

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 Petition No. 2092/2019

(Against the judgment dated 12.03.2019 of the
Peshawar High Court, Peshawar passed in WP
No. 4296-P/2017)

Amanullah Khan

Petitioner

Versus

Hospital Director, KTH (MTI), Peshawar & others

Respondents

For the Petitioner(s) : In person

For the Respondent(s) : Not Represented

Date of Hearing : 12.10.2022

Judgment

Muhammad Ali Mazhar, J. This Civil Petition for leave to appeal is directed against the judgment dated 12.03.2019 passed by the learned Peshawar High Court in Writ Petition No. 4296-P/2017, whereby the petitioner's claim for upgradation was dismissed.

2. In fact, the petitioner sought a declaration in the aforesaid Writ Petition against the impugned decision of the Board of Governors, MTI, KTH ("**BOG**") in connection with Agenda No. 9, whereby the petitioner's claim for upgradation was rejected. Earlier, the petitioner had filed Writ Petition No. 3356-P/2014 for the same claim of upgradation which was disposed of vide order dated 10.11.2015, with a direction to the respondents to place the case of the petitioner before the BOG constituted under the Khyber Pakhtunkhwa Medical Teaching

Institutions Reforms Act, 2015 for considering his upgradation and passing an appropriate order within reasonable time. Being aggrieved, the petitioner also filed Review application with the prayer that his case be treated at par with Muhammad Zahid, who was upgraded in BPS-17. Again, the Review Petition was disposed of by the High Court on 09.02.2016 with the directions to the respondents to consider his case within 30 days in light of the decided matter of Muhammad Zahid, Clinical Technologist (BPS-17). The record further reflects that the case of the petitioner was placed before the BOG, but after consideration his request for upgradation was rejected. The petitioner thereafter moved an application for contempt of Court which was dismissed by the High Court on 07.06.2016, and the said order was also upheld by this Court in appeal vide order dated 02.10.2017, with the observation that if the petitioner is of the view that his case has not been decided properly, he may, if so advised, approach the competent forum in this behalf. s

3. In the minutes of 8th BOG Meeting of MTI KTH, held on 25.5.2016, the Agenda No.9 pertained to the case of petitioner which demonstrates that the case of petitioner was discussed in detail and after extensive discussion it was referred to the Selection/Promotion Committee for recommendation but the Selection/Promotion Committee decided on 5.3.2016 that the petitioner is not entitled for up-gradation from BPS-9 to BPS-17 as he has already been upgraded from BPS 9 to BPS-12. The minutes further reflect that the petitioner could not be upgraded to the Sr. Clinical Technician which post was to be filled as per service rules on the basis of seniority list of Clinical Technician Pathology (BPS-12) in which the petitioner was at Serial No. 14 in the seniority list in JCT Pathology MTI KTH. Ultimately, the

BoG endorsed the recommendation of Selection/Promotion Committee KTH and regretted to upgrade the petitioner to the post of Clinical Technologist (Pathology) (BPS-17) as he was not eligible as per rules. The case of Muhammad Zahid is distinguishable for the reasons that he was upgraded as Clinical Technologist (Pulmonology) BPS-17 in terms of Govt. of KPK (former N.W.F.P) Health Department Notification No. SOH (11) 3-15/2001 dated 26-6-2001 (N.W.F.P Medical Institution Rules 2001, Rule 9, Sub-Rule-2(III) pursuant to the decision of Promotion/Selection Committee KTH/KMC/KCD in the meeting convened on 10.01.2013. In the High Court also, the petitioner failed to make party to employees of the Pathology Department who were senior to him hence his petition in the High Court was hit by non-joinder of the necessary parties. The petitioner could not offer any plausible justification to meet the objection of non-joinder of necessary parties.

4. The petitioner in person argued that after the passage of some time he was in fact upgraded to BPS-14, but he claims that he should be allowed upgradation from the date of upgradation allowed to Muhammad Zahid in BPS-17. Neither any plausible or logical reason has been shown for claiming his up-gradation with retrospective effect nor he could justify that he fulfilled the eligibility requirement for up-gradation in BPS 17 when his case was discussed in BOG meeting.

5. The upgradation of a post is not a vested right but it stems from a policy decision for its implementation for the particular set of employees as per scheme embedded in the Policy which cannot be mixed up with the promotion. By and large, upgradation is accorded to all positions in a category upon completion of a required length of

service in accordance with the benchmarks laid down by the competent authority as a policy decision. Upgradation is the process of improving the quality or usefulness of something or of giving a person a more important job, but in one fell swoop if the upgradation is concomitant and coexisted to all the posts in a group of employees, then obviously there is no sense in calling it a promotion of all the persons in that category. A promotion involves advancement in rank, grade or a footstep en route to a higher position, whereas the facility or benefit of upgradation simply confers some monetary benefits by granting a higher pay scale to ventilate sufferings which is a translucent distinction between the two genres. In the case of upgradation, the candidate continues to hold the same post without any change in his duties but he is accorded a higher pay scale. In order to lessen the distress or misery as a result of stagnation, the modus of upgradation moves in on for reparation. Upgradation under the scheme is personal to the incumbents of a particular post for sufficient length of service without any progression or avenue of promotion. Reference can be made to the dictum laid down in the case of Fida Muhammad Vs. Government of Khyber Pakhtunkhwa, Secretary of Education Peshawar & others [2021 SCMR 1895 = PLJ 2022 SC 253]. In the case of Ali Azhar Khan Baloch and others Vs Province of SINDH and others (2015 SCMR 456), also this Court in paragraph 138 of the judgment held that the up-gradation cannot be made to benefit a particular individual in terms of promoting him to a higher post or further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the up-gradation, the Government is required to establish that the department needs restructuring, reform or to meet the exigency of service in public interest.

6. In the wake of the above discussion, we find that the judgment of the learned High Court does not suffer from any illegality, perversity or impropriety. The petition is therefore dismissed and leave to appeal is refused.

Judge

Judge

Judge

Islamabad, the
12th October 2022
Rizwan
Approved for reporting