

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEALS NO. 704 TO 706, 708, 711 AND 778 OF 2017.

(On appeal against the judgment dt. 14.03.2017 of the High Court of Balochistan, Quetta passed in CPs. No. 99/2017, 961/2016, 936 of 2016,

Sudhir Ahmed
Dawood Khan
Imran Akbar and others
Imtiaz Buzdar
Faisal Khan
Raja RahatJaved

Appellant(s)

VERSUS

The Speaker, Balochistan Provincial Assembly and others *Respondent(s)*

Govt. of Balochistan thr. its Chief Secretary, Quetta and another.

The Secretary, Industries and Commerce, Govt. of Balochistan and others

Federation of Pakistan thr. its Secretary, M/o Interior, Islamabad and others.

For the Appellant(s) : Raja Saifur Rehman, ASC
Mr. Ahmed Nawaz Ch., AOR
(absent) (in CA 704/17)

Mir Aurangzeb, AOR/AC
(in CA 705/17)

Mr. Shoaib Shaheen, ASC
Mr. Ahmed Nawaz Ch., AOR
(absent) (in CA 706 & 778/17)

Mr. Abdul Raheem Bhatti, ASC
Syed Rifaqat Hussain Shah, AOR
(in CA 708/17)

Faisal Khan, in person
(in CA 711/17)

For the Respondent(s) : Mr. Amanullah Kanrani, AG
Balochistan
Mr. Ayaz Khan Swati, Addl. AG
Balochistan

Mr. Sajjid Ilyas Bhatti, DAG
(CA 778/17)

Date of Hearing : 26.05.2017 (Judgment Reserved)

J U D G M E N T

EJAZ AFZAL KHAN, J.- These appeals with the leave of the Court have arisen out of the judgement dated 14.03.2017 of the Division Bench of the Balochistan High Court whereby it dismissed the Constitution Petitions of the appellants as being not maintainable.

2. Appellant in C.A. 704 of 2017 was working as a Senior Research Officer in BS-16 in Capital Development Authority (CDA), Islamabad. He, vide order dated 20.05.2014, was appointed on deputation as Liaison Officer in the Balochistan Provincial Assembly Secretariat for a period of three years on usual terms and conditions. He was then absorbed against the said post in BPS-17 vide notification dated 05.05.2015. He then in view of the judgment rendered in the cases of **Contempt proceedings against the Chief Secretary Sindh and others (2013 SCMR 1752)** and **Ali Azhar Khan Baloch. Vs. Province of Sindh (2015 SCMR 456)** vide notification dated 24.01.2017 was directed to report to his parent department. He filed a Constitution Petition in the Balochistan High Court against the notification which was dismissed as mentioned above.

3. Appellant in C.A. 705 of 2017, through notification dated 08.12.2016 was repatriated to S&GAD department. He filled a Writ Petition before the Balochistan High Court which was dismissed as mentioned above.

4. Appellant no.1 in C.A. 706 of 2017 was appointed as Assistant Engineer in BS-17 through the Public Service Commission in the Public Health Engineering Department vide notification dated 20.03.2007. Soon, thereafter, he was absorbed in Communication and Works Department vide letter dated 13.03.2008 which was approved by the Chief Minister Balochistan. Whereas, appellant no.2 was appointed as Assistant Civil Engineer in BS-17 in Water and Power Development Authority (**WAPDA**) on contract basis. He after clearing the written test and interview was regularized against the said post vide notification dated 17.05.2006. He then with the intervention of the Chief Minister was absorbed in Communication and Works Department vide notification dated 24.03.2007. The Government of Balochistan pursuant to the letter dated 17.10.2016 directed the appellants to report back to their parent department and on 18.10.2016 issued the order repatriating them to their parent department. The appellants questioned their repatriation through a Constitutional Petition in the Balochistan High Court which was dismissed as mentioned above.

5. Appellant in C.A. 708 of 2017 was working as Additional General Manager BS-18. He vide notification dated 09.10.2013 was appointed as Project Engineer Cadet College Killa Saifullah and Kohlu. He then was selected and posted as Project Director Cadet College Balochistan. He vide notification dated 24.10.2016 was repatriated in his parent department. He filed a Constitution Petition in the Balochistan High Court which, as mentioned above, was dismissed as being not maintainable.

6. Appellant in C.A. 711 of 2017 was appointed as Architect BS-17 in Gwadar Development Authority vide notification

dated 28.08.2008. The appellant was then confirmed against the said post vide notification dated 17.09.2008. He was then appointed as an Assistant Engineer in BPS-17 on deputation in Lasbella Industrial Estate vide notification dated 18.01.2011. Finally, he was absorbed in Lasbella Industrial Estate vide notification dated 29.12.2014. On 17.10.2016 he was repatriated to Gwadar Development Authority. He filed a Constitution Petition in the Balochistan High Court against the notification repatriating him to his parent department which was dismissed as mentioned above.

7. The appellant in C.A. 778 of 2017 was working as an Inspector BS-16 in Intelligence Bureau (IB). He possesses expertise and knowledge in the field of Information Technology and Geofencing. He was appointed as Inspector BS-16 in Islamabad Capital Territory (ICT) Police on deputation for a period of three years vide notification dated 03.07.2008. His tenure has been extended from time to time till the time he was repatriated to his parent department vide notification dated 08.02.2016. He filed an appeal before the Federal Service Tribunal which was dismissed on the ground that he being a Civil Servant of non-cadre post could not be absorbed in the ICT Police as Inspector.

8. The common argument addressed by the learned ASCs for the appellants is that when the appointment of the appellants on deputation and then through absorption was not objected to by any nor had it affected the rights of any, notification repatriating the appellants to their parent departments, being without any legal basis cannot be maintained.

9. Learned Additional Advocate General appearing on behalf of the respondents contended that where appointment by

absorption is not provided by any of the statutes regulating appointment by initial recruitment, promotion or transfer, this Court rightly directed the repatriation of all such employees to their parent department.

10. We have gone through the record and the relevant rules carefully and have considered the submissions of the learned ASCs for the appellants and the Learned Additional Advocate General Balochistan.

11. The case of the appellant in C.A. No. 704 of 2017 is that he being a Senior Research Officer in BS-16 was absorbed in the Balochistan Provincial Assembly Secretariat as a Liaison Officer. How far his appointment on deputation and then by absorption is justified is a question which could well be answered by looking into the Schedule B of The Balochistan Provincial Assembly Secretariat (Recruitment) Rules, 2009 relating to the appointment of Liaison Officers as reproduced below:

S. No.	Nomenclature & Basic Pay Scale of the Post	Minimum qualification for initial recruitment	Method of Recruitment
26.	Liaison Officer B-17	---	By Promotion from Assistant Liaison Officer B-16 with 5 years service as such.

The schedule reproduced above shows that the post of Liaison Officer cannot be filled except by promotion of an Assistant Liaison Officer BS-16 with 5 years of service. Appointment by deputation or by absorption being against law cannot be maintained. The notification repatriating the appellant to his parent department is, thus, unexceptionable.

12. Appellant in C.A. No. 705 of 2017, was appointed as a driver in BS-04 in the Planning and Development Department **(P&D)**,

Government of Balochistan vide notification dated 01.12.1992. He was then transferred to Service and General Administration Department (**S&GAD**). He, however, was retransferred to P&D. On occurrence of a vacancy of Transport Supervisor in BS-11, the appellant being senior was promoted as a Transport Supervisor vide notification dated 05.08.2008. His seniority was questioned before the Service Tribunal through an appeal before the Balochistan Service Tribunal Quetta which was allowed vide judgment dated 05.06.2013. The appellant challenged the judgment of the Service Tribunal mentioned above through a petition for leave to appeal before this Court which was allowed in the terms as under:-

"2. We have heard the learned counsel for the parties and find that the Tribunal has not adverted to the true facts of the case and one of the confusions in the matter is whether the respondent was ever transferred from P&D department to S&GAD department, if so, and not re-transferred to P&D department; obviously then in the seniority list prepared for the drivers of P&D department, he would not be shown. Whereas the claim of the respondent's counsel today is that he had never ever been transferred to the S&GAD department, but from the comments available on the record (at page 28 of the paperbook) filed by the Secretary, S&GAD before the Tribunal, find that the respondent is the employee of the S&GAD department. Be that as it may, as these factors are relevant for the purposes of the final determination of seniority of the parties and as there seems to be some discord between P&D and S&GAD department, therefore, we direct the Chief Secretary, Balochistan to look into the matter himself; ascertain as to where exactly the petitioner and the respondent are employed, and to re-determine their seniority after giving them an opportunity of hearing. Both the petitioner and the respondent are directed to appear before the Chief Secretary on 25.09.2013 and the matter of their seniority shall be finalized within one month thereafter. Accordingly, by setting aside the impugned judgment, this petition is converted into an appeal and allowed."

The case on remand from the Supreme Court was decided against the appellant vide order dated 11.11.2013 of the Additional Chief

Secretary Planning and Development Department. Appellant preferred an appeal before the Service Tribunal which was allowed vide its judgment dated 19.05.2014 in the terms as under:-

"16. In view of the above facts, it is quite clear that the Respondent No.2 (Mr. Aashiq Hussain) is an employee of S&GAD department, therefore, his claim for promotion as Transport Supervisor (B-11) is not justified, therefore the appeal is accepted and the impugned orders issued by the Respondent No.4 (Additional Chief Secretary) P&D Department, and Respondent No.1 (Deputy Secretary (Services – II S&GAD), dated 27-11-2013 and 11-11-2013 are hereby set aside with no order as to cost. File after completion be consigned to record."

Ashiq Hussain, respondent no. 2 before the Service Tribunal, discontent with the aforesaid judgment preferred leave to appeal before this Court which was dismissed vide order dated 10.11.2014 which reads as under:

"This is a service matter in which the two contestants are the petitioner Aashiq Hussain and Dawood Khan who is respondent No.4. Both are Drivers. The issue between them relates to inter se seniority. We have gone through the impugned judgement rendered by the Balochistan Service Tribunal dated 19.05.2014. The judgement is well reasoned and is consistent with the record which was available with the Service Tribunal. Learned counsel for the petitioner has, however, referred to a number of documents which he has placed on file, which admittedly were not on the record of the Service Tribunal. These documents, therefore cannot be considered by us. Considering this lapse on the part of the petitioner, learned counsel representing him, requested that the matter be remanded to the Service Tribunal. This request is also not tenable, considering that the matter is going on for many years and litigation between the contestants has seen a number of rounds, before the department concerned, before the Chief Secretary and before the Service Tribunal.

2. In view of the foregoing discussion, we find no justification for interfering in the impugned judgement, considering in mind the provisions of Article 212(3) of the Constitution. This petition, therefore, is dismissed and leave to appeal is declined."

Once the appellant was held to be an employee of P&D department by the judgment of the Service Tribunal which has been upheld by this Court, he could not be disturbed unless the judgement of the Service Tribunal or this Court is set aside through a proceeding under section 12(2) of the CPC.

13. The only point requiring consideration in C.A. No. 706 is that whether the appellants could be absorbed in the **Communication and Works department**. Before we discuss this aspect, we would like to see what is the criteria for appointment of Assistant Engineer as laid down in the appendix substituted through notification No.SOR-II(3)12/S&GAD/1533-1643, dated 23.08.1997 in the Balochistan Communication and Works Department Civil, Mechanical, Electrical and Gas Engineers (BPS-17 and above) Service Rules, 1986 which reads as under:-

“TO BE PUBLISHED IN THE NEXT
SUE OF BALOCHISTAN GAZETTE
GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMIN. DEPARTMENT
(Regulation Section-II) Dated Quetta the 23rd August, 1997

NOTIFICATION

No.SOR-II(3)12/S&GAD/1533-1643. In exercise of the powers conferred by Section 25 of the Balochistan Civil Servants Act, 1974 (IX of 1974), the Government of Balochistan is pleased to substitute the Appendix to the Balochistan Communication and Works Department Civil, Mechanical, Electrical and Gas Engineers (BPS-17 and above) Service Rules, 1986 namely :

APPENDIX
(See Rule 3(3), 5 and 7 (1).

S. NO	NOMENCLATURE OF THE POST	MINIMUM QUALIFICATION PRESCRIBED FOR INITIAL RECRUITMENT	METHOD OF RECRUITMENT
1.	Chief Engineer (B-20)	---	By selection from amongst members of the service holding the post of Superintending Engineer on the basis of seniority-cum-fitness having at least 17 years service in BS-17 and above.
2.	Superintending Engineer (B-19)	----	By selection on the basis of seniority-cum-fitness having at least 12 years service B-17 and above from amongst members of the service holding the post of Executive Engineer having a degree in Engineering
3.	Executive Engineer (B-18)	----	a) 80% by promotion on the basis of seniority-cum-fitness having at least 5 years service in B-17 from amongst the graduate members of the service in the relevant field holding the post of Assistant Engineer. b) 20% by promotion on the basis of

			seniority-cum-fitness having at least five years service in B-17 from amongst the members of the service in the relevant field holding the post of Assistant Engineer holding Diploma of Associate Engineer of B-Tech (Hons.)
4.	Assistant Engineer B-17.	---	<p>Degree in Civil, Electrical or Mechanical Engineering from a recognize University or equivalent qualification.</p> <p>a) 70% by initial recruitment.</p> <p>b) 5% by promotion from amongst holder of the post of Sub-Engineer holding the degree prior to induction to the Government service provided that in case of non availability of Sub-Engineer holding pre-service degree in Engineering in the relevant field vacancies reserved for them shall be added to the share of the category of Sub-Engineers having acquired degree during service.</p> <p>c) 5% by promotion from amongst the holder of the post of Sub-Engineers acquiring the degree during service, provided that in case of non availability of Sub-Engineers acquiring degree during service the vacancies reserved for them shall be added to the share of the category of Sub-Engineers having pre-service degree.</p> <p>Provided further that in case of non-availability of Sub-Engineers having pre-service degree or having acquired post service degree such vacancies of both of the categories be added to the share reserved for Diploma holder Sub-Engineers.</p> <p>d) 17% by promotion on seniority-cum-fitness basis having ten years service as such and having passed such examination or training if any as prescribed by the Government from time to time, from amongst the members of the service holding of the post of Sub-Engineers having three years Diploma in Associate Engineers.</p> <p>e) 3% by promotion on seniority-cum-fitness basis having ten years service as such and having passed examination or training if any, as prescribed by the Government from time to time, from amongst the members of the service holding the post of Sub-Engineers having degree of B-Tech. (Hons).</p>

By Order of
Governor Balochistan

Chief Secretary,
Government of Balochistan"

A look at the relevant table of the rules would reveal that the post of Assistant Engineer BPS-17 is to be filled by initial recruitment or promotion. There is nothing on the record to show what was that unusual which justified the deviation from the legal course. Appointment by absorption, which more often than not, is resorted to through the intervention of the people in power by ignoring the

merit, cannot be approved and upheld. Having thus considered we do not feel inclined to interfere with the notification repatriating the appellants to their parent department.

14. The case of the appellant in C.A. No. 708, too, appears to be alike inasmuch as he, in the first instance, has been appointed against a vacant post of a Project Engineer Cadet College Killa Saifullah and Kohlu and then Project Director without inviting applications and testing merit of the deserving candidates. Doling out public offices to the blue-eyed without adhering to the transparency in the process of selection cannot be upheld. The notification repatriating the appellants to their parent department thus appears to be unassailable.

15. Absorption of the appellant in C.A. No. 711 of 2017, who was working as an Architect in BS-17 in the Gwadar Development Authority also appears to be against the relevant rules because no such post of an Architect in BS-17 exists in the Lasbela Industrial Estates Development Authority (Employee's Service) Rules 2012, therefore, it cannot be upheld. Even otherwise we would be defeating the spirit of the judgments rendered in the cases of **Contempt proceedings against the Chief Secretary Sindh and others(supra) and Ali Azhar Khan Baloch. Vs. Province of Sindh (supra)** by approving the appointments of the persons who parachuted in any autonomous body, authority or department from above without undergoing the process laid down by law and the relevant rules for appointment.

16. Appellant in C.A. No. 778 of 2017 questioned the notification repatriating him to his parent department on the ground that he possessed the requisite qualification for being absorbed

against the post of Inspector in BPS-16 in ICT Police and that he has not disturbed the seniority of others. But it has not been disputed before us that he being a civil servant of non-cadre post could not be absorbed against a cadre post. It, therefore, cannot be permitted under any law notwithstanding expertise of the appellant in Information Technology and Geofencing is extraordinary. Paragraph 126 of the judgment rendered in the case of **Contempt proceedings against the Chief Secretary Sindh and others(supra)** would cover this case in all fours. We, thus, do not feel persuaded to create an exception against all the accepted norms of law and justice.

17. For the reasons discussed above, these appeals having been treated as review petitions and heard as such are dismissed while Civil Appeal No. 705 for the reasons recorded in para 77 is allowed.

JUDGE

JUDGE

JUDGE

Announced in open Court at Islamabad on _____

JUDGE

'Not Approved For Reporting'

M. Azhar Malik