

JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD.

W.P. No. 1021/2010

Rakhshinda Habib
Vs.
Federation of Pakistan etc.

Petitioner by: -	M/s Abdul Rahim Bhatti and Yasir Rahim Bhatti, Advocates
Respondents by: -	Syed Jalil Hussain, D.A.G. and Rao Abdul Ghaffar, standing counsel Kashif Jamil, Assistant Director, M.O.F.A. (SSA)
Date of hearing: -	<u>03-06-2013</u>

Riaz Ahmad Khan J: - This judgment is directed to dispose of W.P.
No. 1021/2010.

2. Brief facts of the case are that husband of the petitioner, namely Habib-ur-Rehman was Director General in Ministry of Foreign Affairs. His case for promotion to BS-21 was placed before Central Selection Board on 22-06-2002, but he could not be promoted. Again, his case was placed before Central Selection Board on 30-12-2003, but again he could not be promoted. Third time, his case was placed on 19-06-2004, but again the Board did not find him fit for promotion; thus he was superseded. He then preferred departmental representation, which was rejected vide impugned order dated 20-10-2004. The petitioner's husband then filed appeal No.174(R)/CS/2004 before the Federal Service

Tribunal, Islamabad, but unfortunately on 04-06-2007, he died, therefore, his appeal pending before Federal Service Tribunal, Islamabad abated. The wife of said Habib-ur-Rehman then filed the present writ petition with the prayer that the decision of supersession be declared as illegal and without any lawful authority and that the respondents be directed to grant financial benefits of BS-21 to the petitioner.

3. Learned counsel for the petitioner submitted that two times the husband of the petitioner was entitled to promotion, but was denied due to non-availability of performance evaluation reports for the year 1983, 1994 and 1997. The promotion to late husband of petitioner could be deferred till completion of service record of petitioner's husband, but he could not be superseded. Third time, promotion was denied to the late husband of the petitioner on the ground of policy known as best of the best, which was struck down by the Hon'ble Supreme Court of Pakistan in Civil Petition No. 836 & 837 of 2006 and 2011 SCMR 295. Learned counsel further submitted that though after the death the late husband of the petitioner cannot be promoted, nevertheless the legal heirs could be granted benefits of BS-21. It was further submitted that since the said relief cannot be granted by the Federal Service Tribunal and after the death of the husband, the appeal before Tribunal abated, therefore, the only remedy available to the wife

of the petitioner was to file writ petition. In support of his contention learned counsel referred to 2005 PLC (C.S.) 1424.

4. On the other hand, learned Deputy Attorney General submitted that late husband of the petitioner could not be promoted in the year 2002 and 2003 for the reason that he failed to obtain the required threshold. In 2004, 2005 and 2006, he was not promoted for the reason that he did not meet the criteria of excellence and comparative merit, though all 3 times, he had attained the required threshold. Learned Deputy Attorney General submitted that the petition suffers from laches, as husband of the petitioner died in 2007 and the writ petition was filed in 2010.

5. I have heard learned counsel for the parties and have also perused the record.

6. Admitted position in the present case is that petitioner husband in the year 2004, 2005 and 2006 had attained required threshold, but could not be promoted due to the policy known as best of the best, the criteria of excellence and comparative merit. The said policy had no basis and the Hon'ble Supreme Court of Pakistan had struck down the same. In this respect, reference may be made to judgment of Hon'ble Supreme Court of Pakistan in Civil Petition No. 836 & 837 of 2006 and 2011 SCMR 295. As far as the second contention regarding laches is concerned, the same is not correct for the reason that the loss being caused to the

petitioner is on yearly basis and it is recurring loss, therefore, it cannot be said that the petition suffers from laches.

7. Had the petitioner been alive, he would have been promoted, as the policy of best of the best and criteria of excellence and comparative merit had already been struck down by the Hon'ble Supreme Court of Pakistan. After his death, he could not be promoted and the appeal rightly abated. However, in judgment reported as 2005 PLC (C.S.) 1424, it was held by the Hon'ble Supreme Court of Pakistan that pensionary benefits could be extended to the legal heirs of the deceased employee.

8. In the above said circumstances, the respondents are directed to consider the case of late Habib-ur-Rehman for promotion to BS-21 and if he is found entitled, the benefits of BS-21 be extended to the heirs of Habib-ur-Rehman. The petition is accordingly disposed of.

(Riaz Ahmad Khan)
Judge

Announced in the open Court on 13-06-2013

Approved for reporting.

Judge

Wajid