

JUDGMENT

AAMER FAROOQ, J.----The instant judgment shall decide the present petition as well as W.Ps. Nos. 904 and 782 of 2019, as common questions of law and facts are involved.

2. The petitioners are employees of Federal Board of Revenue (FBR) and are aggrieved of office order/circular dated 28.10.2018 to the extent of paragraph-g contained therein. The petitioners are Upper Division Clerks (UDCs), who were waiting for promotion as Inspector and in this behalf, also sat for Departmental Promotion Examination and were successful. They were on the waiting list inasmuch as due to lack of promotional seats, they were not being promoted.

3. Learned counsel for the petitioners, inter alia, contended that by virtue of letter dated 28-10-2018, the old recruitment rules have been done away with and in this behalf, even examination results and waiting list have been scrapped. It was submitted that the petitioners are aggrieved to the extent that they were successful in the examination and also were on the waiting list for promotion, hence had acquired vested rights, which could not have been taken away by the impugned letter/circular.

4. Learned counsel for the respondents submitted that the instant petitions are not maintainable as the matter pertains to terms and conditions of service inasmuch as previously some of the employees had filed appeals before the Federal Service Tribunal. It was further contended that partial seats of inspectors are to be filled by fresh recruitment and partial by promotion. In response to the query of the Court, it was conceded that the petitioners though are working as UDCs and were waiting to be promoted, however, learned counsel was unable to assist the Court regarding acquisition of the vested rights.

5. In rebuttal, learned counsel for the petitioners pointed out that recently a circular has been issued wherein some of the petitioners have been given promotion on current charge basis as inspectors, meaning thereby their qualification and eligibility have been recognized for the purposes of promotion.

6. Arguments advanced by the learned counsel for the parties have

been heard and the documents placed on record examined with their able assistance.

7. The petitioners, in the instant petition, have made the following

prayer:-

"In view of the above submission, it is humbly prayed that by accepting the instant petition

The direction may kindly be issued to the Respondents to restore the Waiting List of duly qualified Candidates including the petitioner who had passed the Departmental Promotion Examination in year 2003.

Direction may kindly be issued to the Respondents to consider the promotion of the petitioners to the posts of Inspector Customs on the basis of above Waiting List (2003) with effect from the date(s) of occurrence of the vacancies on the departmental quota, with all consequential benefits.

It is further prayed that till final judgment/order in the main petition the Respondents may kindly be directed to refrain from holding new departmental promotion examination and direct to refrain from making direct appointments through FPSC in violation of the prescribed quota as per rules.

Any other relief, which this honorable Court deems fit and appropriate/favorable to the petitioners, may also be granted."

Bare perusal of the prayer shows that basic grievance of the petitioners is the ending of the waiting list vide impugned letter dated 28.10.2018. In the referred letter, in paragraph-g, it was stated as follow:

"g) The old recruitment rules for above posts have been superseded vide SRO.202(I)/2015,

dated 09.03.2015; hence the waiting list of candidates (if any) maintained by the field formations under the old rules have also become abolished. Therefore, all officials, who had passed the departmental examination under the old (superseded) recruitment rules and could not be promoted due to non availability of vacancies, shall have to compete in the examination along with other candidates as per new rules and syllabus on availability of vacancies."

Admittedly, the petitioners had passed departmental examination and were on the waiting list. By changing rules, vested rights acquired by them could not have been done away. Undoubtedly, it is the prerogative of the department to formulate new rules but the rights acquired vis-a-vis old rules cannot be taken away retrospectively. The petitioners had passed the examination in accordance with the rules and also were on waiting list. There is no impediment, whereby the respondent department has restrained from fresh recruitment; it is only with respect to the promotion quota that the petitioners are aggrieved as they were on the waiting list. The controversy, in hand, does not fall within terms and conditions of service as it is confined only regarding the vires of letter in question. However, the controversy is such that the same is to be decided by the respondent department.

8. In view of above, office is directed to remit copy of the petitions along with annexures to respondent No.1, who shall treat the same as representations on part of the petitioners and decide it in accordance with law and observations made above. Disposed of accordingly.

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