

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

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

CIVIL APPEAL NO.465 OF 2021

(Against the judgment dated 13.09.2018 passed
by Peshawar Court, Peshawar in W.P.2370-
P/2018)

Fida Muhammad

...Appellant(s)

VERSUS

Government of Khyber Pakhtunkhwa Secretary of
Education, Peshawar & others

...Respondent(s)

For the Appellant(s):

Mr. Naeem Jan, ASC

For the Respondent(s)

Mr. Shumail Aziz, Addl. AG KPK
Mr. Abdul Samad, Dy. Dire. E&S
Education KPK
Mr. Shakirullah Khan, SO (Lit) Finance
KPK

Date of Hearing:

28.09.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J. — This civil appeal is directed against the judgment passed by learned Peshawar High Court in W.P.No.2370-P/2018 whereby the writ petition was dismissed.

2. The short-lived facts of the case are as under:-

The appellant was appointed as CT in (BPS-09) on 15.09.1987. He was promoted to the post of SET/SST (BPS-16) on 24.07.2003. He reached to the age of superannuation on 04.05.2016 after qualifying 29 years of service and his pension was calculated on the basis of his last pay in BPS-16. The appellant lodged his grievance that he was not accorded the benefit of Notification dated 26.01.2008 issued by Government of KPK whereby up-gradation was allowed to SET/SST (BPS-16 to BPS-17) on completing ten years of service.

3. The learned counsel for the appellant argued that the benefit of Notification issued for up-gradation from BPS 16 to BPS 17 was not accommodated to the appellant while other employees at par were

given the same benefit keeping in view their length of service in BPS 16. In essence, he pleaded discrimination in the case of appellant and further avowed that learned High Court did not consider this crucial aspect and dismissed the writ petition.

4. On the other hand, the learned Additional Advocate General argued that there was no case of any discrimination or mala fide intention on part of the department. Since the appellant could not qualify the pre-requisites of upgradation Notification in which ten years length of service was required in (BPS-16), therefore, the appellant was not considered for up-gradation.

5. Leave to appeal was granted vide order dated 06.05.2021 on the following terms:-

“Learned counsel contends that through notification dated 26.01.2008 which was subsequently amended on 01.10.2007 and 19.10.2009 up-gradation of SET (BPS-16) was granted in BPS-17 and qualification provided therein was ten years service in BPS-16. Learned counsel contends that the petitioner was promoted to the post of SET in BPS-16 on 01.09.2003 and thus on 02.09.2013 had become entitled to the up-gradation that he had completed the ten years service which is provided as qualification in the notification noted above. He contends that the High Court has altogether misinterpreted the notification and apparently has not counted the period of service properly. Learned counsel contends that the petitioner has retired from service on 04.05.2016 and thus has more than ten years service and entitled to the grant of up-gradation.

2. The submissions made by the learned counsel for the petitioner require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal stage paper books be prepared from the available record with liberty to the parties to file additional documents, if any, within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously, preferably, after three months.”

6. The controversy is predominantly roaming around the impact and outcome of Notification dated 26.01.2008, issued by Finance Department, Government of KPK which articulated in simple terms that the Competent Authority pursuant to the decision of a meeting held under the Chairmanship of Secretary Establishment, allowed upgradation to the Primary School Teacher, (BPS-7), CT (BPS-9) and

SST (BPS-16). The case in hand precisely connected to the one of the categories meant for up-gradation by means of above Notification i.e. "SETs BPS-16 to BPS-17" in which the appellant was lastly employed but the same notification further elucidates the qualifying service of at least ten years for upgradation in (BPS-17) with the rider that upgradation to the post shall be made through DPC as per laid down procedure. One more Notification was also issued on 21.04.2008 for making some clarification in the earlier Notification dated 26.01.2008 that the benefit of up-gradation to all CT-BPS-9 to BPS-15 and SETs-BPS-16 to BPS-17 shall be for one time only.

7. The record reflects that the appellant was promoted to the post of SET/SST (BPS-16) on 1.9.2003, so for all intent and purposes, he did not qualify the threshold of ten years' service on the date when the Notification of upgradation came into effect which fact was also admitted by the learned counsel for the appellant but he insisted that the benefit of notification was recurring one hence on completion of ten years in BPS-16, the petitioner was also entitled for upgradation.

8. The upgradation cannot be claimed as a matter of right but it is in fact based on a policy decision of the competent authority for its implementation across the board for the particular categories of employees jot down in the scheme/notification who fulfilled the required qualification which is normally a particular length of service in a particular pay scale. There is a meticulous differentiation stuck between upgradation and promotion. The promotion involves advancement in rank, grade or a footstep en route for advancement to higher position whereas the facility or benefit of upgradation simply confers some monetary benefits by granting a higher pay scale to ventilate stagnation. In an upgradation, the candidate continues to hold the same post without any change in his duties but he is accorded a higher pay scale. It is also well settled exposition of law that the benefit of upgradation is normally granted to the persons stuck-up in one pay-scale for considerable period of their length of service either having no venue for promotion or progression. In order to minimize the anguish or suffering being stuck-up in particular pay scale for a sizeable period, the mechanism of up-gradation as a policy decision comes in field for redress and rescue. This Court in the case of Regional Commissioner Income Tax versus Syed Munawar Ali

(2016 SCMR 859) held that the expression “up-gradation” is distinct from the promotion which is not defined either in the Civil Servants Act or the Rules framed thereunder which is restricted to the posts and not with the person occupying it. In the case of Federal Public Service Commission through Secretary vs. Anwar-ul-Haq (Private Secretary) Islamabad and others (2017 SCMR 890), this court held that up-gradation is carried out under a policy and specified scheme. It is resorted only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Up-gradation under the scheme is personal to the incumbents of the isolated posts to address stagnation and frustration of incumbent on a particular post for sufficient length of service on particular post without any progression or avenue of promotion.

9. It is clearly emanating from the notification dated 26.1.2008 that it was not an open ended or without any cut-off date decision but upgradation scheme of the incumbents was made effective from 1.10.2007, meaning thereby that in the case of appellant at least ten years of service was required in BPS-16 for upgradation in BPS-17 from 1.10.2007 and since his length of service was not commensurate to the stipulated conditions hence he was not considered for up-gradation. The learned counsel for the appellant candidly admitted that length of service of the appellant was less than ten years in BPS-16 at the time of notification issued for up-gradation.

10. In the wake of above discussion, we do not find any justification for interference in the impugned judgment. The appeal is dismissed.

Chief Justice

Judge

Judge

Islamabad
28th September, 2021
Approved for reporting.