountant from BPS-14 to 15, though the post of Accountant was upgraded from BPS-16 to 17 in 2012 and as per recruitment rules, the subject post was required to be filled 50% by initial appointment and 50% by promotion from amongst the Assistant Accounts (BPS-15). The up-gradation is often misconstrued as a promotion. And in this case, the petitioner and other beneficiaries have obtained promotion to the post of Accountant (BPS-17) on the upgraded post, for which a selection process, in terms of the Sindh Civil Servants Act, 1973, read with Sindh Civil Servant (Appointment, Promotion, and Transfer Rules), 1974 was/is required to be followed, which ought not to have been bypassed by the DPC. It is well-settled law that civil servants are appointed and/or promoted to the post and not to the grades.

8. To appreciate the claim of the petitioner, we have noticed that the post of Sub-Accountant (BPS-11) was upgraded to BPS-14 in 2012, and subsequently, the petitioner was promoted to the post of Assistant Accountant (BPS-15) in 2020, and as per recruitment rules notified on 12.02.2020, the post of Accountant (BPS-17) in Treasury and Accounts Service, Sindh, could only be filled 50% by initial appointment through SPSC and 50% by promotion from amongst the Assistant Accountants (BPS-15) of the Treasury and Accounts Service of Sindh subject to fulfillment of minimum service of 05 years and completion of departmental training in Finance and Accounts as prescribed by the

Administrative Department. Besides, the candidate should possess B.A/B.Sc./B.Com/BBA in 2nd Division or equivalent grade from a University recognized by the Higher Education Commission and preference to be given to the holder of a Master's degree in Business Administration (Finance), M.Com./M.Sc. (Statistics) and be between the ages i.e. 18 to 28 years.

9. The petitioner, *prima facie*, lacks the requisite length of 05 years of service in BPS-15 to claim the promotion post as Accountant (BPS-17) on regular basis and this could be the reason the competent authority has invoked rule 8-A of the Sindh Civil Servants (Appointment, Promotions & Transfer) Rules, 1974, which reads as under:

“Where the appointing authority considers it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned who is otherwise eligible for promotion does not possess the specified length of service the authority may appoint him to that post on acting charge basis.”

10. In view of the above facts and circumstances of the case, no case for the intervention of this court is made out and this petition stands dismissed along with the pending application(s).

JUDGE

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