

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-2717 of 2018
(Mrs. Rizwana Akhtar & others v Federation of Pakistan & others)

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 23.12.2024

Mr. Shaun-Ur-Rehman advocate for the petitioners.

Ms. Wajiha Mehdi Assistant Attorney General.

ORDER

Adnan-ul Karim Memon, J: Petitioners Mrs. Rizwana Akhtar and Rafiq Ahmed Channer pray that this Court direct respondent- Auditor General of Pakistan to implement the letter dated 17.01.2011 issued by the Respondent No.3 whereby Competent Authority extended the benefits of restoration of seniority, pay and allowances and other consequential benefits to the petitioners in the light of judgment passed by Federal Service Tribunal (FST) dated 26.04.2010, this court order dated 02.04.2010 and the Supreme Court of Pakistan order dated 05.03.2010 and clarification issued by Ministry of law dated 24.05.2010, without discrimination and Promote them to BPS-18 with all back benefits.

2. Petitioners have averred that they are Assistant Audit Officers employed since 2021. However failed the Subordinate Audit/Account Services (SAS) Examination three times, were terminated, and then reinstated after qualifying for the Pakistan Institute of Public Finance Accountants (PIPFA). The grievance of the petitioners is that they have been denied equal treatment (training, promotions) compared to their colleagues, and were not considered for earlier regularization, even though they were not nominated for promotion to BS-18 despite meeting requirements, concerning over seniority list and promotion process. They request their nomination for mandatory training for promotion to BS-18 by reviewing their previous seniority and implementation of the letter dated 17.01.2011 issued by Respondent No.3.

3. Learned counsel for the petitioners has contended that the respondents failed to implement the 2011 letter (dated 17.01.2011), denying petitioners the consequential benefits, including promotion to BPS-18. Per learned counsel, petitioners' colleagues appointed concurrently have already been promoted to BPS-18. He

added that despite numerous letters to the Auditor General and Director General Audit Sindh, no action has been taken in favor of the petitioners though clear direction was given by the Supreme Court of Pakistan, which judgment is in rem. He next argued that actions against petitioners by the respondents have been challenged due to mala fide intent (both in law and fact). He submitted that the opponent lobby continuously victimized petitioners through false accusations, causing mental distress and hindering their career progression. As per the petitioners, they were/are not nominated for mandatory training, which is illegal, discriminatory, and unfair. As per counsel, the petitioners met all recruitment criteria, including "service." Counsel requests this Court to allow the instant petition.

4. Ms. Wajiha Mehdi, Assistant Attorney General, opposes the petition and has contended that the Federal Service Tribunal has exclusive jurisdiction over civil servants disputes under Article 212 of the Constitution. It is further averred that the petitioners were offered employment with the condition of passing the PIPFA/SAS exam within three attempts, failing which their employment would be terminated. Petitioners failed to pass the exam within the stipulated attempts, leading to the termination of their services. Petitioners were re-appointed as Senior Auditors after accepting an offer with revised terms and conditions, including the forfeiture of previous seniority and experience. The Departmental Promotion Committee considered and rejected the petitioners' request for antedate promotion due to their failure to qualify for the exam. Petitioners lost their seniority due to the re-appointment and subsequent promotion of junior colleagues who had qualified for the requisite exam, which is provided in their offer of appointment. The Assistant Attorney General prayed for the dismissal of the petition.

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

6. Petitioners, appointed alongside colleagues now in higher positions, despite numerous appeals to audit authorities, have not been confirmed due to failing the SAS exam. While colleagues challenged this requirement in court and succeeded, petitioners now claim discrimination based on a 2011 letter and seek to enforce a previous Federal Service

Tribunal (FST) judgment. However, this court cannot enforce the FST order as the FST itself has the authority to enforce its own judgments.

7. Petitioners were initially offered employment conditional on passing the PIPFA/SAS exam within three attempts. After termination, they were given one more chance, which they failed. Upon accepting a fresh appointment, their services would count from the date of the regular appointment, as the previous service was forfeited due to the exam failure, per Civil Service Regulations 418 and 420. An excerpt of the same is reproduced as follows for the sake of convenience:

“418. (a) Resignation of the public service, [or dismissal] or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service.”

“420. An interruption in the service of an officer entails of his past service, except in the following cases:-

(a) Authorized leave of absence.

(b) Unauthorized absence in continuation of authorized leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the past service of the absentee is forfeited.

(c) Suspension where it is immediately followed by reinstatement, whether to the same or a different office or where the officer dies or is permitted to retire or is retired while under suspension.

(d) Abolition of office or loss of appointment owing to reduction of establishment.

(e) Transfer to non-qualifying service in an establishment under Government control. The transfer must be made by competent authority; an officer who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant in aid school entail forfeiture.

(f) Transfer to service on the household establishment of the President.

(g) Time occupied in transit from one appointment to another provided that the office is transferred under the orders of competent authority, or, if he is a non-gazette officer, with the consent of the head of his old office.

(h) Due to any other reason, provided the interruption is not due to any fault or willful act of a Government servant, such as, unauthorized absence, resignation or removal from service.”

8. The 2011 letter granted certain benefits. It is the Competent Authority's responsibility to determine if these benefits apply to the petitioners, based on the FST decision. This Court cannot intervene, as per the Supreme Court's ruling in Hameed Akhtar Niazi (1996 SCMR 1185).

This ruling has conditions, and since the petitioners failed a qualifying exam, they cannot claim equity or this Court's jurisdiction based on the Niazi case analogy.

9. In view of the above facts and circumstances of the case, petitioners have not demonstrated a case for this court's intervention under Article 199 of the Constitution.

JUDGE

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