

JUDGMENT SHEET

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

W.P.No.2488 of 2009

Muhammad Yaqoob and another.

VERSUS

Managing Director/Chief Executive Officer
OGDCL and another

Date of Decision: 16.5.2012.

Petitioners by: Mr. Muhammad Umair Baloch, Advocate.

Respondents by: Raja Muqsit Nawaz, Advocate.

MUHAMMAD AZIM KHAN AFRIDI, J:- Muhammad Yaqoob

and Tariq Mehmood hereinafter referred to as the petitioners have preferred the instant constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, hereinafter referred to as the Constitution with a prayer to issue directions to respondents to promote the petitioners as Private Secretary (EG-III) with effect from 01.12.2001 and Executive Secretary (EG-IV) with effect from 01.12.2008 with all consequential back benefits.

2. Brief facts giving rise to the present writ petition are that the petitioners were appointed as Stenographers and, later on, promoted as Private Secretaries. That the petitioners opted for promotion as Private Secretary or Admn/Personnel Officer. That on 24.4.2003, seventeen stenographers were promoted as Private Secretaries (EG-II) with effect from 01.12.2001 and they were subsequently given EG-III with effect from the same date,

while the petitioners were ignored though eight junior officers were also promoted as Private Secretaries. That the petitioners preferred departmental appeals which were ultimately decided against them. That the appeals before the learned Federal Service Tribunal preferred by the petitioners stood abated as the August Supreme Court of Pakistan struck down Section 2-A of the Service Tribunal Act, 1973. That the petitioners approached the learned Labour Court who dismissed the case of the petitioners vide judgment dated 14.10.2007, whereafter labour appeals were preferred which were disposed of vide order dated 04.8.2008 on the basis of compromise as, according to the terms of compromise, the petitioners were to be considered on merit for promotion against the said posts. That the petitioners were promoted as Private Secretaries (EG-II) with effect from 01.12.2008 instead of their entitlement to be promoted as EG-III with effect from 01.12.2001.

3. Learned counsel for the petitioners has argued that the petitioners were entitled to ante date promotion as there was no adverse entry whatsoever against the petitioners. That the petitioners were finally given relief by this Court while disposing of the labour appeals, but the respondents have failed to promote the petitioners with effect from the date of their entitlement. That the petitioners are entitled to be promoted as private Secretaries (EG-III) with effect from 01.12.2001 and Executive Secretaries (EG-IV) with effect from 01.12.2008 with all consequential back benefits.

4. Learned counsel for the respondents has argued that the petitioners are not entitled to the relief as claimed. That the order of this Court dated 04.8.2008 was complied with by the respondents and the petitioners were promoted as Private Secretaries with effect from 01.12.2008. That similarly placed employees had also filed writ petition bearing Nos.3517 and 3518 of 2009, which were dismissed by the August Lahore High Court, Rawalpindi Bench vide judgment dated 14.5.2010 and 17.5.2010, respectively. That the petitioners cannot re-agitate the same cause and issue and that the principle of res-judicata would be applicable against the petitioners.

5. Reliance was placed on case law reported in PLD 1971 Supreme Court 779, 1968 SCMR 816, 1972 SCMR 225 and 1998 SCMR 1074.

6. I have heard arguments of learned counsel for the parties and perused the record.

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7. It is not disputed that the petitioners were not promoted at the first instance as Private Secretaries with effect from 01.12.2001, though their junior colleagues were promoted by the respondents at that time. The petitioners approached different forums and finally preferred a labour appeal, which was disposed of by this Court vide order dated 04.8.2008 with the observations that if posts of Private Secretaries were available or would become available, then the petitioners shall be considered for

promotion as Private Secretaries on merits against the said posts.

8. In case of Fazal Din Vs. Wali Muhammad and five others (1972 SCMR 225) it was observed that successive writ petitions in respect of the same cause of action were nothing but abuse of process of Court.

9. In case of Mirza Maqbool Ellahi vs CDA (1998 SCMR 1074) it was observed that successive petitions on the same cause of action were not competent. Similar view was taken in case of Abdul Majid and another Vs. Muhammad Riaz Hashim and another (1968 SCMR 816). In case of Fazal Din and others Vs. The Custodian, Evacuee Property, Lahore and others (PLD 1971 Supreme Court 779) it was observed that unsuccessful party would be barred from agitating same matter over again by instituting fresh writ petition.

10. In the case in hand, controversy of ante date promotion of the petitioners was finally adjudged by this Court vide judgment dated 04.8.2008. Though the controversy at the first instance was settled by way of decision in Labour Appeal and, not by a decision in writ, yet principles and scheme of successive petition would apply to the case of the petitioners as the writ petition in hand is in respect of the same cause of action which was earlier agitated and finally settled by the Court of competent jurisdiction.

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11. The nature of dispute agitated in the earlier round of litigation was between the same parties and in respect of the same cause of action as such the principles of res-judicata would also be applicable to the case of the petitioners and the petitioners cannot be, therefore, permitted to re-agitate the same matter by invoking constitutional jurisdiction of this Court.

12. In view of the above, I hold that the writ petition in hand in respect of the same cause of action is neither competent nor entertainable. I would therefore dismiss the same with costs.

(MUHAMMAD AZIM KHAN AFRIDI)
JUDGE

16.05.12

Qamar Khan

Approved for reporting.