

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

WRIT PETITION No. 40/2011

SYED TALLAH SHAH,

VS.

FEDERATION OF PAKISTAN, ETC.

PETITIONER BY: *Barrister Syed Masood Raza, Advocate for petitioners.*

RESPONDENT BY: *Mr. Arshad Mehmood Kiani, learned DAG.*
Mr. Asaf F. Vardag, ASC for respondent No.2 & 3.

DATE OF HEARING/DECISION: 18.11.2016.

SHAUKAT AZIZ SIDDIQUI; J: Petitioner invoked the Constitutional jurisdiction of this court by way of filing instant Writ Petition with the following prayer:-

“It is therefore, most respectfully prayed that writ may be issued by declaring the impugned order of promotion of the respondent No.3 illegal, unjustified, arbitrary exercise of powers and without lawful authority, and in consequence thereof, the respondent No.1 and 2 may be directed to reconsider the promotion of the petitioner with effect from the date when respondent No.3 was promoted with all consequential back benefits in the interest of justice.

It is also prayed that respondent No.1 and 2 may be restrained not to promote any other junior officer of the respondent No.2 till final decision of this writ petition and promotion of the petitioner; it is also prayed that respondent No.2 may also be restrained not to change the present seniority list maintained by the corporation i.e respondent No.2.”

AND presented the facts as under:-

2. That petitioner was appointed as Area Manager in the Utility Stores Corporation of Pakistan, w.e.f 28.01.1988 on merits through prescribed procedures and was posted at Utility Stores Corporation Lahore Region, Lahore as an Area Manger. Petitioner being Manager performed his duties and responsibilities to the best of his abilities, skills and without any complaint from his superiors. That petitioner performed and carried out the tasks assigned by his superiors, in the best interest of Corporation and in recognition of the same was awarded five times best

performance certificate during his posting as Area Manger, CDC. Further, in recognition of his hard work and dedication to duty petitioner was promoted to the post of CDC Manager in BPS-17 w.e.f 27.09.1992 and thereafter to BPS-18 w.e.f 07.06.2004 and lastly to BPS-19 w.e.f 01.06.2007. That despite discharging the assigned duties, responsibilities and other obligatory functions in a most satisfactory manner and contributing to great extent in the growth and development of the Corporation, petitioner was superseded in the DPC meeting held in October, 2008 in an unjust and arbitrary manner. Instead a junior officer was promoted to BPS-20 despite the fact that petitioner was fully qualified and otherwise eligible for the said promotion.

3. Learned counsel for petitioner argued that petitioner has been deferred in an illegal, arbitrary and unjust manner despite the fact that he was senior to respondent No.3 who promoted to BPS-20 in preference over petitioner, in gross violation of the service rules of the Corporation and law of the land. That petitioner is fully qualified and eligible for promotion to BPS-20 in terms of fitness, seniority, qualification, previous outstanding performance having no adverse remarks on his count and prescribed length of service but has been deprived of his legitimate right and expectation to be promoted to the next higher grade in violation of case laws reported as 2003 PLC (CS) 503 and PLC (CS) 103. Learned counsel further submitted that consideration for promotion in a transparent manner is vested right of an employee and in this regard departments have been provided with the guidelines by the august Supreme Court of Pakistan. That admittedly, there is no complaint whatsoever against petitioner with regard to his work, conduct and performance, nor any adverse remarks ever recorded while conveying the ACRs. Therefore, in absence of such, there remains no legal justification to deprive him from his legal right. It is further contended that it has authoritatively been held by the august Supreme Court of Pakistan in a number of cases that where a civil servant was eligible for promotion to next higher grade and had been unjustly ignored, he could be ordered to be promoted from the date his junior was promoted. In this regard learned counsel for

petitioner placed his reliance on case law reported as 2004 PLC (CS) 62, 2002 SCMR 574 and 1990 SCMR 1692. Learned counsel added that departmental authorities are not supposed to use different yard-sticks for equally placed persons and if it is established that discriminatory treatment is meted out, same has always been termed as violation of Article 25 of the Constitution of Islamic Republic of Pakistan, in support of his , reliance been placed on 1995 PLC (CS) 188. On the point of jurisdiction learned counsel for petitioner contended that Utility Stores Corporation is owned by the Federal Government, the entire working capital of the Corporation is being financed by the Federal Government and its Board of Directors are appointed by the Federal Government which regulates the affairs and business of the respondent Corporation as such Corporation is amenable to the writ jurisdiction of this court. Learned counsel relied on case law titled Federal Government Employees Housing Foundation etc. Vs. Muhammad Akram Ali Zai, Deputy Controller, PBC Islamabad (PLD 2002 S.C 1079) & 1998 NLR Service 30.

4. On the other hand, respondents filed their reply and parawise comments and raised preliminary objection that Writ Petition has been filed. 03 years after the impugned action, and eventually badly suffers from the doctrine of laches.

5. On grounds respondents contended that although there is no complaint against petitioner and the DPC considered his case for promotion but deferred it by not considering him fit for promotion through the collective wisdom of the DPC. That junior officer was considered fit while the petitioner was considered misfit for promotion by the DPC while giving reason that petitioner's performance needed to be further assessed. Learned counsel for respondents while acknowledging the fact of award of Certificates and Cash Prize submitted that same were in appreciation of honesty and integrity but not due to good performance. Learned counsel further submitted that Respondent No.3 has been retired, during the pendency of instant Writ Petition, therefore, same has become infructuous, which merits dismissal.

6. On jurisdictional point, it is contended that Utility Store Corporations is a Private Limited Corporation, it has a Board of Directors and its rules are non-statutory as it has its own service rules as such office bearers are not amenable to the Writ Jurisdiction.

I have heard the learned counsel for parties and with their able assistance perused the record made available on the file.

7. As for preliminary objection with regard to maintainability of Writ Petition is concerned, it is observed that Respondent No.2 i.e Utility Stores Corporation is a public Service entity and apex court laid the dictum in the case *Munawar Hussain Bukhari Vs. Appellate Authority/Tribunal Alipur etc.* (2016 SCMR 1087) as under;

“And the “public service corporations” is defined therein as “a utility company privately owned but regulated by the Government. It may sell gas, water or electricity but its rates are established by the state.” It is not disputed that the corporation, is fully owned and controlled by the Federal Government as discussed in preceding paragraph 3 above, the corporation, through network of its utility stores all across Pakistan, provides provisions stores at subsidies rates, to the general public. Service of such bodies, may it be statutory/corporate or otherwise owned or controlled by the Government or local Government, or where any of such governments has a controlling share or interest in ‘public service’. Even otherwise, “service of corporations” has been declared to be service of Pakistan under section 5 of the Corporation Employees (Special Powers) Ordinance, 1978.

In the case of Major General (Rtd.) Malik Muhammad Farooq Vs. Govt. of Pakistan & others reported as 2013 PLC (CS) 962, Islamabad, while refusing relief to petitioner therein this court issued following direction to the respondents of above titled petition.

“The Secretary, Industries present in the court is directed to evolve competitive process for appointment of Managing Director (BS-21) which must commence with proper advertisement and be completed by 10th of May, 2013. It is further

directed that till the appointment of regular Managing Director, through competitive process, the most senior regular employee of Utility Stores Corporation having requisite qualification and experience to be appointed as M.D, may be assigned task of Acting Managing Director, Utility Stores Corporation.

Above observations clearly indicate that for all practical intent and purposes, Utility Stores Corporation is not only owned by the Federal Government but it's affairs relating to appointment of Officers of higher grade are also regulated by the Federal Government. Composition of DPC itself is sufficient to determine the status of USC. In this view of the matter it is held that Respondent No.2 is a Public Service Corporation, amenable to the Constitutional Jurisdiction of this Court, in terms of Article 199 of the Constitution, as such Writ Petition is maintainable against it.

8. This is an admitted fact that at the time of meeting of DPC, petitioner was senior to Respondent No.3, coupled with a fact that no disciplinary proceedings were pending against him, therefore, names of petitioner, Respondent No.3 and two others were placed before the DPC, held on 28.10.2008 for the consideration of their promotion. The DPC consisting of the Secretary (Chairman) and Additional Secretary Ministry of Industries & Production and Managing Director and General Manager (HR &A) USC, recommended Mr. Sultan Mahmood and Respondent No.3 for promotion, whereas DPC deferred the promotion of petitioner and Mr. Inayat Ullah Daula. Since, Mr. Sultan Mahmood was senior to petitioner; therefore, petitioner did not voice his grievance against the promotion of senior. However, petitioner put serious challenge to the recommendation of his deferment and promotion of Respondent No.3. Before commenting upon the consideration prevailed and reasoning advanced by the DPC, it looks appropriate to reproduce herein below the relevant paras:-

"MR. TALAH SHAH, GENERAL MANAGER (PROJECTS).

The officer joined Corporation as Area Manager on 28.01.1988. He was promoted to BS-19 w.e.f 01.06.2007 and is presently performing the duties as General Manager (Projects). The performance of the officer was reviewed and it was felt that his suitability for the higher position needs to be further assessed. Therefore,

the Committee recommended that promotion of the Officer may be deferred for the time being.

“MR. MASOOD ALAM NIAZI, DEPUTY MANAGING DIRECTOR.

The officer joined USC as Area Manager wef. 13.08.1988. He was posted as Zonal Manager Karachi wef. 31.05.2005. He is tact full, hard working and dedicated Officer. In appreciation of his hard work and competency the Officer was posted as Deputy Managing Director in his own pay and scale. He is well conversant with the Rules and Regulations of the Corporation. He was promoted in BS-19 wef. 08.03.2008, therefore his remaining probation period requires condonation. According to Government Rules, the required length of service for promotion to BS-20 is 17 years in BS-17 and above. Where first appointment of the Officer is in Grade 16 or below, half of the service in Grade 16 and one fourth of service in Grade 15 & below is counted as Service in Grade 17 for computing length of service for the purpose of promotion. Accordingly the required length of service in respect of Mr. Masood Alam Niazi was found complete. In view of his excellent performance and contribution in the overall performance of the Corporation, the committee decided to terminate his probation period with immediate effect and recommended him for promotion as Senior General Manager in BS-20.

9. It is beyond the grasp and reach of mind, that an employee, who ever since his appointment on 28.01.1988 as Area Manager performed brilliantly and as a token of appreciation and recognition, management avowed him with the following bounties.

*	27.11.1989	-	Grant of Special increment to petitioner.
*	26.12.1990	-	Certificate for achieving best position.
*	27.01.1991	-	Grant of special increment to petitioner.
*	27.09.1992	-	Promoted as Manager, Central Distribution Center (BPS-17)
*	11.12.1993	-	Grant of special increment to petitioner.
*	15.05.1996	-	Grant of special increment to petitioner.
*	28.03.2002	-	Appreciation certificate of petitioner.
*	19.08.2003	-	Certificate of achievement.
*	31.01.2004	-	Grant of special increment to petitioner.
*	2007 & 2008	-	Sale of utility bran items reached 21 billion gaining record profit of 1 billion.
*	12.03.2007	-	Appreciation certificate of petitioner.
*	16.04.2009	-	Certificate of achievement.

*** 02.05.2009 - Cash award to petitioner for achieving maximum sale & profit on utility brand projects during the year 2008.**

Above rewards fully established this fact that petitioner was a consistent performer for the Organization, but it appears that DPC ignored the prolific career of petitioner, in order to extend favour and oblige Respondent No.3. I am amaze to hear from the learned counsel for Respondent No.2 that appreciation of petitioner by the management was not due to good work but honesty and integrity. Although certificates and reward protest against the assertion of the learned counsel, still a question arises that how petitioner exhibited honesty and inaugurated his integrity, without performance, worthy of credence for the organization? This act of Respondent No.2 is contaminated rarity, oppressive, polluted, whimsical, result of colourable exercise of authority, offensive to fundamental rights, unlawful and besides the dictums laid down by the august Supreme Court of Pakistan through authoritative pronouncement. Reliance in this regard is placed on the following judgements:-

1991 SCMR 1041, Titled I. A. Sharwani & others Vs. Government of Pakistan, through Secretary, Finance Division, Islamabad & others

PLD 2011 SC 963, Corruption in Hajj arrangements in 2010.

2010 SCMR 1301, Tariq Aziz-ud-Din & others in Human Rights cases.

2010 SC 265, Dr. Mubashir Hassan Vs. FOP

2010 SCMR 1466, Dr. Muhammad Amjad & another Vs. Dr. Israr Ahmad & others

2005 SCMR 25, Abid Hassan & others Vs. PIAC & others

2001SCMR 256, Allah Yar Vs. General Manager, Railways Headquarters, Lahore & another

10. Authority vested in DPC, of making recommendations is a sacred trust and depriving any deserving person form promotion is not less than a breach of trust. Almighty Allah, in the Quran, Surah (4) Al-Nisa, Verse 58, gave the following command:-

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا (4:58)

Allah commands you to deliver trusts to those worthy of them; and when you judge between people, judge with justice. Excellent is the admonition Allah gives you. Allah is All-Hearing, All-Seeing.

Similarly following saying (حديث مبارك) of the Holy Prophet Muhammad (PBUH) further signifies the adherence to impartiality:-

"It was narrated from Abu Umamah that the Messenger of Allah (P.B.U.H) said.

" مِنْ شَرِّ النَّاسِ مَنْزِلَةٌ عِنْدَ اللَّهِ يَوْمَ الْقِيَامَةِ عَبْدٌ أَذْهَبَ آخِرَتَهُ بِدُنْيَا غَيْرِهِ

"Among the worst people in status before Allah on the Day of Resurrection will be a person who loses his Hereafter, for the sake of worldly gains of others."

11. The command and wisdom ordained in the Quran and Hadees impose absolute duty upon the persons made custodian of the rights of people and bestowed upon with an obligation to umpire amongst the people, not besides the ableness, merit, rectitude and worthiness. It is hard to believe that in the Islamic Republic of Pakistan a person of unquestionable integrity, sanctity and veracity can be penalized for his authentic, incorruptible, laudable and un-pretended performance and veritable achievements. Public functionaries vested with some authority in order to decide about the accrued rights of persons(s) subordinate to them or any other person(s) required to decide honestly, without likes/dislikes, fear or favour, and by considering the responsibility as a sacred trust, so that benefit must be extended to the one, qualify for.

12. Allah, warns those who pursue either personal or national interest at the cost of honesty, equity, reasonableness and good faith. It has been emphasized through above Quranic verse that, declare what is right in the face of friend and foe alike, and judge between people with justice and equity. To deprive someone from

his due, intentionally and malafidely is nothing but a rude and noisome act, for which responsible persons shall be held accountable.

In this view of the matter instant Petition is **allowed**, and these are the reasons of my short order dated **18.11.2016**, reproduced herein below:-

“The above observation/assessment is besides the facts and law, result of subjective approach and motivated as well. Recommendations in favour of respondent No.3 recorded in the same meeting are illegal and besides the dictums laid down by the superior courts of the country, therefore, respondents are directed to re-consider the petitioner for promotion from the date respondent No.3 was promoted.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Approved for Reporting.
Blue Slip added.

“Waqar Ahmad”

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