

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.360 of 2018

Kaleem ul Haq

Versus

Oil & Gas Development Company Limited

Date of Hearing: 22.09.2020

Appellant by: Mr. Muhammad Asif Gujjar, Advocate

Respondent by: Raja Muqsit Nawaz Khan, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal, the appellant, Kaleem ul Haq, impugns the judgment dated 03.07.2018 passed by the learned Judge-in-Chambers, whereby writ petition No.4025/2016 filed by him was dismissed as not maintainable. In the said writ petition, the appellant had sought a direction to Oil and Gas Development Company Limited (“O.G.D.C.L.”) to grant him proforma promotion with effect from the date when officers junior to him were promoted on the recommendations dated 10.06.2005 of the Departmental Promotion Committee (“D.P.C.”).

2. The record shows that on 09.12.1984, the appellant was appointed in grade 16 (EG-I). Subsequently, on 01.07.1994, he was promoted to EG-II. After Civil Appeals No.925 to 943/1999 were decided in favour of the appellant and others, he was promoted to EG-III with effect from 01.07.1994. The appellant was considered for further promotion but was not promoted due to the lack of a vacancy. O.G.D.C.L. had also changed the promotion criteria from seniority-cum-fitness to fitness only. On 10.11.2008, the appellant while serving in EG-III retired from service on attaining the age of superannuation.

3. More than two years after his retirement, the appellant filed writ petition No.2370/2011 seeking promotion to EG-IV with effect from the date when officers junior to him were promoted. Vide judgment dated 12.05.2015, this Court dismissed the said petition. In the said judgment, it was observed *inter alia* that proforma promotion can be granted only when an employee was not considered for promotion during his service despite being eligible

and in presence of vacancy. It was also held that since the appellant had been considered by the D.P.C., the writ petition was liable to be dismissed.

4. Against the said judgment dated 12.05.2015, the appellant preferred I.C.A. No.292/2015, which was dismissed by this Court vide order dated 17.06.2015. There is nothing on record to show that the said order had been assailed by the appellant any further.

5. Vide judgment dated 13.10.2009 passed in C.P.L.A. 1538/2008 titled Abid Kamal Vs. O.G.D.C.L., the Hon'ble Supreme Court held the petitioners in the said case entitled for promotion from EG-II to EG-III with effect from 01.07.1994 and two subsequent promotions in EG-IV and EG-V on 01.12.1999 and 01.12.2004, respectively. It ought to be borne in mind that the said relief was granted to the petitioner in the said case while he was still in service.

6. Heard.

7. Vide judgment dated 17.11.2009 passed by the Hon'ble Supreme Court in civil petitions No.1359 to 1361/2009, it was held that in view of Section 5 of the Oil and Gas Development Company (Re-Organization) Ordinance, 2001 (**"the 2001 Ordinance"**), the employees of O.G.D.C.L. employed prior to the promulgation of the said Ordinance would be governed by the O.G.D.C. Service Regulations, 1994 (**"the 1994 Regulations"**), which had been *"elevated to a status even higher than that of mere statutory rules."*

8. Subsequently, vide judgment dated 25.06.2012 passed in civil petitions No.147 and 152/2012 titled "Noor Alam Vs. Secretary, Ministry of Petroleum and Natural Resources", the Hon'ble Supreme Court held *inter alia* that the employees of the Corporation i.e. employees who had been employed prior to the promulgation of the 2001 Ordinance were protected under Section 5 of the said Ordinance and could enforce their rights acquired under the 1994 Regulations.

9. Since the appellant was employed in O.G.D.C.L. prior to the promulgation of the 2001 Ordinance, he would be entitled to the protection under Section 5(1) of the said Ordinance, which is reproduced herein below:-

***“5. Transfer of employees from the Corporation to the Company.-
 (1) All officers, workmen or other employees of the Corporation
 (hereinafter referred to as the employees) shall, as on the date of
 incorporation of the Company, be deemed to be employees of the
 Company on the same remuneration and other conditions of
 service, rights and privileges including, but not limited to,
 provisions as to the pension, provident fund and gratuity, if any,
 and other matters as were applicable to them before the
 conversion of the Corporation into Company.”
 (Emphasis added)***

10. The appellant's terms and conditions of service with O.G.D.C.L. were governed by the Rules and Regulations which were prevalent prior to the promulgation of the said Ordinance. As regards the appellant's promotion, the same was to be in accordance with the promotion criteria dated 13.04.1994. The appellant may well have been considered for promotion on 10.06.2005 under the promotion criteria dated 13.05.2004 and not under the promotion criteria dated 13.04.1994 but there is nothing on the record to show that he had agitated his right that he could not have been considered for promotion under the promotion criteria dated 13.05.2004. It is only after his retirement that he invoked the Constitutional jurisdiction of this Court to seek proforma promotion.

11. Be that as it may, it is an admitted position that the appellant has retired from service on 10.11.2008. The vital question that needs to be determined is whether this Court, in exercise of writ jurisdiction, can direct O.G.D.C.L. to grant proforma promotion to the appellant. This Court had the occasion of going through the 1994 Regulations and have not been able to find any provision therein under which the appellant could be granted proforma promotion in the same manner as has been granted to retired civil servants under Fundamental Rule-17. In the absence of such an enabling provision in the 1994 Regulations, we are of the view that this Court cannot direct O.G.D.C.L. to consider the appellant for promotion post-retirement.

12. A writ of *mandamus* can be issued to direct a person performing functions in connection with the affairs of Federation *“to do anything he is required by law to do.”* Since the law (i.e. the Service Rules/Regulations applicable to the appellant) has no provision for granting proforma promotion to the retired employees

of O.G.D.C.L., this Court could not have issued a writ which had been sought by the appellant in his writ petition.

13. In view of the above, the instant appeal is dismissed with no order as to costs.

(LUBNA SALEEM PERVEZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

(JUDGE)

Qamar Khan*

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