

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 473/2019.

Dr. Ali Bat Khan and others

versus

Federation of Pakistan through Secretary Ministry of Planning, Development & Reforms, Islamabad, etc.

Petitioners by: Mr. Ali Nawaz Kharal and Rana Arshad Javed,
Advocates.

Respondents by: Barrister Mumtaz Ali, AAG.
Nadeem Ahmed Bhatti, Deputy Secretary and Saeed
Ahmed Rahoojo, Section Officer, M/o Planning
Division & Reforms.

Date of Hearing: 29.08.2019.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the
petitioners have prayed for the following relief:-

The instant writ petition may graciously be accepted, and a writ may graciously be issued, declaring that the act of respondents thereby to advertise the post of Chief Economist (BS-22) through and by virtue of the impugned advertisement dated 21.01.2019 and to fill in the post through direct recruitment/contract and any such acts in furtherance of the same are illegal, unlawful, exercise of discretion based on extraneous considerations and therefore void ab initio and to direct the respondents to fill the post of Chief Economist (BS-22) through regular promotion and by considering the eligible employees as mandated by the law.

This Honourable Court may as per the dictates of law and equity, mould or grant any relief deemed fit and proper in the circumstances.

2. Learned counsel for the petitioners contends that respondents No.1 & 2 have got published advertisement dated 20.01.2019 for the post of Chief Economist (MP-I Scale) (BS-22) (Economists Group, Planning & Development Division Islamabad) despite the fact that said post is a promotion post as

provided under the recruitment rules of economist group and the same could not be filled through direct recruitment.

3. Conversely, para-wise comments have been filed on behalf of Ministry of Planning, Development & Reforms and the said Ministry has taken the stance that as per method of recruitment notified on 03.10.1984 if no one is found suitable for promotion then the post reserved for promotion shall be filled by initial appointment and failing that by way of transfer. Learned AAG further argued that according to recruitment rules of Economist, the post of Chief Economist (BS-22) is meant for 100% by promotion among the suitable and eligible officers of BPS-21 of same group having 05 years service in BPS-21, however, present petitioners have not completed the said threshold, even petitioner No.1 had already retired and petitioner No.2 has not yet completed the requisite service length, whereas petitioners No.3 to 6 are in BPS-20.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioners are mainly aggrieved with the advertisement dated 21.01.2019, whereby Planning Commission, Ministry of Planning, Development & Reforms, Government of Pakistan has got advertised the post of Chief Economist (MP-I Scale), and whereas petitioners claim that the post of Chief Economist could only be filled through promotion and not by direct recruitment. The other important ground raised by the petitioners' side is the eligibility criteria while relying upon S.R.O. 789(I)/2010 dated 16.08.2010, whereby in exercise of the powers conferred by Sub-section (1) of section 25 of the Civil Servants Act, 1973 read with proviso to sub-section (1) of section 9 of the said Act, the Federal Government was pleased to make the rules i.e. Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules, 2010, which provide 02 years service length to be completed in the post of BPS-21 under Rule 4(i).

6. The controversy raised in the instant writ petition is based upon two scenarios referred above, however in order to answer the proposition, I have gone through the S.R.O. 46 (KE)/84 dated 03.10.1984, issued by Government of Pakistan Planning and Development Division, which was issued in pursuance of sub-rule (2) of rule 3 of Civil Servants (Appointment, Promotion and Transfer) Rules 1973, whereby the method, qualifications and other conditions are laid down for appointment to the posts in (BPS-17) to (BPS-22) in the Economists Group under the Planning and Development Division, whereby method of appointment as well as conditions for promotion were given in an elaborated manner. The relevant extract is as under:-

Name and Basic Pay Scale of the posts	Persons eligible	Conditions of Eligibility
1	2	3
(vii) Chief Economist (BPS-22)	Economic Advisor (BPS-21)	5 years service in (BPS-21)

7. Keeping in view the above background and separate SROs placed by the parties before this Court, I have minutely scrutinized the S.R.O. 789(I)/2010 dated 16.08.2010, whereby following criteria as well as eligibility has been laid down:-

NOTIFICATION

Islamabad, the 16th August, 2010

S.R.O. 798(I)/2010.---In exercise of the powers conferred by sub-section (1) of section 25 of the Civil Servants Act, 1973 (LXXI of 1973), read with proviso to sub-section (1) of section 9 of the said Act, the Federal Government is pleased to make the following rules, namely:---

1. **Short title, application and commencement.**---(1) These rules may be called the Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules, 2010.

(2) These rules shall apply to all posts in Basic Scale 22 in the All Pakistan Service or, as the case may be, civil service of the Federation or posts in connection with the affairs of the Federation, including the post in BS-22 as Secretary in the Secretariat Group or equivalent in the regularly constituted Occupational Groups

and Services and any such post connected with defence, hereinafter referred to as post of Basic Scale 22 in the Federal Government, but shall not apply to the technical posts specified in clause (c) of paragraph 7 (a) of the Finance Division's O.M.F.1(I)Imp/83, dated the 18th August, 1983 read with instructions issued from time to time lastly modified vide Establishment Division's O.M. No.F.8/3/2006-CP-5 dated 07-05-2009.

(3). *They shall come into force with immediate effect.*

2. **Definitions.**---*In these rules, unless there is anything repugnant in the subject or context,---*

- (a) *"Appendix" means Appendix to these rules;*
- (b) *"Appointing Authority" means the Prime Minister;*
- (c) *"Board" means the High Powered Selection Board constituted under rule 5;*
- (d) *"Government" means the Federal Government; and*
- (e) *"Secretary" means the Secretary to the Government of Pakistan.*

3. **Manner of Promotion.**---(1) *The posts in BS-22 in the Federal Government shall be filled in by promotion from amongst the officers specified in sub-rule (2) with the approval of the appointing authority on the recommendations of the Board.*

(2) *The Officers holding post in Basic Scale 21 on regular basis in an All Pakistan Service or, as the case may be, a civil service of the Federation or a post in connection with the affairs of the Federation and possession the length of service and fulfilling other conditions specified in rule 4, shall be eligible for promotion to a post in Basic Scale 22 in the respective service, group or cadre to which the officer for the time being belongs:*

Provided that the post of Secretary in BS-22 in the Secretariat Group may be filled in by promotion in the public interest from amongst officers of regularly constituted Occupational Groups and Services possessing the length of service and fulfilling other conditions specified in rule 4, holding, on regular basis, posts in Basic Scale 21.

(3) *Nothing in this rule shall prevent a post in Basic Scale 22 or equivalent already reserved for initial appointment in accordance with the method of appointment laid down under sub-rule (2) of rule 3 of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, in filling such post in accordance with such method.*

4. *Length of service and other conditions for promotion.*---An officer shall possess the length of service and fulfill the following conditions for promotion to a post in Basic Scale 22 including the post in BS-22 as Secretary in the Secretariat Group or equivalent in the regularly constituted Occupational Groups and Services in the Federal Government:

- (i) Twenty-five years service in Basic Scale 17 and above, excluding the period of suspension not counted as duty and extraordinary leave, and has completed at least two years in a post in Basic Scale 21.

8. Keeping in view the above background, it is observed that in sub-rule (2) of Rule 1 of Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules, 2010 a restriction has been imposed by using the phrase "but shall not apply to the technical posts specified in clause (c) of paragraph 7 (a) of the Finance Division's O.M.F.1)1) Imp/83, dated the 18th August, 1983, read with instructions issued from time to time". This qualification and restriction clarifies the entire proposition of rules referred by the petitioners' side that the same is only meant for occupational groups specified in Appendix-A for promotion in BS-22 but not as Chief Economist which could only be regulated on the touch stone of term "technical post" used in the above mentioned underlined portion of Rules, which further confirms that the post of Chief Economist is a technical post, the same cannot be considered on the parameters referred in the S.R.O. 789(I)/2010 dated 16.08.2010, which is only meant for promotion for the post of BPS-22 as Secretary in the Secretariat Group or equivalent in the regularly constituted Occupational Groups and Services, whereas post for the Chief Economist (BPS-22) has been explained and defined in S.R.O. 46(KE)/84, dated 03.10.1984 in terms of powers exercise conferred by sub-rule (2) of rule 3 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 read with Section 7(1)(b)(i) & (ii) of FPSC Ordinance, 1977 which requires 05 years of service in BPS-21, even the recent S.R.O. 974(I)/2013 dated 14.10.2011 is silent qua any change for the length of service in BPS-21, therefore, Chief Economist

post is considered to be a technical post and it could not be governed under the promotion rules of occupational and secretariat groups, who have different criteria.

9. The petitioners have also prayed that the impugned advertisement dated 21.01.2019, whereby the respondents have advertised the post of Chief Economist (BPS-22) to be filled through direct recruitment, be declared as null and void. In this regard the petitioners have relied upon Rule-3 of Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules, 2010, which reads as under:-

3. Manner of Promotion.---(1) The posts in BS-22 in the Federal Government shall be filled in by promotion from amongst the officers specified in sub-rule (2) with the approval of the appointing authority on the recommendations of the Board.

It has already been decided in the preceding paragraphs that the above referred Rules do not relate to technical post of Chief Economist (BPS-22) and at the same time the said post does not fall within the ambit of Establishment Division, Government of Pakistan, rather the same falls within the ambit of Planning and Development Division, Government of Pakistan. Hence, the petitioners cannot ask for any relief on the basis of Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules, 2010.

10. The above referred stance taken by the petitioners is not supported by the basic legislation i.e. S.R.O. 46 (KE)/84 dated 03.10.1984, issued by Government of Pakistan, Planning and Development Division, which exclusively deals with methods, qualifications and other conditions for appointment to the posts in (BPS-17) to (BPS-22) in the Economists Group under the Planning and Development Division. In the said SRO under the heading Method of appointment, condition (c) reads as under:-

(c) if no one is found suitable for promotion then the post reserved for promotion shall be filled by initial appointment and failing that by way of transfer

From the critical analysis of the aforesaid legislations, I have reached to an irresistible conclusion that:-

- (i) Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules, 2010, issued by Government of Pakistan, Cabinet Secretariat (Establishment Division) do not regulate appointment against the post of Chief Economist (BS-22).
- (ii) Methods, qualifications and other conditions laid down for appointment to the posts in BPS-17 to BPS-22 in the Economists Group under the Planning and Development Division published vide S.R.O. 46(KE)/84 is the basic legislation which regulates the conditions relating to posts of Economists Group, which does not support the stance of the petitioners taken in the instant writ petition.

11. In view of what has been discussed above, it can safely be concluded that petitioner No.1/Dr. Ali Bat Khan has retired from service, whereas petitioners No.2 to 6 have failed to meet out the required service length and they could not be considered for promotion at this stage, therefore, the petitioners are not aggrieved persons in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, hence, they have no *locus-standi* to challenge the same. Accordingly, the instant writ petition is misconceived and the same is hereby **dismissed.**

(MOHSIN AKHTAR KAY/ANI)
JUDGE

Announced in open Court on 3rd Sept, 2019.

JUDGE

Zahid