

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE UMAR ATA BANDIAL, HCJ
MRS. JUSTICE AYESHA A. MALIK
MR. JUSTICE ATHAR MINALLAH

CIVIL PETITIONS NOS.2347 TO 2360 OF 2022

(Against the judgment dated 17.3.2022 of the Federal Service Tribunal, Islamabad passed in Appeals Nos.1111(R)CS/2017 to 1124(R)CS/2017)

Federal Public Service Commission
through its Chairman, Islamabad and another ... **Petitioners** (*in all cases*)

Versus

Shiraz Manzoor and others	...	(in CP-2347/22)
Zameer Hussain and others	...	(in CP-2348/22)
Muhammad Rafique and others	...	(in CP-2349/22)
Abrar Ahmed and others	...	(in CP-2350/22)
Soomer Khan Hulio and others	...	(in CP-2351/22)
Aamir Hayat and others	...	(in CP-2352/22)
Syed Ismail Hussian Shah, etc.	...	(in CP-2353/22)
Muhammad Sharjeel & others	...	(in CP-2354/22)
Syed Kazim Hussain Shah, etc.	...	(in CP-2355/22)
Muhammad Bilal Khan, etc.	...	(in CP-2356/22)
Wasim Afzal and others	...	(in CP-2357/22)
Anwar Khan and others	...	(in CP-2358/22)
Amjad Ali and others	...	(in CP-2359/22)
Aqib Javed and others	...	(in CP-2360/22)

Respondents

For the petitioner(s): Malik Javaid Iqbal Wains, Addl. AGP
Muhammad Abdullah, A.D. (Legal) FPSC

For the respondent(s): Mr. Muhammad Shoiab Shaheen, ASC

Date of hearing: 24.11.2022

JUDGMENT

Athar Minallah, J.- In all these petitions, the Federal Public Service Commission ('**Commission**') has sought leave against the consolidated judgment dated 17.03.2022 of the Federal Service Tribunal, Islamabad ('**Tribunal**') whereby appeals of the respondents were allowed.

2. The Tribunal was established under the Federal Service Tribunals Act, 1973 ('**FST Act**') and the terms and conditions of the service

of its employees are regulated and governed under the Civil Servants Act 1973 ('Act of 1973') read with the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 ('**Rules of 1973**'). The competent authority, in exercise of powers conferred under the Act of 1973 and the Rules of 1973, made rules with the concurrence of the Establishment Division, Finance Division and the Commission, whereby conditions were prescribed regarding the method, qualifications and manner for appointment against various posts, including the post of the 'Reader'. The said rules were notified and published in the official gazette vide SRO No.338(i)/2009 dated 14.4.2009 ('**SRO of 2009**'). In the case of the post of Reader the rules had prescribed filling of the vacancies through promotion and initial appointment in the ratio of 40% and 60% respectively. It is noted that, prior to the framing and notifying of SRO of 2009, no rules existed to regulate and govern the appointment against the post of the Reader and the vacancies had been filled from amongst those who were working against the post of Assistant. It appears from the record that the vires of the SRO of 2009 were not challenged till the Commission initiated the process of filling the vacant posts through the mode of initial appointment and, that too, seven years after the publication of the rules. The private respondents, who were appointment and working against the post of Assistant, challenged the process initiated by the Commission and they preferred their respective appeals before the Tribunal when the competent authority did not decide the representations within ninety days. The appeals were disposed of by the Tribunal vide order dated 8.4.2016 and the competent authority was directed to decide the representations. Subsequently, the representations were dismissed by the competent authority on two grounds i.e. barred by time and that the prescribed mode and conditions for appointment were based on the policy formulated in order to enhance efficiency of service.

The respondents again preferred appeals by invoking the jurisdiction of the Tribunal and they were allowed vide the impugned judgment. The Tribunal has directed the competent authority to modify the Rules of 2009 to the extent of the criteria and conditions prescribed for appointment against the post of Reader. In essence, the Tribunal has directed that rules may be amended so that appointments made against the post of a Reader are exclusively through the mode of promotion from amongst those holding the post of Assistant. As already noted, the appointment to the post of Reader was not regulated nor governed under any rules prior to the framing of the rules under the SRO of 2009.

3. We have heard the learned Additional Attorney General for Pakistan and the learned counsels appearing on behalf of the respondents.

4. It is not disputed that appointment to the post of the Reader was not governed under any rules before framing and notifying the SRO of 2009 which had, for the first time, prescribed the criteria, conditions, qualifications and mode for filling the five sanctioned posts of Readers in the Tribunal. The Tribunal has relied on the judgment of this Court in the case of Mohammad Insha Ullah¹ and has formed an opinion to the effect that the competent authority had varied the terms and conditions of service of the respondents to their disadvantage by prescribing the criteria and conditions under the SRO of 2009 and, by doing so, had infringed section 3(ii) of the Act of 1973. The Tribunal has also questioned the policy formulated by the competent authority regarding the criteria and conditions prescribed for appointment against the post of the Reader. The reliance on the judgment of the Court in the case of Mohammad Insha Ullah was misplaced. The question considered by this Court in that case

¹ *Ch. Muhammad Insha Ullah and others v. Chief Conservator of Forest and others (PLD 1988 SC 155)*

was; whether the rules for promotion conferred a vested right and whether they could not be altered to the disadvantage of the civil servant awaiting promotion. The Court affirmed its consistent view that in the context of promotion, the competent authority is entitled to formulate rules in the interest of efficiency of service and that they can also be subjected to change. It was further held that where no vested right exists, if a principle of policy is given effect to and the principle of policy is such which has not matured into a vested right then it cannot be said that in the absence of the vested right, the principle of policy should not be recognized or enforced. The facts of that case were also distinguishable. In the case in hand, no rules were made to govern or regulate the appointment to the post of the Reader before prescribing the criteria, conditions and mode of appointment through the SRO of 2009. There was no vested right that had accrued in favor of the respondents, working against the post of Assistant, to be appointed to the post of the Reader through promotion. The question of alteration of a right to their detriment or disadvantage did not arise. The mischief contemplated under section 3(ii) of the Act of 1973, therefore, was not attracted.

5. The Act of 1973 read with the rules framed by the competent authority regulate and governs the terms of conditions of service and it includes prescribing the mode of appointment, transfer, posting, eligibility for promotion, seniority etc. It is settled law that there is no vested right in promotion nor the rules which determines the eligibility criteria for promotion.² It is within the exclusive domain of the competent authority to make rules in order to raise the efficiency of the employees in particular and the service in general.³ Promotion is neither a vested right nor could it be

² *Muhammad Umar Malik and others v. Federal Service Tribunal and others* (PLD 1987 SC 172)

³ *The Central Board of Revenue v. Asad Ahmad Khan* (PLD 1960 SC (Pak) 181)

claimed with retrospective effect. An employee may claim under the relevant law/rules to be considered for promotion when cases of other similarly placed employees are taken up but cannot compel the employer department to fill the promotion post nor to keep it vacant or under consideration.⁴ The question of promotion exclusively falls within the domain and jurisdiction of the competent authority and, ordinarily, a court or tribunal would not interfere, except when the designated competent authority has acted in violation of law, excess of jurisdiction or without jurisdiction.⁵ The competent authority is empowered to prescribe criteria and conditions relating to eligibility for promotion. The formulation and creation of a recruitment policy falls within the exclusive domain of the competent authority and it cannot be subjected to judicial scrutiny unless it infringes vested rights or is in violation of the law. Every recruitment and selection process formulated by the competent authority is presumed to be regular and aimed at choosing the most suitable person for a given position. The recruitment and selection policy formulated by the competent authority cannot be substituted by a court or tribunal, nor questioned, unless its implementation infringes vested rights or is in violation of the law. In the case in hand, the respondents did not have a vested right to claim to be considered for promotion against the post of the Reader, nor to take away the prerogative of the competent authority to formulate a recruitment and selection process relating to the post of the Reader. The Tribunal had transgressed its jurisdiction by questioning the policy formulated by the competent authority and substituting it by its own. The reasons recorded in the order dated 18.01.2017, whereby the representations were dismissed, were in accordance with the principles of fairness and not unreasonable.

⁴ *Abid Hussain Sherazi v. Secretary M/o Industries & Production (2005 SCMR 1742)*

⁵ *Muhammad Iqbal and others v. Executive District Officer (R) and another (2007 SCMR 682)*

The policy regarding appointment against the post of the Reader notified vide the SRO OF 2009 has been found to be unimpeachable, reasonable and not in conflict with any vested right of the respondents. The rules notified vide the SRO of 2009 were competently framed, without prejudicing vested rights and, therefore, they could not have been ordered to be modified by the Tribunal. The impugned judgment, therefore, is not sustainable in law.

6. In view of the foregoing reasons, the impugned judgment of the Tribunal, dated 17.03.2022, is set aside, and the Commission shall be at liberty to fill the vacancies in accordance with the mode of appointment prescribed under the SRO of 2009. These petitions are consequently converted into appeals and allowed.

Chief Justice

Judge

Judge

Islamabad the,
24th November, 2022
“NOT APPROVED FOR REPORTING”
M. Azhar Malik