

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.1177/2020

Shahid Tufail Khan, etc

Versus

Zarai Taraqiati Bank Limited, etc

Petitioners by : M/s Barrister Afzal Hussain, Umer Ijaz Gillani, Arsalan Binyamin and Abdur Rashid Awan, Advocates in their respective petitions.

Respondents by : M/s Habib Ahmed Bhatti, Tahira Rashid and Hafeez Ur Rehman, Advoctes for ZTBL. Syed Muhammad Tayyab, Deputy Attorney General.

Date of Hearing : **02-03-2021.**

ATHAR MINALLAH, C.J.- Through this consolidated judgment, I shall decide the instant petition alongwith Writ Petition Nos.1084, 1143, 1144, 1181, 1394, 1714, 1715 and 1716 of 2020.

2. The petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 because they are aggrieved on account of failure on part of the President of the respondent Bank to ensure that the judgment of the august Supreme Court, dated 02.07.2018, passed in Civil Petitions No.797 and 834 to 836 of 2018, titled 'Zarai Taraqiati

Bank Ltd, Islamabad and another vs. Syed Shad Muhammad Shah, etc' (hereinafter referred to as the "**Judgment**") is implemented in letter and spirit.

3. The facts, in brief, are that the petitioners were promoted to the post of Vice President. They had opted to be governed under the Staff Regulations, 2005 (hereinafter referred to as the "**SR, 2005**"). There are two distinct categories of employees in the respondent Bank. One category had given the option to be governed under SR, 2005 while the terms and conditions of employees in the other category continued to be dealt with under the Agriculture Development Bank (Staff) Service Regulations, 1961 (hereinafter referred to as the "**SSR, 1961**"). The petitioners who were governed under SR, 2005 were promoted to the next higher grade i.e. the post of Vice President on the basis of the principle of open merit/competitive process. The promotions were later challenged by employees who were governed under SSR-1961. The petition was allowed by the learned Peshawar High Court vide judgment, dated 10.01.2018. The learned Peshawar High Court had directed the respondent Bank to consider the aggrieved petitioners for promotion without disturbing the promotions granted to the employees who were governed under SR,2005. The judgment of the learned Peshawar High Court was assailed by the respondent Bank before the august Supreme Court and which led to passing of the Judgment by the apex Court. The relevant portion of the Judgment is reproduced as follows:-

"The officers who are optees under SR, 2005 and respondent-officers governed by SSR, 1961 are purportedly treated by the petitioner-Bank as belonging to two categories of staff, each governed by their respective service Regulations. A dispute between these groups about the terms of their service was decided by this Court in Civil Appeal No. 792 of 2013 dated 08.04.2014 titled Zarai Taraqiat Bank Limited (ZTBL) and others versus Riaz Muhammad. This judgment upholds SR, 2005 to the extent of higher salary, perquisites and financial benefits in the terms of service of the employees governed thereby. The criteria of promotion laid down in Regulation 17 of SSR, 1961 and clauses 2 and 3 of the Promotion Policy 1999 have statutory backing (as already noted above). These cannot be by passed by resort to the competitive assessment method for promotion under SR, 2005 because the latter have a lower legal status than the SSR, 1961. The impugned memoranda have recorded promotions that were made on competitive merit contrary to the method of seniority-cum-fitness laid down by SSR, 1961. Unless, a valid legal provision giving superior or equal legal status to the promotion criteria in SR, 2005 vis-à-vis SSR, 1961 is made, the office

memoranda dated 08.04.2015 and 21.04.2015 ineffectively assume the creation of a new channel of promotion. Therefore, the promotions purported to be conferred on the optees under SR, 2005 are flawed.

In order for a parallel promotion channel to be established, it is necessary to have a legally binding quota of allocation of seats among officers who are subject to the SSR, 1961 mechanism and those who are optees under SR, 2005. Equally, for separate promotion channels there ought to be separate seniority lists of officers in each category; unless the competitive channel is open to all. None of this has been done in the present case. The foundation of the impugned action, namely, separate service cadres having different promotion criteria is, therefore, lacking. Although the impugned action is claimed to be based on the laudable method of competition on merit statedly under transparent criteria for promotion to the higher grade, this cannot prevail over the criteria laid down in SSR, 1961 for reasons already stated. Indeed promotions made on the basis of competitive selection on merit are credible and promising; however, their legal status requires protection by amending SSR, 1961 or by

*incorporating a new promotion channel in regulations having similar legal backing. The superiority of such a method lies in its fairness and transparency to employ relevant, verifiable and objective criteria of promotion. Indeed, this Court has not only approved but directed the adoption of objective standards as the lawful method for assessing merit for promotion. Reference is made to **Federation of Pakistan Vs. Muhammad Arif** (2017 SCMR 969) and **Orya Magbool Abbasi Vs. Federation of Pakistan** (2014 SCMR 817) wherein it was held that open, transparent, objective criteria of promotion applied on the basis of tangible record fulfills the requirements of fairness, due process and procedural propriety. Therefore, in the present case the impugned action can sustain if its method of promotion is competently framed as part of the existing legal framework or is separately backed by adequate law and is based on suitable objective criteria under transparent and verifiable decision making in a process that is open to scrutiny.*

Be that as it may, the petitioner claims that the respondent officers were too junior on the seniority list of SSR, 1961 officers and, therefore, they were not eligible for the 248 promotion seats of Vice Presidents filled by officers from such list.

Therefore, the respondent officers now wish to dislodge the 112 promotees who are optees of SR, 2005. Such an enterprise concedes the respondents' or else they would have lower merit competed for the 112 seats taken by SR, 2005 optees. This is thus a case in which the equities in the pleas of the contesting parties must be kept in mind. Rather than forcing the petitioner-Bank to consider the respondent-officers for promotion as directed by the impugned judgment, irrespective of the Bank's need and existence of vacancies, it would be equitable to maintain a balance between the rival interests of the contesting parties. More importantly, for any public sector organization it is essential to promote merit among its employees. Accordingly in the circumstances of the case, it would be fair to give the petitioner-Bank time to improve its human resource management structure by rectifying its existing legal deficiencies. The petitioner-Bank is granted 03 months from the issuance of a certified copy of this judgment to take appropriate action for establishing the requisite legal framework to sustain the promotions made purely on merit in addition to those granted on the criteria of seniority-cum-fitness. In case the petitioner-Bank cannot accomplish that milestone in

the time allowed, the impugned memoranda dated 08.04.2015 and 21.04.2015 shall to the extent of the promotes selected from among SR, 2005 officers be deemed to be ineffective on account of their conflict with the terms of SSR, 1961. In such event, the 112 seats held by officers who are optees of SR, 2005 shall subject to requirements of law be filled afresh according to the criteria of promotion laid down in SSR, 1961. As a result the impugned judgment is upheld substantively with allowance of time to the petitioner-Bank to comply with the consequential direction."

4. The respondent Bank filed a review petition before the apex Court and it was dismissed vide order, dated 05.12.2019. It is noted that the Board of the respondent Bank remained dysfunctional and it appears that no meeting of a lawfully constituted Board was held after 31st May, 2017. The Federal Government for reasons best known to it, had failed to constitute the Board. It was ultimately constituted vide notification, dated 30-12-2020 pursuant to direction given by this Court. It appears from the record that in the absence of a lawfully constituted Board, the President of the respondent Bank had been purportedly exercising its powers. It appears from the record that this arrangement continued since 2018 till the Board was duly constituted vide notification, dated 30.12.2020. The impugned notifications, dated 06.03.2020 were issued pursuant to the decision of the President of the respondent Bank.

5. The learned counsel for the respondent Bank was asked to satisfy the Court whether the President of the respondents Bank was empowered to take decisions during the absence of a Board constituted under the law. He has referred to section 11 of the Banks (Nationalization) Act, 1974 (hereinafter referred to as the "**Act of 1974**") in support of his contention that the President was empowered to formulate policies and to take decisions relating thereto. The said section is reproduced as follows:-

"11. General provisions pertaining to management of banks.-(1) *Subject to subsection (2) a bank shall have a Board consisting of-*

(a) a President, who shall be its Chief Executive; and

(b) not less than five and not more than seven other members 17including one or more directors whose election by the private shareholders, removal and other matters shall be governed by the companies ordinance, 1984(XLVII of 1984).

(2) The Federal Government may, if it deems necessary, appoint a Chairman of the Board in respect of a bank.

(3) The Chairman, the President and other members of the Board representing the Federal Government's direct and indirect shareholding-

- (a) *shall be appointed by the Federal Government in consultation with the State Bank, for a term of three years, on such terms and conditions as may be fixed by the General Meeting of the bank: provided that the Chairman and the President shall be appointed from amongst professional bankers whose names are included in a panel of bankers qualified to be the Chairman or the President, which panel shall be determined, maintained and varied, from time to time, by the State Bank;*
- (b) *may be removed for misconduct or physical and mental 16 Section 10 and 11 substituted w.e.f. 21-01-1997 vide *Ordinance No. VIII of 1997 * Act No. XVIII of 1997 dated 7-6-1997 17 Added by Finance Act 2007, vide the Gazette of Pakistan, Extra, Part-1, dated July 02, 2007, page-447. 18 Added by Finance Act 2007 published vide the Gazette of Pakistan, Extra, Part-1, dated July 02, 2007, page-447. 12 incapacity before the expiry of the three years term by the Federal Government in consultation with the State Bank;*
- (c) *shall stand removed if he becomes ineligible on any of the grounds specified in sub-section (12);*

(d) *may be re-appointed by the Federal Government, in consultation with the State Bank of Pakistan, for a further period of three years.*

(4) *The general direction and superintendence of the affairs and business of a bank, and overall policy making in respect of its operations, shall vest in its Board.*

(5) *The Board shall determine-*

(i) *the credit policies of the bank;*

(ii) *evaluation criteria for the performance of the employees of the bank other than the President;*

(iii) *personnel policies of the bank including appointment and removal of officers and employees;*

(iv) *guidelines for entering into any compromise with borrowers and other customers of the bank; and*

(v) *any other policy matter.*

(6) *The Chief Executive and other officers of the bank shall act in accordance with the policies, criteria and guidelines determined by the Board.*

(7) *The board shall appoint committees from amongst the executives of the bank, and determine the powers, functions and duties of such committees.*

(8) *Where the Federal Government has appointed a Chairman he shall preside over the meetings of the Board, and in case a Chairman has not been appointed, then the President shall preside over the meetings of Board. In the absence of the Chairman or the President, as the case may be the directors may elect one of its members to preside over the meetings.*

(9) *The President, subject to the control and directions of the Board, shall exercise powers of management of the affairs of the bank.*

(10) *All selections, promotions and transfers of employees of banks except the President and decisions as to their remuneration and benefits shall be made by the President in accordance with evaluation criteria and personnel policies determined by the Board.*

(11) *The Board, the President and other officers shall exercise their powers and discharge their duties in accordance with sound banking principles and prudent banking practices and shall ensure compliance with regulations and directions that may be issued by the State Bank from time to time.*

(12) *No person shall be eligible for appointment as the Chairman, the President, or a member of the Board if-*

(a) *he is or has at any time been, adjudged an insolvent or has suspended payment or has compounded with his creditors; or*

- (b) *he is a minor or is found a lunatic or of unsound mind; or*
- (c) *he is not citizen of Pakistan; or*
- (d) *he was at any time in the service of Federal Government or a corporation controlled by any such Government or in the service of a bank and was dismissed; or*
- (e) *he is a person against whom any action has been taken or any proceedings are pending under section 412 of the Companies Ordinance, 1984, (XLVII of 1984), or section 83 of the Banking Companies Ordinance, 1962 (LVII of 1962); or*
- (f) *he is, or has been convicted for tax evasion under any law for the time being in force; or*
- (g) *he is a member of the Senate, National Assembly, any Provincial Assembly or an elected Member of a local council constituted under any law relating to local councils; or*
- (h) *he is holding an office in a political party."*

6. The learned counsel for the respondent Bank has argued that paragraph 3 and 4 of the Judgment unequivocally highlights the legal position. He has argued that since the direction given by the august Supreme Court could not be implemented within the specified

timeframe, therefore, the President was left with no option but to pass the impugned orders.

7. The learned counsels for the petitioners have also been heard at great length. They have mainly argued that in the absence of a validly constituted Board, the President was bereft of jurisdiction or authority to take decisions relating to policy matters. They have argued that implementation of the august Supreme Court's direction given in the Judgment required taking policy decisions. They have also asserted that by keeping the Board dysfunctional for almost three years, the implementation of the Judgment of the august Supreme Court was delayed and frustrated.

8. The learned counsels for the parties have been heard and the record perused with their able assistance.

9. The learned counsel who has appeared on behalf of the respondent Bank has rightly pointed out that the august Supreme Court in paragraph 3 and 4 of the judgment has highlighted the legal status governing the terms and conditions of the two distinct categories of employees of the respondent Bank. However, the argument that the President was not left with an option other than to issue the impugned notifications because the time specified by the august Supreme Court had lapsed, does not appear to be reasonable. Section 11 of the Act of 1974 has been reproduced above. The Board is exclusively vested with the power and jurisdiction to consider and take decisions relating to formulation of policies. The policies

regarding evaluation criterion and personnel are within the domain of the Board.

10. The relevant portions of the Judgment have been reproduced above. The august Supreme Court while appreciating formulation of a promotion policy based on merit and transparency has, however, highlighted the legal lacunas, which have created contradictions rendering the prevailing scheme of promotions not sustainable in law. The august Supreme Court had set the specified timeframe so that the competent authority could consider the matter and endeavor to remove the legal hurdles without disturbing the accrued rights of the petitioners. In response to a query, the learned counsel for the respondent Bank has conceded that the august Supreme Court was not informed regarding the absence of a duly constituted Board. A plain reading of the Judgment shows that the august Supreme Court had referred the matter to the authority which was competent to consider and formulate a policy regarding human resource management. In the case in hand, the competent authority was the Board of the respondent Bank. As noted above the Board was not constituted when the Judgment was rendered nor this crucial fact was brought to the notice of the apex Court. The Judgment could not have been implemented in the absence of a validly constituted Board. The fate of notifications/memorandums, dated 08.04.2015 and 21.04.2015 was dependent on implementation of the first limb of the direction i.e. formulation of a policy by the competent authority regarding human resource management while the second limb was to set a specified timeframe for this purpose. In case the

competent authority after considering the matter had come to the conclusion that it was not possible to overcome the legal hurdles, only than the promotion notifications were to be recalled. The failure on part of the Federal Government to constitute a Board had obviously delayed the implementation of the Judgment in letter and spirit. The Board has now been constituted and, therefore, the impediment in implementing the Judgment has been removed.

11. In the light of the above discussion, the petitions are allowed and the impugned orders are hereby set-aside. The Judgment is directed to be placed before the recently constituted Board so that the directions given by the august Supreme Court could be considered and appropriate policy decisions are taken within the specified timeframe i.e. 03 months. For the benefit of the Board, the relevant portion required to be considered and implemented is as follows;

"More importantly, for any public sector organization it is essential to promote merit among its employees. Accordingly in the circumstances of the case, it would be fair to give the petitioner-Bank time to improve its human resource management structure by rectifying its existing legal deficiencies. The petitioner-Bank is granted 03 months from the issuance of a certified copy of this judgment to take appropriate action for establishing the requisite legal framework to sustain the promotions made

purely on merit in addition to those granted on the criteria of seniority-cum-fitness. In case the petitioner-Bank cannot accomplish that milestone in the time allowed, the impugned memoranda dated 08.04.2015 and 21.04.2015 shall be deemed to be ineffective on account of their conflict with the terms SSR, 1961. In such event, the 112 seats held by officers who are optees of SR, 2005 shall subject to requirements of law be filled afresh according to the criteria of promotion laid down in SSR, 1961.”

12. This Court expects that the Board will endeavor to comply with the Judgment in letter and spirit.

(CHIEF JUSTICE)

Asif mughal/*