

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITIONS NO. 1775 TO 1778 AND 1793 OF 2022

(Against the judgment dated 07.03.2022 passed by the Federal Service Tribunal, Lahore in Appeals No.180 (L) to 183 (L) & 179 (L) of 2021)

Controller General of Accounts, Government of Pakistan, Islamabad
and another

...Petitioners
(In all cases)

VERSUS

Abdul Waheed	(In CP.1775/2022)
Sajid Iqbal	(In CP.1776/2022)
Syed Muhammad Usman	(In CP.1777/2022)
Ashar Jan Siddiqui	(In CP.1778/2022)
Muhammad Baqir	(In CP.1793/2022)

...Respondents

For the Petitioners	Ch. Aamir Rehman, Addl. AGP Mr. Anis M. Shahzad, AOR
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For the Respondents:	N.R.
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Date of Hearing:	28.09.2022
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JUDGMENT

MUHAMMAD ALI MAZHAR, J. The aforesaid Civil Petitions for leave to appeal are directed against the common Judgment dated 07.03.2022, passed by the learned Federal Service Tribunal, Lahore ("**Tribunal**") in Appeal No.180 (L) to 183 (L) and 179 (L) of 2021, whereby the service appeals filed by the Respondent-Employees were allowed and the Department was directed to consider them for promotion.

2. The Respondent-Employees pleaded in their Service Appeals before the learned Tribunal that they were not considered for promotion as Assistant Accounts Officer (BS-17) ("**AAO**") by the Departmental Promotion Committee ("**DPC**") in its meeting convened in the year

2020. According to the Respondent-Employees, they qualified the Pakistan Institute of Public Finance Accountants ("**PIPFA**") examination before convening the DPC meeting and were qualified and eligible to be considered fairly, however on denial, they preferred departmental appeals with legitimate expectation but it was rejected on 05.05.2021 with the observation that the cases of promotion will be considered in the next DPC meeting subject to the availability of vacancies.

3. The learned Additional Attorney General for Pakistan ("**AAGP**") referred to the amendments made in the Recruitment Rules (originally notified *vide* S.R.O. 639(I)/2014 dated 15.07.2014 ("**Original S.R.O.**") for the posts in the office of the Controller General of Accounts ("**CGA**") notified *vide* S.R.O. 690(I)/2020 dated 02.06.2021 ("**Amendatory S.R.O.**") and argued that the impugned Judgment is not sustainable in law. He further contended that the Director of Accounts, Pakistan Post Office Department ("**DAPPOD**"), Lahore have not recommended the promotion while submitting working papers for the DPC meeting of 17.06.2020 as they have passed their PIPFA examination during Summer-2014, Winter-2014, Summer-2016, Winter-2017 and Summer-2018 respectively, while the last Senior Auditor who was recommended was Habib-Ullah Khan who qualified PIPFA examination in Winter-2011. Hence, PIPFA batch wise Senior Auditors were promoted as AAO in DAPPOD as well as in all FAOS. He further added that the respondent employees will be considered on the basis of qualification of PIPFA exam batch-wise as per amendments in the Recruitment Rules of CGA notified *vide* the Amendatory S.R.O.

4. The minutiae of the case set out before the learned Tribunal demonstrates that the Respondent-Employees entreated for the directions against the petitioners that their claim of promotion to the post of Assistant Accounts Officer (BS-17) was to be considered with effect from the 17.06.2020 when their juniors were promoted to the said post and the order dated 05.05.2021 be declared illegal. The rationale of this plea was based on the assertion that they qualified the PIPFA exam before the DPC meeting convened, hence their

credentials and antecedents for promotion ought to have been considered in the DPC.

5. The main bone of contention which cropped up between the parties has direct nexus with the interpretation and exactitudes of the Original S.R.O. and the Amendatory S.R.O., whereby the Recruitment Rules for the posts in the office of the CGA were amended, hence the question arises whether the amendments made will have prospective or retrospective effect. For the ease of convenience, the relevant portions of both S.R.Os are reproduced as under:-

According to the Original S.R.O. 639 (I)/2014, the conditions for promotion from the post of Senior Auditor (BS-16) to Assistant Accounts Officer (BS-17) were as follows:-

Conditions for Promotion

S.No.	Designation and BPS of the Post	Persons eligible	Conditions of eligibility
(1)	(2)	(3)	(4)
1.
2.	Assistant Accounts Officer (BS-17)	Senior Auditor (BS-16)	03 years' service as Senior Auditor (BS-16), with qualification of APE/SAS/PIPFA (Public Sector) Exam (Senior Auditors on the date of DPC would be considered for promotion on seniority-cum-fitness basis subject to observance of ratio 1:2 between unqualified and APE/SAS/PIPFA (Public Sector) qualified Senior Auditors respectively.
3.

However, vide the Amendatory S.R.O. 690(I)/2020 certain amendments were made in the Recruitment Rules for posts in the office of the CGA notified vide the Original S.R.O. The conditions for promotion enunciated in Rule 3, were amended in the following manner:-

"S.R.O. 690(I)/2020. – In pursuance of sub-rule (2) of Rule-3 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 & Section 7 (1) (b) (i) and (ii) of Federal Public Service Commission Ordinance, 1977 (XLV of 1977), the following amendments shall be made in the Recruitment Rules of the posts in Controller General of Accounts (CGA), notified vide S.R.O. 639(I)/2014, dated 15.07.2014, namely:

In the aforesaid Recruitment Rules:

In Rule-3 (Condition for promotion), against Sl. No. 2 under Column-4, the existing entries shall be substituted with the following:

Against 67% PIPFA Vacancies

'Senior Auditor (BS-16), with 03 years' service having qualified the PIPFA (Public Sector) examination. Promotion will be considered sequentially in terms of PIPFA qualified batches.'

Against 33% non PIPFA Vacancies

'Five (05) years' service as Senior Auditor (BS-16) for non PIPFA qualified Senior Auditors on Seniority-cum-fitness basis.'

2. This Notification issues with the approval of the Establishment Division *vide* their O.M. No. 10/2/89-R-V, dated 28.01.2021 and with the concurrence of FPSC *vide* their letter No.F.15-14/2021-RR, dated 18.5.2021."

6. There is no denial of the fact that the Respondent-Employees completed and qualified the PIPFA exam in 2014 well before the DPC which was convened on 17.6.2020, but by means of the Amendatory S.R.O. amendments were made whereby the mechanism or condition for promotion from the post of Senior Auditor (BS-16) to the post of AAO (BS-17) was amended while remaining intact the condition of 03 years' service having qualified the PIPFA (Public Sector) examination but with further rider that promotion will be considered sequentially in terms of PIPFA qualified batches. Whereas in view of the Original S.R.O., the condition of promotion for AAO (BS-17) was 03 years' service as Senior Auditor (BS-16), with qualification of APE/SAS/PIPFA (Public Sector) Exam on the date of DPC would be considered for promotion on seniority-cum-fitness basis subject to observance of ratio 1:2 between unqualified and APE/SAS/PIPFA (Public Sector) qualified Senior Auditors respectively. So in all fairness, the amendment made *vide* the Amendatory S.R.O. will not apply to the case of the Respondent-Employees, firstly for the reason that the S.R.O. itself does not mention or specify that it will have retrospective impact; secondly when the amendment came into field, the Respondent-Employees had already qualified the PIPFA examination and that was before the convening of DPC meeting, so their cases for promotion were ought to have considered in terms

of previous criteria or conditions of promotion where there was no such condition to consider the promotion case with batch mates. It is a well-settled principle of interpretation of statutes that where a statute affects a substantive right, it operates prospectively unless, by express enactment or necessary intendment, retrospective operation has been given. The insertion or deletion of any provision in the rules or the law, if merely procedural in nature would apply retrospectively but not if it affects substantial rights which already stood accrued at the time when the un-amended rule or provision was in vogue. [Reference can be made to Zakaria H.A. Sattar Bilwani and another v. Inspecting Additional Commissioner of Wealth Tax, Range-II, Karachi (2003 SCMR 271), Government of KPK and others v. Khalid Mehmood (2012 SCMR 619) and Senior Member BOR and others v. Sardar Bakhsh Bhutta and another (2012 SCMR 864)].

7. According to **Bennion on Statutory Interpretation** (Seventh Edition), page 181 with regard to the retrospectivity effect of law, it was said that "principle is sometimes expressed in the maxim *lex prospicit non respicit* (law looks forward not back). As Willes J said in *Phillips v Eyre* retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.'" Whereas in **Crawford's Statutory Construction**, Chapter XXV, germane to Prospective and Retrospective Operation, at pages 562 to 566 and 622, the gist of the discussion is that retroactive legislation is looked upon with disfavor, as a general rule, and properly so because of its tendency to be unjust and oppressive. There is a presumption that the legislature intended its enactments to have this effect to be effective only *in futuro*. This is true because of the basic presumption that the legislature does not intend to enact legislation which operates oppressively and unreasonably. If perchance any reasonable doubt exists, it should be resolved in favour of prospective operation. In other words, before a law will be construed as retrospective, its language must imperatively and clearly require such construction. Amendatory statutes are subject to the general

principles discussed elsewhere herein relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In the case of *People v Dilliard* (298 N.Y.S. 296, 302, 252 Ap. Div.125) Court held that "It is chiefly where the enactment would prejudicially affect vested rights, or the legal character of past transactions that the rule in question applies. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation."

8. The amendments in the Recruitment Rules for the posts in the office of the CGA were made *vide* the Amendatory S.R.O. pursuant to Sub-rule (2) of Rule 3 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 & Section 7 (1) (b) (i) and (ii) of Federal Public Service Commission Ordinance, 1977 (XLV of 1977). Rule 3 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, is germane to the appointments to posts (a) by promotion in accordance with Part II of these rules; (b) by transfer in accordance with Part II of these rules; and (c) by initial appointment in accordance with Part III of these rules. While Sub-rule (2) is related to the method of appointment, and the qualifications and other conditions applicable to a post, shall be as laid down by the Ministry or Division concerned in consultation with the Establishment Division. Whereas Section 7 (1) (b) (i) and (ii) of Federal Public Service Commission Ordinance, 1977 (XLV of 1977) pertains to the role of Commission; (b) to advise the President: (i) on matters relating to qualifications for and methods of recruitment to, services and posts referred to in clause (a); (ii) on the principles to be followed in making initial appointments to the services and posts referred to in clause (a) and in making appointments by promotion to posts in BS-18 and above and transfer from one service or occupational group to another. The survey of the above Rules by dint of which the Recruitment Rules were amended are general in nature which elucidate the method of appointment and the matters relating to qualifications for recruitment to the services and posts, but have

nothing to do with the effective date, either prospective or retrospective, for which well-settled rules of interpretation shall apply to understand the pith and substance of amendments made in the existing rules of service regarding whether it can affect vested rights or not. In all fairness, the learned Tribunal rightly recorded its findings that those who qualified the PIPFA exam before the DPC meeting, their cases shall not be regulated by the amended rules for promotion.

9. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgment passed by the learned Service Tribunal. The Civil Petitions are dismissed and leave is refused.

Judge

Judge

Judge

Islamabad the
28th September, 2022
Khalid
Approved for reporting.