

## **JUDGMENT SHEET.**

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

**W.P. No. 4443/2018.**

Safoora Hussain

***Versus***

The Secretary, Establishment Division, Government of Pakistan, Islamabad, etc.

**Petitioner by:** Mr. Yasser Latif Hamdani, Advocate.  
Barrister Omer Azad Malik, Advocate.

**Respondents by:** Barrister Muhammad Mumtaz Ali, AAG.  
Muhammad Asif, Section Officer, M/o Human Rights.  
Nadeem Arshad, Section Officer (Lit-v), Establishment Division.

**Date of Decision:** 15.11.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this Writ Petition, the petitioner has prayed for the following relief:-

*That the instant writ petition may kindly be accepted, the inaction and delay on the part of the Respondents for up-gradation of the post of Cataloger from BPS-10 to Librarian BPS-17 may kindly be declared illegal, unlawful and without lawful authority and against the policy, as a consequence, thereof, the Respondents be directed to consider the post of the Petitioner i.e. Cataloger BPS-10 for up-gradation to Librarian BPS-17.*

2. Learned counsel for the petitioner contends that petitioner was appointed as Cataloger (Library) in BPS-10 in the year 2003 in the Ministry of Human Rights/respondent No.3 and she has not been considered for promotion as there was no avenue of promotion in the hierarchy of the said ministry whereas in other ministries and departments the post of Cataloger and Library Assistant has already been upgraded and re-designated as Librarian (BPS-17); that petitioner fulfills the criteria laid down by the Establishment Division in their office

memorandum dated 20.01.2001 regarding up-gradation and re-designation of the post, hence, she is entitled for the same.

3. Conversely, learned AAG in attendance contends that in CADD Cataloger and Library Assistant have been promoted against the existing posts of Librarian and no up-gradation of the posts has been approved; that ministry/ respondent No.3 has not communicated any decision or recommendation whereby it has been stated that post requires up-gradation, even the case of petitioner does not fall within the purview of office memorandum dated 20.01.2001 called as Policy on up-gradation/re-designation of posts.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner was appointed as Cataloger in the year 2003 in respondent No.3 and still performing her duties in BPS-10 and there was no avenue of promotion of petitioner's post in the said ministry. The only grievance of the petitioner highlighted in the instant writ petition is regarding her claim of up-gradation/re-designation and promotion of her position like other similarly placed employees of Federal Government, which has not been provided in Ministry of Human Rights in terms of O.M dated 20.01.2001.

6. In order to resolve the controversy, it is necessary to go through the office memorandum dated 20.01.2001, which dealing with Policy of up-gradation/re-designation of post, the relevant extract is as under:-

2. Henceforth, the up-gradation of posts shall be considered in the following cases only:

- (a) *When it is considered necessary to up-grade certain posts in order to rationalize the administrative structure of a Ministry/Division or a Department to make it more effective or to bring about uniformity of pay scales of similar posts in different organizations.*
- (b) *Where the duties and responsibilities attached to a post have considerably increased.*
- (c) *Where pay scale of a post is considered grossly incommensurate with the qualifications and experience prescribed for appointment to that post.*

- (d) Up-gradation of a post on personal basis may not be allowed except if any officer, already holding on regular basis a higher grade post, is posted against a post, carrying lower grade, due to exigencies of service.

7. Besides the above referred policy, Establishment Division has issued O.M for standardization of pay scales and recruitment rules for librarians working in the Federal Government Organizations dated 10.08.2016, which provides the concept of Chief Librarian, Principal Librarian, Senior Librarian, Librarian and Assistant Librarian BPS 16. The relevant extract of the said O.M is as under:-

***“Standardization of Pay Scales and Recruitment Rules for Librarians Working in the Federal Government Organizations.***

Since long, the question for standardization and rationalization of pay scales, qualifications and experience for Librarians working in the Federal Government organizations has been under consideration of the government. The President has now been pleased to approve the proposal contained in paragraph-3 of Education Division's Summary bearing u.o.No.F.6-13/84-AD(Lib), dated 2-1-1984 and approval conveyed vide Establishment Division U.O.No.8/50/83-R.1., dated 21-8-1985. The contents of paragraph-3 of the Summary approved by the President are reproduced below:-

Group	Name of Post	Basic Pay Scale	Qualifications/Experience required	Type of Govt. Library
I.	Chief Librarian/Director General	20	At least Second Class Master's Degree in Library Science/Information Sciences with 17 years professional-cum-administrative experience in BPS 17 and above. Experience relaxable by one year for those holding Degree from a foreign university.  OR  Ph.D. in Library Science with 15 years experience in the relevant field.	Libraries.
II.	Principal Librarian/Director	19	At least Second Class Master's Degree in Library Science/Information Science plus 13 years professional experience in BPS 17 and above. Experience relaxable by one year for those holding degree from a foreign university.  OR  Ph.D in relevant subject plus 10 years post qualifications experience in the relevant field.	1.National Library. 2.Federal Department of Libraries. 3.Other Libraries with 150,000 or more volumes
III.	Senior Librarian/Senior	18	At least Second Class Master's Degree in Library	1.National Library.

	Documentation Officer/Senior Bibliographer/Senior Editor, National Bibliography/Deputy Director.		Science/Information Sciences/Documentation plus 6 years post qualification experience in the relevant field. Experience relaxable by one year for those holding Degree from a Foreign University.	2.Federal Department of Libraries.  3.Other Libraries with 50,000/- or more volumes
IV.	Librarian/Bibliographer/Planning Officer/Editor, National Bibliography/Documentation Officer/Research Officer/Assistant Director.	17	At least Second Class Master's Degree in Library Science/Information Sciences.  OR  Graduate with Diploma in Library Science from a University or Bachelor of Library Science, plus 5 years post qualifications professional experience in BPS-16 otherwise 8 years if not in BPS-16.  OR  Second Class Master's Degree in relevant subject with Diploma in Library Science or Bachelor of Library Science.	1.National Library.  2.Federal Department of Libraries.  3.Other Libraries with 15,000 to 50,000/- or more volumes.
V.	Assistant Librarian/Junior Librarian/Assistant Editor/Assistant Research Officer/Assistant Documentation Officer/Deputy Assistant Director	16	At least Second Class Bachelor's Degree with Diploma in Library Science or Bachelor of Library Science preferably with experience.	1.National Library.  2.Federal Department of Libraries.  3.Other Libraries upto 15,000 volumes.
VI	Sub-Librarian	15	Graduate with Diploma in Library Science from a University or Bachelor of Library Science.  OR  Graduate with Certificate in Library Science from institutions recognized and notified by the Ministry of Education plus two years experience.	1.National Library.  2.All other government libraries.
VII.	Library Assistant/Technical Assistant /Reference Assistant/Documentation Asstt/Cataloguer/Classifier	(1) BPS 12  (2) BPS 10  (3) BPS 9	Graduate with Certificate in Library Science from institutions recognized and notified by the Ministry of Education.  Intermediate with Certificate in Library Science from institutions recognized and notified by the Ministry of Education.  Matric with Certificate in Library Science from Institutions recognized and	1.All government libraries.

			notified by the Ministry of Education.	
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2. All Ministries/ Divisions/Departments are, therefore, advised to initiate action to upgrade/re-designate the existing professional/technical posts of Librarians and to amend their relevant recruitment rules so as to bring the same in conformity with above provisions of the approved Summary. It may, however, be clarified that the up-gradation of post implies abolition of the existing post and creation of new post in a higher grade. Up-gradation of a post does not mean automatic up-gradation of its incumbent. Appointment to the upgraded post will have to be made in the manner prescribed for the post under the existing rules. If a post is upgraded with immediate effect, the incumbent would be left without any post (in his pay scale) until he is approved for appointment to higher grade. In view of this position, Ministries/Divisions are required that, while sanctioning up-gradation of the existing posts, it should be clearly provided in the sanction letter that up-gradation of the posts would take effect from the date the post is actually filled by a person in the higher grade. This would ensure that until the existing incumbent is formally appointed to the higher grade, the post and the incumbent would continue to be in lower grade.

3. If the incumbents working against the posts which have been upgraded do not possess the requisite qualifications/experience of the upgraded post they will continue to work in their present grade and they will be allowed to improve their qualifications within a period of 5 years, failing which their grade would be a dying cadre.

4. The incumbents of posts under Group-VII carrying BPS 13 – 14 will continue to draw their pay in their present scales as personal to them, so long they hold the post and that would be a dying cadre.

5. This issues with the approval of Finance Division and Establishment Division vide NO.F.2(59)R.2/83, dated 21-11-1985 and No.8/50/83-R.1 dated 14-11-1985 respectively."

8. Keeping in view above background and the O.M, the concept of up-gradation was resorted only for the incumbents of the isolated posts, who had no avenue or channel of promotion at all. The up-gradation policy is meant for incumbents of isolated posts to address their frustration having sufficient length of service without any progression and promotion. The up-gradation was carried out under a scheme or under a policy to incentivize, encourage and give financial benefits without creating additional vacancies of higher grade. Reliance is placed upon 2017 SCMR 890 (Federal Public Service Commission through Secretary vs. Anwar ul Haq (Private Secretary) Islamabad others).

9. Besides the above referred concept of up-gradation, it is also settled that up-gradation of the post requires to establish that the department needs

restructuring, reforming or to meet exigency of service in public interest and in absence of such conditions, the up-gradation is not permissible. Similarly up-gradation cannot be made for particular individual or promotion or further provide him or her avenue. Reliance is placed upon 2015 SCMR 456 (Ali Azhar Khan Baloch vs. Province of Sindh).

10. The detail view has already been given by the Division Bench of this Court in case reported as 2017 PLC (CS) Note 58 (Chairman FBR, Islamabad Vs. Atta Muhammad Mashsud and others), whereby it has been held that:-

12. The expression "upgradation" has been examined by the august Supreme Court in the case titled 'Regional Commissioner Income Tax, Northern Region, Islamabad and another v. Syed Munawar Ali and others' [2016 SCMR 859] wherein it has been observed and held as follows:-

"The expression "upgradation" is distinct, from the expression "Promotion" which is not defined either in the Civil Servants Act or the Rules framed thereunder, and is restricted to the post (office) and not with the person occupying it. The upgradation cannot be made to benefit a particular individual in term of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs re-structuring, reform or to meet the exigency of service in the public interest. In the absence of these pre-conditions, upgradation is not permissible."

13. The august Supreme Court in the case of 'Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab and another' [2007 PLC (C.S.) 617] has observed that upgradation of a post simpliciter does not confer a right to the person holding such an upgraded post to claim the benefits as well. No right can be claimed for the benefits, such as higher pay, allowances, perks and privileges and pensionary benefits due to upgradation of the post, since the same can only be conferred on an employee pursuant to promotion. The august Supreme Court in the case of 'Government of Pakistan M/o Railways, through Secretary and others v. Jamshed Hussain Cheema and others' [2016 SCMR 442] has observed and held that discrimination cannot be raised as a valid plea in case of upgradation of a post nor up gradation of a post was a vested right. Reference is also made to the cases of 'Chief Commissioner, Inland Revenue and another v. Muhammad Afzal Khan and others' [2014 PLC (C.S.) 829], and 'Ali Azhar Khan Baloch and others v. Province of Sindh and others' [2015 SCMR 456].

14. The principles and law enunciated by the august Supreme Court and the Policy determines the scope, conditions, mechanism, locus standi of a person holding a post and appointment against a post in the context of

*upgradation of a post. The principles are, therefore, summarized as follows.-*

- (i) A post can be upgraded pursuant to a policy formulated by the Government since it is not contemplated under the Civil Servants Act, 1973 and the rules made there under or under any other law.*
- (ii) The details of the existing policy are contained in the Office Memorandum dated 20-01-2001.*
- (iii) It falls within the exclusive domain of a Ministry, Division or Department to initiate a proposal, having regard to the conditions mentioned in the Policy.*
- (iv) The proposal initiated for upgrading a post essentially has to be processed and approved in accordance with and in the manner prescribed in the Policy.*
- (v) Upgradation is distinct from promotion and, therefore, no right accrues in favour of the holder of the post except when it is sought on a personal basis under clause (d) of paragraph 2 of the Policy.*
- (vi) Upgradation can only be proposed on the basis of circumstances mentioned in clauses (a) to (d) of paragraph 2 of the Policy.*
- (vii) Up gradation of a post is not a right vested in the person appointed against it.*
- (viii) Even if a post is upgraded the person holding such a post is not entitled to claim higher pay, allowances, perks, privileges or pensionary benefits of the grade to which the post has been up graded.*
- (ix) After the competent authority grants approval and pursuant thereto a post has been upgraded, appointment against such a post cannot be made except in accordance with the Rules of 1973 or the rules which regulate appointment to such post.*
- (x) Discrimination i.e. violation of Article 25 of the Constitution cannot be pleaded as a ground for upgradation of a post.*
- (xi) If up gradation is claimed on a personal basis under clause (d) of paragraph 2 of the Policy, a constitutional petition seeking a writ of mandamus will not be competent unless the principles enunciated by the august Supreme Court in the case of District Magistrate, Lahore versus Syed Reza Kazim supra have been complied with.*
- (xii) Since a post can only be upgraded pursuant to a policy, therefore, restraint will be exercised by a High Court while exercising powers under Article 199 of the Constitution.*

11. While considering the entire law and details discussed above, case of the petitioner comes under the up-gradation policy, because other similar departments have provided different avenues for the promotion of Cataloger

and Library Assistant which is not available in the department/respondent No.3, although the said ministry is the best judge to settle this question but respondent No.3 has not demonstrated from record that they have any objection on the up-gradation of the post in accordance with the rules as well as O.M. issued by the Establishment Division while dealing with the standardization of pay scales and recruitment rules for librarian working in the Federal Government Organizations.

12. Keeping in view the above position, petitioner is entitled for benefit of up-gradation, therefore, instant writ petition stands disposed of with direction to the Secretary Ministry of Human Rights/respondent No.3 to consider the time frame on which petitioner has performed her duties as Cataloger, nature of duties, increase in work as well as higher qualification of the petitioner with the available avenues in the said ministry for promotion of the petitioner on relevant post, if such post is not available and respondent No.3 comes to an opinion that no such post is available, they can transmit the case of the petitioner under the up-gradation policy as well as standardization of pay scales and recruitment rules for Librarians working in the Federal Government Organizations. It is expected from respondent No.3 to decide the said issue within period of three (03) months, where-after matter shall be transmitted to Establishment Division for their consideration under law as well as under the policy discussed above. It is expected from the concerned ministry as well as from the Establishment Division to decide the matter within reasonable time.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid