

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D-5060 of 2023

Present:

Justice Zafar Ahmed Rajput

Justice Mrs. Rashida Asad

Petitioner : Capt. Muhammad Ali Khan, through
Mr. Malik Naeem Iqbal, Advocate.

Respondent : Federation of Pakistan, through its
No.1 Secretary for Ministry of Maritime
Affairs, through Mr. Shah Hussain,
Asstt. Attorney General for Pakistan.

Respondents : Port Qasim Authority, through its
No.2 & 3 Chairman & Director Human Resources,
Port Qasim Authority, through
Mr. Khalid Mahmood Siddiqui, Advocate.

Respondents : Capt. Bilal Maqsood & Capt. Sheikh
No.4 & 5 Anser Abbas, in person.

Date of hearing : 07.05.2024
Date of order : 21.08.2024
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ORDER

ZAFAR AHMED RAJPUT, J: The petitioner is serving as a Pilot/Tug Commander (BPS-19) under Marine Operations Cadre in the Port Qasim Authority (PQA). He being aggrieved by the Office Order, dated 18.07.2023, (**impugned Office Order**) whereby the respondents No. 4 & 5 have been posted as Dock Master and Deputy Harbour Master, respectively, has preferred this petition, *inter alia*, seeking the following relief(s):

- i. *Declare that the Office Order dated 18.07.2023 is unlawful, illegal, unconstitutional, arbitrary, discriminatory, mala fide, violative of principles of natural justice, fairness and equity and of no legal effect;*

- ii. *Direct the respondents to post senior most officer as Dock Master (BPS-19) in accordance with law;*
- iii. *Suspend the operation of Office Order dated 18.07.2023 and/or restrain the respondents, their agents, officers, sub-ordinates and/or anybody acting for and on their behalf from acting upon the Office Order dated 18.07.2023,*

2. Learned counsel for the petitioner has contended that the petitioner is entitled to the fundamental rights enshrined in the Constitution, including the right to be treated in accordance with the law and protection against exploitation and discrimination; however, these rights of the petitioner have been violated by the respondents No.2 & 3, who acting with mala fide intent and bypassing established rules and norms of seniority, have posted junior officers—respondent No. 4 as Dock Master and respondent No. 5 as Deputy Harbour Master— above the petitioner in key managerial positions through the impugned Office Order. He, while referring to numerous office orders attached to the petition, has also contended that being senior to the respondents No.4 & 5, the petitioner has a legitimate expectation of being posted as Deputy Harbour Master, and subsequently Dock Master, in accordance with the established practice whereby the senior-most officer is appointed to such positions as per the hierarchy provided under the Port Qasim Authority Employees Service Regulations, 2011, as amended in 2013 (**PQA Service Regulations**). However, in blatant disregard of the prevailing rules and practice, petitioner's juniors have been posted to these posts, carrying supervisory control over the Pilots/Tug Masters, which was done to humiliate the petitioner, undermining the service hierarchy and discouraging senior officers. He has also contended that the posting decisions fall within the jurisdiction of the competent authority, yet such

discretion must be exercised judiciously and in accordance with settled norms of equity and fair play, rather than arbitrarily or fancifully; however, the petitioner is being systematically victimized, and the impugned Office Order is part of a crafty scheme of the respondents, aimed at undermining the petitioner's career at the behest of certain individuals with vested interests. He has added that when the petitioner challenged the wrongful assignment of seniority in 2021, which matter after the dismissal by this Court is now subjudice before the Supreme Court of Pakistan, the respondents retaliated by launching a vilification campaign against him; initially, he was subjected to warning letter, which was struck down by this Court vide order passed in a writ petition, and now he has been deprived of his legitimate expectations based on his undisputed seniority compared to the respondents No.4 & 5. He has asserted that the impugned Office Order, whereby two junior officers have improperly been posted over their senior without any reason, violates the PQA Service Regulations, which do not permit postings in disregard of seniority, thus, the postings of the respondent Nos. 4 & 5 contravening the established practice of posting the senior-most officers to these positions are arbitrary and discriminatory, which are liable to be set-aside. In support of his contentions, the learned counsel has relied on the case of *Uzma Manzoor v. Vice-Chancellor, Khushal Khan Khattak University* (2022 SCMR 694) and *National Database and Registration Authority (NADRA) through Chairman, Islamabad and others* (2223 SCMR 1381).

3. On the other hand, learned counsel appearing for the respondents No.2 & 3 has maintained that the petitioner has acted in a mala fide

manner by omitting to disclose that a high-level Fact Finding Inquiry, which found serious allegations against him, recommended initiating disciplinary action. Despite this, the petitioner remained unpenalized and continues to perform pilot duties and receive shipping allowances. He has also maintained that the petitioner's challenge to the postings of the respondents No.4 & 5, who are also in BPS-19, is legally unfounded, as the authority for postings and appointments lies exclusively with the competent authority, which makes decisions based on organizational needs and the suitability of individuals, without creating vested rights for any employee. He has further maintained that the role of a marine pilot requires exceptional professionalism due to the high value of assets handled and the potential impact of negligence on sensitive waterways. He has asserted that the postings of the respondents No. 4 & 5, contrary to the petitioner's claims, have not caused any financial or administrative prejudice to the petitioner, as eligibility for future promotions is based on seniority and not upon the specific positions held. He has further asserted that the petitioner has previously filed petitions regarding the seniority list and a warning letter related to physical altercations with colleagues, which contain baseless accusations against senior management and, according to him, this conduct demonstrates a lack of professionalism on the part of the petitioner. He has added that the petitioner's allegations of mala fide intent and humiliation are unfounded and reflect negatively on his discipline and attitude toward service. Lastly, learned counsel has sought dismissal of this petition as, according to him, the grounds raised by the petitioner are untenable in light of the facts and the applicable law, as no customary practice or usage could be sought to be enforced which

is contrary to the codified law, so also, past practice could never substitute codified law. In support of his submissions, the learned counsel has relied on the cases of *Muhammad Shoaib Shaheen and others v. Pakistan Bar Council and others* (PLD 2017 SC 231), *Dr. Muhammad Saleem vs. Government of Baluchistan and others* (2023 SCMR 2119), *Uzma Manzoor and others vs. Vice-Chancellor Khushal Khan Khattak University, Karak and others* (2022 SCMR 694).

4. The learned Asstt. Attorney General for Pakistan, appearing for the respondent No.1, has adopted the arguments of learned counsel for respondents No.2 & 3, while respondents No.4 & 5, as reflected in the order dated 18.03.2024, have already informed the Court through a joint statement supported by their affidavits that they do not wish to engage any private counsel and will abide by the orders of the Court as well as those of PQA.

5. Heard, record perused.

6. It appears from the perusal of the record that the petitioner as well as the respondent No.4 are serving in Marine Operations Cadre; however, as per seniority list dated 26.12.2019 (*available at P-75 as Annexure "B" of the memo of Petition*), the latter is much junior to the former. Despite this, the respondent No.4 was posted as Deputy Harbour Master (BP-19) vide Office Order dated 04.07.2023. Being aggrieved, the petitioner earlier filed C.P. No. D-3274 of 2023 before this Court, which is still pending adjudication yet, vide impugned Office Order the respondent No.4 has now been posted as Dock Master, while the respondent No.5, who is even more junior officer to petitioner, has been

posted as Deputy Harbour Master, while the petitioner is posted as a Pilot/Tug Commander. The post of Deputy Harbour Master is a managerial post, *inter alia*, to provide in-service training to Pilots/Tug Commanders and he may also be asked to perform duties of Dock Master. Record reveals that it has been a consistent practice in PQA that the officers are posted to the posts of Dock Master, Deputy Harbour Master and Pilot/Tug Commander keeping in view their seniority roll. Hence, the petitioner has legitimate expectation of being treated in the same way by the administrative authority of PQA.

7. It has been observed by the Apex Court in the case of *Uzma Manzoor (supra)* “the doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. In fact, a legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government or a public authority. When such a legitimate expectation is obliterated, it affords locus standi to challenge the administrative action and even in the absence of a substantive right, a legitimate expectation may allow an individual to seek judicial review of a wrongdoing and in deciding whether the expectation was legitimate or not, the courts may consider that the decision of public authority has breached a legitimate expectation and if it is proved then the court may annul the decision and direct the concerned authority/person to live up to the legitimate expectation. This doctrine is basically applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate

expectation. This Court expatiated the doctrine of legitimate expectation in the "Judges Pension case" reported in PLD 2013 SC 829 with the observation that the rule of legitimate expectation is not a part of any codified law, rather the doctrine has been coined and designed by the Court primarily for the exercise of their power of judicial review of the administrative actions. As per Halsbury's Laws of England, Volume 1(1), 4th Edition, paragraph 81, at pages 151-152, it is prescribed that "A person may have a legitimate expectation of being treated in certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice."

8. Schedule-"II" of the PQA Service Regulations provides Service Cadres of PQA, wherein following six posts under Operations Cadre (Marine Operations) are provided:

1. Director ((Marine Operations) BS-20
2. Harbour Master/Dock Master BS-19
3. Pilot/Tug Commander BS-19
4. Manager (Conservancy) BS-19
5. Operation Room Officer BS-18
6. Conservancy Officer BS-18

In the instant case, it is an admitted position that the petitioner is much senior to respondents No. 4 & 5, who are holding managerial post of Dock Master and Deputy Harbour Master, respectively, while the petitioner is posted as Pilot/Tug Commander. It is also an admitted fact that as per past practice the seniors in rank have been posted on the said positions. Therefore, the petitioner has legitimate expectation of being treated in a same way owing to uniform practice and policy made and adopted by the administrative authorities of the PQA, and since in the

instant case such legitimate expectation has been eliminated, it has afforded locus standi to petitioner to challenge the administrative action of the respondents through the instant petition.

9. As regards the contentions of learned counsel for the respondents No.2 & 3 that no customary practice could be sought to be enforced which is contrary to the codified law, and that, past practice could never substitute codified law, suffice is to say that the PQA Service Regulations itself provides a pattern and design of posts in ranks one to six under Operations Cadre (Marine Operations) of PQA, which are to be assigned as per seniority roll; otherwise, it will cast doubts over the fair and square acts of the respondents No. 2 & 3 in all matters encompassing legitimate expectation.

10. For the foregoing facts and reasons, we allow instant Constitution Petition by setting aside the impugned Office Order with directions to respondents No.3 to assign a post to petitioner as per seniority roll within 30 days here of.

JUDGE

JUDGE

Tahseen/PA