

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SH. AZMAT SAEED.
MR. JUSTICE IJAZ UL AHSAN.

(D.O) (A.F.R.)

CIVIL PETITION NO. 1787 OF 2016.

(Against the judgment dated 26.04.2016 passed by the Baluchistan Service Tribunal, Quetta in S.A. No. 269 of 2015).

Dr. Yasmeen Jaffar.

...Petitioner(s)

Versus

Dr. Shehla Sami and others.

...Respondent(s)

For the petitioner(s):

Mr. Tariq Mehmood, Sr. ASC.
Syed Rifaqat Hussain Shah, AOR.

For respondent # No. 1: In person.

For respondents 2-3:
(On Court's call)

Mr. Ayaz Swati, Addl. A. G.

Date of Hearing: 02.04.2019.

ORDER

IJAZ UL AHSAN, J.- The petitioner seeks leave to appeal against the judgment of the Baluchistan Service Tribunal, Quetta dated 26.04.2016. Through the impugned judgment the Tribunal accepted the appeal filed by the respondent No.1 and set aside the notification dated 17.02.2015 through which the petitioner was granted proforma promotion w.e.f. 22.01.2008 as Assistant Professor (BS-18). The competent authority was further directed by the Tribunal to place the case of the respondent No.1 before the Provincial Selection Board for promotion as Associate Professor (BS-19) if she fulfilled the requirements as per the rules.

2. We were informed on 15.12.2016 that the petitioner as well as the respondent had since been promoted as Associate Professors. Therefore, to that extent there was no live issue. It appears that the only live issue between the parties to their *inter se* seniority.

3. Briefly stated the facts necessary for decision of this lis are that respondent No.1 Dr. Shehla Sami was appointed as Associate Professor (BS-18) on 08.08.2008 against the quota reserved for direct recruitment. The petitioner joined service as Senior Registrar, Gynaecology Department on 01.07.2006. Dr. Mahrukh Fatima and Dr. Najma Ghaffar who were senior to the petitioner applied to the Balochistan Public Service Commission ("the Commission") for appointment as Assistant Professor against the posts reserved for initial appointment. By order dated 20.10.2005 they were recommended for appointment by the Commission. However the said recommendation was challenged and the Baluchistan High Court set aside such recommendation. Subsequently Dr. Mahrukh Fatima was promoted from the post of Senior Registrar to that of Assistant Professor against the quota reserved for promotees w.e.f. 22.01.2008. In the meantime the appeal filed by Dr. Mahrukh Fatima and Dr. Najma Ghaffar before this Court succeeded through the judgment dated 26.01.2009. The recommendations of the Public Service Commission in their favour for initial appointment were upheld and the judgment of the Baluchistan High Court was set aside. Consequently they were appointed as Assistant Professors against quota reserved for direct recruitment w.e.f. 22.12.2005 vide notification dated 21.11.2011. In the above backdrop two posts against quota reserved for promotees fell vacant on 22.01.2008 and the petitioner was granted back dated promotion vide notification dated 11.02.2015 w.e.f. 2.01.2008 when a seat from promotion quota became available. Seniority was accordingly granted to her.

4. The respondent felt aggrieved because she was relegated to a junior position on the seniority list. She filed a representation for promotion as Associate Professor. On failure of the department to

decide her representation she filed an appeal before the Baluchistan Service Tribunal which was allowed vide judgment dated 26.04.2016. The petitioner is aggrieved of the said judgment. Hence this petition.

5. The learned counsel for the petitioner submits that the issue raised before the tribunal was legality of the notification dated 17.02.2015 whereby the petitioner was given promotion with retrospective effect. However since in the meantime subsequent events occurred and parties were promoted as Assistant Professors, the issue had become academic. The Tribunal was not justified in interfering in the matter. He further maintained that as per relevant rules 50 percent of the posts of Assistant Professors were to be filled through direct recruitments and remaining 50 percent by way of promotion. The Petitioner became eligible for promotion to the post of Assistant Professor in January, 2008, when the posts became available against promotion quota. However she could not be considered as Dr. Mahrukh Fatima was appointed against the promotion quota, though she had already been recommended for appointment against the quota reserved for direct recruitment. However as a result of Supreme Court's decision followed by appointment of two doctors against direct recruitment quota w.e.f. 12.12.2005, the vacancy against the promotion quota became available w.e.f. 08.01.2008. In this background the respondent-Govt. was justified in granting her promotion w.e.f. 08.01.2008 when vacancy fell vacant. He maintained that in substance the petitioner's case was one of *ante dated* promotion from the date vacancy became available and the Tribunal was not justified in interfering with the same. He finally argued that Tribunal had no valid reason to interfere in the matter and the reasoning adopted by the Tribunal was flawed and unsustainable.

6. On the other hand respondent No.1 who appeared in person on account of inability of her counsel to appear today has with our permission argued the matter herself. She has pointed out to us that she was appointed as Assistant Professor (BS-18) on 08.08.2008 while the petitioner was initially appointed as Senior Registrar (BS-18), Gynaecology Department on 01.07.2006. She was promoted as Assistant Professor on 17.12.2009 when she became eligible under the eligibility criteria. The seniority list circulated from time to time followed by final seniority list of 10.09.2012 contained the name of the respondent No.1 at serial No.4 whereas the name of the petitioner at serial No.6. The petitioner was apparently dissatisfied with the seniority assigned to her. She filed a Service Appeal and questioned the seniority of the one Dr. Balqees Ara Magsi whose name was at the serial No.2 of the list. However neither respondent No.1 nor the other doctors whose names were at serial Nos.1, 3, 4 and 5 were arrayed as respondents. Vide judgment dated 25.02.2014 the Tribunal remanded the case to the Secretary Health with a direction to scrutinize and examine all aspects of the matter and decide the case on merit within four months. The respondent No.1 submits that in post remand proceedings the petitioner was given proforma promotion as Assistant Professor (BS-18) w.e.f. 22.01.2008 when she did not even meet eligibility criteria. She emphasised the fact that seniority list circulated on 10.09.2012 showed respondent No.1 and few others including Respondent No.1 as senior to the petitioner. Therefore, the order of giving proforma promotion w.e.f. 22.01.2008 directly and adversely affected their rights and they were condemned unheard. She further maintained that the petitioner did not fulfil the notified criteria for proforma promotion as prescribed by the Proforma Promotion Policy.

7. We have heard the learned ASC for the petitioner and respondent in person. The entire record has been examined with the assistance of the learned ASC and Respondent No.1, in person. The only question requiring determination by us at this stage is whether the petitioner could have been granted proforma promotion w.e.f. 22.01.2008 as Assistant Professor (BS-18).

8. On hearing the learned ASC and the respondent in person we found that answer of the question has to be in the negative for the following reasons:

- i) Respondent No.1 was appointed as Assistant Professor (BS-18) w.e.f. 08.08.2008 on the recommendations of Public Service Commission against the quota reserved for initial recruitment. The petitioner was appointed as Assistant Professor (BS-18) when she became eligible, against the vacant post on 17.12.2009 on the recommendation of the Provincial Selection Board by way of promotion. The final seniority list of Gynaecology Department was issued on 10.09.2012 wherein respondent No.1 appeared at serial No.4 while petitioner was at serial No.6. This seniority list was not questioned by the any one. The dispute appears to have arisen from the Service Appeal filed by the petitioner to establish her seniority vis-à-vis Dr. Bilqees Ara Magsi. However the Tribunal did not settle that controversy and remanded the case to the department with a direction to decide the case on merit. It is significant to note that neither respondent No.1 nor three others who would have

been directly affected by any change in the seniority list were neither arrayed as respondents in the Service Appeal nor were they called, impleaded or heard by the department. It is clear and obvious to us that the said persons were condemned unheard and the principle of *audi alteram partem* was violated at both levels.

ii) The department processed the case of the petitioner in isolation without hearing other parties interested in the matter and ultimately notification dated 17.02.2015 was issued whereby the petitioner was unilaterally granted proforma promotion with retrospective i.e. 22.01.2008 which is apparently the date on which the Post of Assistant Professor against the promotion quota became available. However the department clearly overlooked the fact that on the said date the petitioner was not eligible for promotion against the said seat on account of shortfall in her relevant experience. This in addition to ignoring the rule of *audi alteram partem* is an additional reason why the notification in favour of the petitioner cannot be allowed to stand.

iii) The Tribunal also examined Proforma Promotion Policy, 2011 which spelt out the criteria for grant of proforma promotion to Civil Servants. Accordingly it came to the conclusion that the petitioner did not meet any of the criteria provided in the Proforma Promotion Policy for entitlement to proforma promotion. Therefore, the earlier appointment of the

petitioner by way of promotion as Assistant Professor though notification dated 17.12.2009 appears to have been correctly made when she met the requisite criteria for appointment against the post of Assistant Professor (BS-18). We are, therefore, of the view that the Tribunal had valid reasons and lawful justification to set aside notification No.SO-VI(H) 1-637/2014/6004-11 dated 17.02.2015 issued by the Health Department.

9. The learned counsel for the petitioner has not been able to demonstrate before us any legal, procedural and jurisdictional error, defect or flaw in the impugned judgment of the Tribunal that may justify grant of leave to appeal. Even otherwise, we are not satisfied that the case involves substantial questions of law of public importance that may furnish basis for grant of leave to appeal within the contemplation of Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

10. Above are reasons for our short order dated 02.04.2019 which for ease of reference is reproduced below:

"For reasons to be recorded later this Civil Petition is dismissed and leave is declined."

ISLAMABAD.

02.04/2019.

Farhan Shah

'Not Approved For Reporting'

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