

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mrs. Justice Ayesha A. Malik
Mr. Justice Irfan Saadat Khan

Civil Petitions No.2074 to 2082/2023

(Against the judgment dated 20.1.2023 passed by
Khyber Pakhtunkhwa Service Tribunal, Peshawar in
Service Appeal Nos.534, 535, 538, 539, 540, 541, 542,
543 & 544/2020)

Naseem Khan (in CP 2074/2023)
Noor Muhammad (in CP 2075/2023)
Sajjad Hussain (in CP 2076/2023)
Umar Rehman (in CP 2077/2023)
Bilal Ahmad (in CP 2078/2023)
Aqib Nouman (in CP 2079/2023)
Naveed Hashim (in CP 2080/2023)
Miss Ayesha Riaz (in CP 2081/2023)
Muhammad Amir Alam (in CP 2082/2023) ...Petitioner(s)

Versus

The Government of Khyber Pakhtunkhwa through ...Respondent(s)
Chief Secretary Khyber Pakhtunkhwa, Peshawar,
and others (in all cases)

For the Petitioners: Mr. Noor Muhammad Khattak, ASC
Mr. Anis Muhammad Shahzad, AOR

For the Respondent(s): N.R

Date of Hearing: 17.04.2024

Judgment

Muhammad Ali Mazhar, J.- These Civil Petitions are directed against the judgment of the Khyber Pakhtunkhwa Service Tribunal, Peshawar ("**Tribunal**") dated 20.01.2023, whereby all the service appeals were dismissed by the learned Tribunal.

2. According to the sequence of events divulged by the petitioners, they were appointed as Soil Conservation Assistants (BPS-17) on

recommendations of the Khyber Pakhtunkhwa Public Service Commission, Peshawar. On 18.04.2018, the department issued a Notification for setting forth an equitable service structure to categorize 25 different cadres for maintaining seniority and promotion. However, *vide* impugned Notification dated 18.09.2019, the 100% promotion quota reserved for the petitioners was reduced to 75% and the remaining 25% quota was allocated to the cadre of "Field Assistants" which allegedly affected seniority and promotion of the petitioners. They filed a Departmental Appeal but no response was received, hence they filed Appeals before the Tribunal which were dismissed by means of the impugned judgment.

3. The learned counsel for the petitioners argued that the impugned notification is against the law and it would seriously affect the seniority and promotion of the petitioners and the other cadres to BPS-18. It was further contended that the Field Assistant (BS-9), with a diploma course of three years after matriculation, will be promoted to BPS-18 and will be managing the DDO office without any specialized degree. He further argued that the impugned Notification is also violative of Section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 ("Act") and Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion, and Transfer) Rules, 1989 ("Rules").

4. Heard the arguments. We repeatedly asked the learned counsel to show how the policy decision was *ultra vires* to the provisions of the Act or the Rules, but the learned counsel only referred to Section 9 of the Act which pertained to the promotion of a civil servant who possessed the minimum qualification for promotion, as may be prescribed. The record reflects that on 18.04.2018, the Livestock and Cooperation Department of the Government of Khyber Pakhtunkhwa issued a Notification No.SOE(AD)II(2)429/2015-16/SC pursuant to the provisions contained in sub-rule (2) of rule 3 of the Rules and in supersession of all previous notifications, the Agriculture, Livestock and Co-operation Department in consultation with the Establishment Department and the Finance Department laid down the method of recruitment qualification and conditions and also enumerated 25 nomenclatures of different posts. However, *vide* another Notification SOE(AD)II(2)429/2019/SC, dated

18.09.2019, the Government of the Khyber Pakhtunkhwa Agriculture, Livestock and Cooperation Department, in exercise of powers conferred under sub-rule 2 of Rule 3 of the Rules, made certain amendments in the earlier Notification dated 18.04.2018 and quantified a proportional quota for the promotion to the post of Deputy Director Soil Conservation, Deputy Directors (Planning), Deputy Director (Monitoring), Deputy Directors Soil Survey, and District Officers Soil Conservations, that is to say, 75% by promotion on the basis of seniority-cum-fitness, from amongst the Soil Conservation Assistants, Soil Conservation Assistants (Technical), Soil Conservation Officers, Assistant Soil Survey Research Officers having at least Second Class Master's Degree in Agriculture (Soil Sciences), or at least Second Class Bachelor's Degree (Hons) in Agriculture (Soil Sciences) from a recognized University with five years' service as such, and 25% by promotion, on the seniority-cum-fitness basis or from amongst the Soil Conservation Assistants, having at least Second Class Bachelor's Degree from a recognized University with 25 years' total service as a Field Assistant and above. A note was also appended in the amended notification that for the purpose of promotion, a joint seniority list of the Soil Conservation Assistant, Soil Conservation Assistants (Technical), Soil Conservation Officers, Soil Survey Research Officers and Assistant Soil Survey Research Officers shall be maintained.

5. According to Rule 3 of the Rules, the method of appointment to the posts are provided intrinsically (a) by promotion or transfer in accordance with the provisions contained in Part-II of these rules; and (b) by initial recruitment in accordance with the provisions contained in Part-III of these rules. Whereas sub-rule (2) articulates that the method of appointment, qualifications, and other conditions applicable to a post shall be such as laid down by the Department concerned in consultation with the Establishment and Administration Department and the Finance Department. The required qualifications for appointment to any post is the sole discretion and decision of the employer and it is in its realm to prescribe criteria and the preference for appointment of a candidate who is best suited to its requirements in which the court has no sphere of influence to arbitrate or set down the course of action or put forward the conditions of eligibility or fitness for appointment or promotion until and unless the relevant laws and rules prescribing the well-defined and

straightforward benchmark of appointment or promotion seems to have been violated, but in the absence of any such defilement, the relevant rules framed for the appointment, transfer and promotion in the civil service, by the Federal Government and Provincial Governments separately under their Civil Servants Acts and Appointment, Promotion and Transfer Rules will undoubtedly prevail and put into action across the board in their respective civil servant service structures.

6. No doubt, it is within the dominion of the Court to exercise its power of judicial review to evaluate and weigh upon the legislative and executive actions in order to maintain and sustain the rule of law, check and balance and render null and void an unlawful action or decision, and with the same spirit and frame of mind, the Court may also invalidate and strike down the laws, acts, and governmental actions if found unlawful and beyond the scope of power and jurisdiction. The judicial review can be sought if the decision maker was misdirected in terms of the law, exercised a power wrongly, or improperly purported to exercise a power that it does not have, which is known as acting *ultra vires*. We are not convinced in the least that the policy decision, made up by a dint of the amended impugned notification of reducing 25% promotion quota and allocating it for the progression of Field Assistants according to the exigency, was *ultra vires* to the Act or the Rules but seemingly, with the aim of harmonizing the promotion criteria and path of progression, the department allocated a quota for accommodating the Field Assistants. The learned counsel for the petitioners remained unsuccessful in persuading us as to how the law in question is infringing or contravening the fundamental rights or against the public interest or is against the law. Neither the impugned notification is *ex facie* discriminatory nor is it capable of being administered in any discriminatory manner or is unjust or oppressive. On the contrary, the competent authority is empowered to establish the yardsticks for determination of eligibility and fitness which is *sine qua non* for promotion, and devising and structuring the recruitment policy falls within its exclusive line of work and adeptness and in case of exigency and expediency, it may enact and amend the rules.

7. The question of eligibility correlates to the terms and conditions of service, whereas fitness for promotion is a subjective evaluation based on an objective criteria. Though consideration for promotion is a right, yet the promotion itself cannot be claimed as of right. There is no vested right in promotion or rules determining the eligibility for promotion. In the case of Government of Punjab v. Muhammad Awais Shahid (1991 SCMR 696), this Court held that as regards the claim for promotion or proforma promotion, what the civil servant could claim under the law was that he should be considered when question of promotion was taken up. A civil servant, could not call upon the Service Tribunal to direct the department to fill the promotion post forthwith or on a particular date and not to keep it vacant or under consideration. In the case of Fida Hussain vs. The secretary, Kashmir Affairs and Northern Affairs Division, Islamabad (PLD 1995 SC 701), the five member bench of this Court in Suo Motu Review Petition held that it is the domain of the Government concerned to decide whether a particular academic qualification of a civil servant employee is sufficient for promotion from one grade to another higher grade, which dictum was also reiterated in the case of Maula Bux Shaikh vs. Chief Minister Sindh (2018 SCMR 2098), while this Court in the case of Government of Khyber Pakhtunkhwa vs. Hayat Hussain (2016 SCMR 1021), held that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making powers of the Government and any interference with such matters by the courts is not warranted. Whereas this Court in the case of Government of Khyber Pakhtunkhwa vs. Muhammad Javed (2015 PLC (C.S.) 962), while referring to the case of Zafar Iqbal v. Director, Secondary Education (2006 SCMR 1427), reiterated the principle that the Government is always empowered to change the promotion policy, and the domain of the Government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable and it was further held that the promotion cannot be claimed as a vested right. While in the case of Federal Public Service Commission through Chairman, Islamabad and another versus Shiraz Manzoor and others (2024 PLC (C.S.) 18), this

Court affirmed 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. 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 upon vested rights or is in violation of the law.

8. As a result of above discussion, we do not find any illegality or perversity in the impugned judgment of the learned Tribunal which may warrant any interference by this Court. All these petitions are dismissed and leave to appeal is refused.

Judge

Judge

Judge

Islamabad
17.4.2024
Naseer
Approved for reporting