

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

Civil Petition 22-Q/2020

(Against the judgment dated 31.10.2019
passed by the Balochistan Service
Tribunal, Quetta in S.A. No.606/17)

The Chief Secretary, Government of Balochistan, Quetta and others

...Petitioners

Versus

Hidayat Ullah Khan

..Respondent

For the petitioners: Mr. Ayaz Khan Swati, Addl.A.G. Balochistan

For the respondent: Mr. Muhammad Akram Shah, ASC

Date of hearing: 14.10.021

ORDER

GULZAR AHMED, CJ -.

C.M.A. No.24-Q/2020: The listed petition is barred by 18 days. This application for condonation of delay has been filed in which it has been explained that on 05.08.2019, the Balochistan Service Tribunal, Quetta (the '*Tribunal*') heard the service appeal, filed by the respondent, and reserved the judgment. The judgment was announced by the Tribunal on 31.10.2019 but the notice of announcement of such judgment by the Tribunal was not received in the office of Advocate General, Balochistan and the petitioner came to know about the announcement of the said judgment by the Tribunal on 20.12.2019, whereupon the certified copy of the judgment was obtained and then the present petition was filed.

2. We note that, apparently, sufficient reason has been given by the petitioner for delay in filing of the petition. Subject to all just exceptions, this application is allowed and the delay in filing of the petition is condoned.

Civil Petition No.22-Q/2020: We have heard the learned counsel appearing for the parties. The respondent was appointed as Field Programme Officer (BPS-17) in the Ministry of Health, Government of Pakistan in the year 2005. On account of 18th Amendment, devolution of certain departments had taken place from the Federal Government to the Provincial Government, consequently the services of the respondent were placed at the disposal of the Health Department, Government of Balochistan and he was assigned the additional charge of Law Officer, in the office of Director General, Health Services, Balochistan. Later on, he was transferred and posted as Law Officer in the Health Department. In the year 2016, he was assigned the additional Charge of Deputy Secretary (Judicial), P&D Department and thereafter, the P&D Department created the Post of Law Officer after seeking approval of the Finance Department. The Post of Law Officer in the P&D Department was specifically created for the respondent and though approval of the Finance Department was obtained but he was not absorbed/transferred as Law Officer in the P&D Department. After filing of representation/departmental appeal, the respondent filed service appeal before the Tribunal with prayer seeking his absorption/transfer as Law Officer in the P&D Department with all back benefits from the date of his initial appointment in 2005, with protection of pay and finalization of service structure of the post of Law Officer in the P&D Department for further promotion of the respondent. The Tribunal by the impugned judgment dated 31.10.2019 allowed the service appeal,

filed by the respondent, and directed the petitioner to redress the grievance of the respondent with observation that the petitioner is vested with the power to make adjustment of the respondent as asked by him. The Tribunal was comprising of three Members; the Chairman and the Member-II have given the above findings, the Member-I, however, in his note, has found that no legal right of a person can be found on mere creation of the post and thus disposed of the appeal and the concerned authority was directed to decide the case on merits.

2. Be that as it may, we note that in the first place the respondent was an employee of the Health Department of Government of Pakistan and was employed in the Cadre of Field Programme Officer in BPS-17. He was transferred and posted as Law Officer in the Health Department, Government of Balochistan and in 2016, he was assigned additional charge of Deputy Secretary (Judicial) in P&D Department. P&D Department itself created the Post of Law Officer after the approval of the Finance Department. It seems that the post of Law Officer created in P&D Department was person specific i.e. for the respondent in fulfillment of his will and desire. This appears to have not materialized.

3. We may note that being appointed as Field Programme Officer in the Health Department, the respondent could not have been transferred or absorbed at all in the P&D Department as Law Officer for that the Field Programme Officer is totally a different Cadre in the Health Department from the one that of a Law Officer and in view of the judgments of this Court in the cases of Contempt Proceedings Against Chief Secretary, Sindh and others (2013 SCMR 1752) and Ali Azhar Khan Baloch and others Vs. Province of Sindh

and others (2015 SCMR 456), the posting, transfer, absorption and change of cadre are not permissible in law.

4. We may further note that P&D Department has created a new post of Law Officer. Such post has to be filled in not by transferring or borrowing an employee from another department rather such post is to be filled in by following the law, in that, it has to be advertised. If the respondent is interested in joining such post he may apply for the same as a result of advertisement but the respondent cannot be allowed the change of his cadre and then by jumping from the Health Department to P&D Department and on creation of a new post by the P&D Department desired to join such post. The respondent may be having such desire but the law does not permit that his such desire be accepted as the post of Law Officer in P&D Department has to be filled in accordance with law and rules that is the post has to be advertised and filled in by duly qualified person. Thus, the impugned judgment of the Tribunal is not sustainable in the eyes of law. The same is, therefore, set aside and the petition is converted into appeal and allowed.

Islamabad,

14th October, 2021

Nasir Khan /-

'Not approved for reporting'