

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-6571 of 2020

[Masood Ahmed & others v. Province of Sindh and others]

Petitioners : through Mr. Faizan Hussain Memon,
Advocate.

Respondents No.1 to 4 : through Mr. Ali Safdar Depar, Assistant
Advocate General

Dates of hearing : 07-05-2025

Date of order : 07-05-2025

ORDER

Adnan-ul-Karim Memon, J. The petitioners request that this Court declare the respondents' refusal to grant them BPS-17, following the office Notification dated 26-02-1997 issued by Respondent No. 4 as arbitrary, illegal, unlawful, discriminatory, and unconstitutional. They further pray for a directive compelling the respondents to grant them BPS-17, thereby placing them on par with their similarly situated colleagues.

2. The Water Management Officers (BPS-16) in the Agriculture Department have petitioned for BPS-17, citing a Finance Department directive from February 26, 1997. This order allows BPS-17 for officers in their position, who hold specific engineering or agriculture degrees. Their counsel contended that, having the requisite qualifications, they are entitled to this higher pay scale, just like their colleagues who have already received it. He asserted that being denied BPS-17 is discriminatory and infringes upon their fundamental rights. At this stage, we confronted him that petitioners were appointed in BPS-11 based on their qualification, however they claim to have acquired the higher qualification, whereas BPS-17 post is also a direct/promotion post. Learned counsel replied to the query and submitted that the petitioners despite serving for many years could not get promotion, after 13.01. 2020, in next rank and the Notification dated 26.02.1997 whereby the incumbents of the post of Water Management Officer (BPS-16) possessing a Degree in Agriculture, Civil, Chemical Engineering at least second Division or MSc (Agriculture) at least second Division from recognize university, were allowed in BPS-17 and the case of the present petitioner is akin to their colleagues and they want similar treatment to be meted out with them.

3. However, the Finance Department clarified that the 1997 order was intended for individuals already serving as Water Management Officers (BPS-16) at that time. The petitioners were hired as Sub-Engineers (BPS-11) on contract much later, in 2005. Their services were subsequently regularized in 2016 under the Act 2013, effective from

March 25, 2013, and they were promoted to BPS-16 in 2020. The Finance Department further pointed out that their seniority was established from January 16, 2018, a decision upheld by the Supreme Court. Additionally, a later notification from April 9, 2015, which appeared to offer similar benefits, has since been rescinded.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. At this point, the learned Assistant Advocate General (AAG) informed the court that the Notification dated April 9, 2015, which seemed to provide similar advantages, has been withdrawn. Given this, and considering the recruitment regulations for the BPS-17 positions, the relief sought by the petitioners, which is based on the Notification dated February 26, 1997, cannot be judicially reviewed and it is the policy decision of the Government of Sindh, however that should be without discrimination, if the colleagues of the petitioners were getting benefit.

6.. Primarily the promotion in next rank is to be made based on senior cum fitness coupled with availability of vacancy under the Recruitment Rules and if those rules do not equate BPS-16 positions to BPS-17, the same cannot be granted based solely on possessing specific Second-Division degrees in Agriculture, Civil, or Mechanical Engineering, or an MSc in Agriculture from a recognized university. However, it is for the respondent department to deal with the service issues of the employees in accordance with law and without discrimination.

7. In view of the aforesaid legal position of the case, this petition is dismissed with pending application(s).

JUDGE

HEAD OF CONST. BENCHES