

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present

Mr. Justice Umar Ata Bandial
Mr. Justice Munib Akhtar

Civil Appeals No. 323-325 of 2018

(On appeal from the order dated 16.12.2016
passed by the FST, Ibd. in Appeals No.2299(R)
CS/2013 to 2301(R)/CS/2013).

Director General, National Savings
Central Directorate of National
Saving 32-N Sector G-6, Islamabad
and others. (in all cases)

...Appellant (s)

Vs

Muhammad Sultan and others

(CA 323/18)

Hussain Sardar and others

(C.A.324/18)

Fawad Ahmed and others

(C.A.325/18)

...Respondent (s)

For the appellant (s): : Mr. Sohail Mahmood, D.A.G.
(in all cases) Ch. Akhtar Ali, AOR.

Ch. M. Tariq, Ali, Dir National Savings

For the respondent (s): : Mr. Muhammad Ramzan Khan, ASC.
(in all cases) Syed Rifaqat Hussain Shah, AOR.

Date of hearing: : 17.04.2019

ORDER

Umar Ata Bandial, J.- Leave was granted by this Court on 6.03.2018

to consider the points noted in the order dated 14.02.2018, which is
reproduced below:

"The learned DAG states that the respondents were not civil servants and thus the Federal Service Tribunal had no jurisdiction in the matter and further though the respondent's service was regularized but the Tribunal has exceeded in its jurisdiction while directing the petitioners to initiate process of re-designation of the respondents so that they are encadred properly, which is not possible under the law".

2. The respondents were appointed on contract in the year 2008 as Marketing Officer, BS-17, in a project titled "Crop Scouting and Price Monitoring of Essential Items of Daily Use by Common Man" undertaken in the Ministry of Food, Agricultural and Livestock Products Marketing and Grading Department, Government of Pakistan ("**MINFAL**"). Consequent upon 18th Constitutional Amendment in the year 2010, the MINFAL was devolved; and the appellants were transferred alongwith post and budget to the Ministries/Divisions on deputation basis under section 10 of the Civil Servants Act, 1973 ("**the Act**"). The transfer order dated 18.08.2011 of the respondents in their existing Basic Pay Scales to the Central Directorate of National Savings, Government of Pakistan which took effect from 01.07.2011 was subject to the terms listed in the 'Remarks' column of the said order.

"On the reorganization of the Federal Secretariat, in pursuance of Constitution (Eighteenth Amendment) Act, 2010 (Act No.X of 2010), and the Agricultural, Livestock Products Marketing and Grading Department of the devolved Ministry of Food & Agriculture wound-up w.e.f. 01.07.2011, the following officers are transferred alongwith post and budget to the Ministries/Divisions mentioned against each on deputation basis under section 10 of the Civil Servants Act, 1973, in the same Basic Scales of pay with effect from 01.07.2011.

S#	Name	Designation	BP S	Place of posting as on 30.08.2011	Transferred to	Remarks
1.	Mr. Sikandar Shah	Director Marketing	19	Islamabad	M/o Commerce	i) The employee being Adhoc/other employees of the Deptt. Transferred from Development to Non-Development side w.e.f.01.7.2010. The case of regularization is sub judice in Islamabad High Court (Writ Petition # 3808/2010. These orders are subject to the final outcome of the said writ petition. ii).....
2.	Mr. Muhammad Sultan	Marketing Officer	17	Sargodha	Finance Division for posting in Central Directorate of National Savings at concerned stations mentioned against each.	
3.	Mr. Hussain Sardar	Marketing Officer	17	Multan		
4.	Mr. Fawad Ahmad	Marketing Officer	17	Hyderabad		
5.	Mr. Navidullah	Marketing Officer	17	Peshawar		
6.	Mr. Frhan Sikandar	Marketing Officer	17	Islamabad	CA&DD.	

3. On 19.07.2012 the Cabinet Sub Committee recommended the case of the respondents for regularization. Consequently, offers of appointment were given to the respondent vide letter dated 30.03.2015 which laid down the following three conditions:

- i) *"Your request for change of cadre shall not be entertained on any ground.*
- ii) *Your request for conversion of post of Marketing Officer (BS-17) to post of National Savings Officer (BS-17) shall not be entertained.*
- iii) *Your seniority and inter-se seniority against the post of Marketing Officer will be determined in the light of Civil Servants (Seniority) Rules, 1993."*

4. On 08.04.2015 the respondents were permanently absorbed/inducted in the Central Directorate of National Savings with immediate effect. The said notification made the respondents' absorption/induction in service subject to the same three conditions laid down in their afore-noted letters dated 30.03.2015.

5. Shortly, thereafter the respondents filed representations before the Appellant-authorities for the up-gradation of their posts to Marketing Officers from BS-17 to BS-18 and the re-designation of such posts to Assistant Director for the provision of a career channel in the service of Central Directorate of National Savings. The departmental authority rejected the request and the matter went before the learned Federal Service Tribunal ('FST') in appeal filed on 19.12.2015 which has been decided by the impugned judgment dated 16.12.2016. The learned Tribunal declined the prayer for up-gradation of respondents' post in consequence of the said prayer being withdrawn. However, in conclusion the learned Tribunal issued the following direction to the appellant-authorities:

"8. The appellants have also cited an example of the case of Farhan Sikander who was notified on 18.12.2012 to join CADD as Accounts Officer (BS-17) notwithstanding the fact that in the Ministry of Food and Agriculture (defunct), he was serving as Marketing Officer (BS-17). The appellants thus suffered from discrimination. Marketing Officer of the same defunct Ministry was accommodated as Accounts Officer in the transferee Ministry whereas the appellants are languishing in the respondent-department and were absorbed as Marketing Officers, for which there can be no encadrement. This situation needs attention of the respondent-department and the Establishment Division.

9. So while disposing of this appeal as withdrawn to the extent to the plea of up-gradation, we accept the plea of the appellants and direct the respondents to initiate the process of re-designation of the appellants so that they are encadred properly and in the alternative, to frame recruitment rules for providing a channel of promotion to the appellant. The exercise be completed within a period of four months from the date, the copy of this judgment is received in their offices."

6. Learned Additional Attorney General submits that the respondents are not civil servants because they were not inducted through the regular process. He has relied upon paragraph 203 in the judgment of this Court reported as Ali Azhar Khan Baloch and others vs. Province of Sindh and others (2015 SCMR 456). He has then referred to section 11-B of the Act, where-under a reference may be made to the FPSC in order to determine whether an officer absorbed in the service of the Federation possesses the qualifications required for the post held by him. He submits that since no assessment of the respondents' credentials has been made by the FPSC, therefore, the direction given for framing fresh rules for the respondents' promotion is premature and without merit.

7. Learned counsel for the respondents submits that the letter dated 08.04.2015 permanently absorbing the respondents into Government service is issued under the recommendations of the Cabinet sub-Committee which enjoys sanctity. By that letter the respondents have been conferred the status of a civil servant which, under section 9 of the Act, includes the entitlement to be considered

for promotion and therefore, the right to have a promotion channel available. Accordingly, the direction given by the learned Tribunal is perfectly in order. He has opposed the appellant's submissions based upon section 11-B of the Act on the ground that under a consistent policy the Federal Government has in hundreds of cases given the status and rights of a Civil Servant, to officers who were previously employed in devolved Ministries.

8. We agree with the learned counsel for the respondents that the letter dated 08.04.2015 cannot be reversed by the appellant-department by referring to the legal requisites for absorption into regular government service identified in our judgment given in the *Ali Azhar Khan Baloch* case (supra). That judgment considers the question in a different scenario. It does not adjudicate the vires of absorption in government service of persons whose services were rendered surplus on account of the 18th Constitutional Amendment. Such relief was granted by the highest executive authority to hundreds of government employees affected by the new Constitutional dispensation. Neither the vires of the recommendation made by the Cabinet sub-Committee were under challenge before the learned FST nor should this Court enter a controversy that may potentially expose the respondents to discriminatory treatment vis-à-vis hundreds of other similarly placed employees of the Federal Government. Therefore, the arguments of the learned D.A.G. purporting to override the respondents' absorption in regular service on the touchstone of section 11-B of the Act is without force.

9. We do note that the conditions laid down in their offer letter dated 30.03.2015 were accepted by the respondents. These are

reproduced in the respondents' notification of absorption/induction dated 08.04.2015. The three conditions for the absorption/induction of the respondents into service are; firstly, that they shall be absorbed/inducted as 'Marketing Officer' (BS-17); secondly, that they shall not have a right of change of their cadre or for the conversion of their post to the post of National Savings Officer (BS-17); and finally, that their inter-se-seniority against the post of Marketing Officer shall be determined in the light of Civil Servants (Seniority) Rules, 1993. The terms of the said letter have not been modified or invalidated by the impugned judgment of the learned FST. The relief granted to the respondents who accept the impugned judgment and have not challenged the same, is to the effect that the appellant should initiate the process of re-designation of the respondents' posts so that they are encadred properly or in the alternative to frame recruitment rules for providing a channel of promotion to the appellant. That direction does not impose any conditions on the terms that may be laid down by the appellants for providing a promotion channel to the respondents. We are informed that vide notification dated 16.05.2017 the appellants have, subject to the decision of the present appeals, encadred the respondents to the post of National Savings Officers BS-17 as against their previous posts of Marketing Officers BS-17. That decision is made in implementation of the impugned judgment of the FST.

10. Consequently, in the light of submissions made by the learned counsel for the parties the question that remains for our consideration is whether the respondents are entitled to a channel of promotion in their service of the Central Directorate of National Savings as is assured to other officers who were regularly inducted

through the FPSC in that service. We are clear in our minds that the terms of the letter dated 08.04.2015 secures only the post of Marketing Officers BS-17 for the respondents until the date of their superannuation. It does not guarantee them a career leading to higher posts in service of the said Directorate. This is plausible because the Federal Government has sought to limit the incidence of hardship upon individual officers on account of the amendments made in the Constitution. Therefore the letter dated 08.04.2015 gives the respondents job security and in doing so it confers them the status of civil servants. To be considered for promotion is a legal right of a civil servant provided he satisfies the requisites therefor. At the very outset this includes his eligibility by way of educational qualifications and experience. There may be other prescribed criteria for the higher post. It is in this respect that the impugned judgment of the learned FST has rightly envisaged that rules be framed by the appellants thereby opening, *inter-alia*, the vista of promotion for the respondents. These rules may, *inter-alia*, specify the criteria of qualifications, experience, seniority and fitness for the higher post and possibly the number of seats in the cadre for which the respondents may compete.

11. It is settled law that the absorption/induction into service of a person who has not complied with the legal process for recruitment into government service cannot confer on him all the rights and fruits guaranteed under the Act. Therefore, in order to avail, *inter-alia*, career progression through promotion under section 9 of the Act, the claimant officers are obligated to qualify for such a benefit and privilege. For this purpose, appellants must install an appropriate framework that caters for officers in the respondents'

position to be considered for promotion in service by laying down criteria consistent with the law. Accordingly, these appeals are **partly allowed** with no order as to costs.

Bench-IV

Islamabad

17.04.2019

~~Me~~ approved for reporting

Saeed Aslam/f