

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, HCJ

Mr. Justice Ijaz Ul Ahsan

Mr. Justice Qazi Muhammad Amin Ahmed

(AFR)D.J.)

Civil Appeal No.607 of 2021

Against judgment dated 24.02.2021 of Sindh Service Tribunal, Karachi, passed in Service Appeal No.888 of 2018.

Saqib Ali Khokhar, Director (Regional)/Additional Director (BS-19) STEVTA to be served through Managing Director (STEVTA), Headquarters, Street No.19, Block-6, Gulshan-e-Iqbal, Karachi.

Appellant(s)

Versus

Inayatullah Lohar & others

Respondent(s)

For the Appellant(s): Mr. M. Shoaib Shaheen, ASC

For Respondent No.1: Syed Ghulam Shabbir Shah, ASC
(via video link from Karachi) assisted
by Mr. Awwad Anwar, Advocate
Syed Rafaqat Hussain Shah, AOR

For Respondents#2-4: Mr. Fauzi Zafar, Addl.AG, Sindh

Date of Hearing: 08.11.2021

ORDER

IJAZ UL AHSAN, J.- This appeal by leave of the Court arises out of a judgment of Sindh Service Tribunal, Karachi ("**the Tribunal**") dated 24.02.2021. Through the impugned judgment, a Service Appeal bearing No.888 of 2018, filed by Respondent No.1 was allowed and a direction was issued to Sindh Technical Education and Vocational Training Authority ("**STEVTA**") to grant promotions, etc in accordance with the

provisions of Rules framed under Sindh Civil Servants, Act 1973 (**“Act, 1973”**) and not under the provisions of STEVTA Act and its Rules.

2. Briefly stated the facts necessary for disposal of this Appeal are that vide notification dated 24.04.2009, the Government of Sindh transferred administrative control of 250 institutions to STEVTA, whereby all Technical Education and Vocational Training Colleges, Institutes, Schools and Centers working under the Education, Labour and Social Welfare Department of the Government of Sindh and the District Governments with all their assets including human resources and administrative offices were transferred to STEVTA under STEVTA Act, 2009. Out of the said 250 institutions, 150 were taken over from the Directorate of Manpower Training, Labour Department and 12 institutions were taken over from the Social Welfare Department, Government of Sindh. Before takeover, the said institutions were under the administrative control of their respective Departments. In terms of Section 15(2) of STEVTA Act, 2009 as amended in 2010, all civil servants transferred and given in the administrative control of STEVTA were to be governed by the provisions of the Act, 1973 and the Rules made thereunder. In terms of STEVTA Act, 2009 employees of all institutions were

transferred by the Government of Sindh for service under the Authority on terms and conditions, as may be determined by the Government which shall not be less favourable than those admissible to them immediately before their transfer to the Authority. Likewise, in terms of Section 15(3), the employees transferred under subsection 2 thereof were to continue to be employees of the Government and liable to be transferred back to the Government unless absorbed by consent in service of the Authority in such manner as may be prescribed.

3. It appears that in 2012, STEVTA framed its own Rules namely Sindh Technical Education Vocational Training Authority Employees (Appointment, Promotion & Transfer) Rules, 2012 (**"Rules 2012"**). Under the said Rules, STEVTA changed the administrative structure of the institution, gave new nomenclatures to the posts of employees and broadly categorized all employees in two different categories; one such category consisted of the employees who had been transferred from the Directorate of Manpower Training and the other, the employees of Technical Education. Pursuant to the said Rules, STEVTA granted promotions under its own rules on the basis of seniority lists separately maintained for the two categories. The Appellant and Respondent No.1 belonged to two different departments of the Government of Sindh

and came from different cadres which had their own rules for upward movement through promotions. However, the Appellant was promoted under STEVTA Rules of which Respondent No.1 was aggrieved and had challenged the promotion of the Appellant first before the departmental authorities and thereafter before the Tribunal. Through the impugned judgment, the promotion of the Appellant was declared unlawful and the direction as noted above was issued. He is aggrieved of the said judgment.

4. In this case, leave to appeal was granted by us on 29.06.2021 in the following terms:

*"The Sindh Service Tribunal, Karachi (**the Tribunal**) has already given its judgment dated 21.10.2015 in Service Appeal No.757 of 2015 (titled Muzaffar Ali Bhuttoo vs. Province of Sindh and others), regarding the application of the Sindh Technical Education and Vocational Training Authority Act, 2009 (**Act of 2009**), and the rules made under it in 2012. Such judgment, as stated by the learned counsel for the petitioner, was upheld by this Court but the Tribunal by the impugned judgment dated 24.02.2021, has disagreed with its earlier judgment noted above, against which the petition before this Court stood dismissed.*

2. *The learned counsel for the petitioner contends that the Tribunal could not have taken a different view from the one already taken by it in the matter and, thus, the impugned judgment of the Tribunal is not sustainable. Further contends that the petitioner was transferred to the Sindh Technical Education and*

Vocational Training Authority (**STEVTA**) under the Act of 2009 and under such Act, the rules have been framed by the Sindh Government in 2012. Such rules being applicable for the promotion to the staff of STEVTA and the petitioner having been granted such promotion, the Tribunal on the basis that STEVTA rules being not applicable, was not justified in setting aside the promotion of the petitioner. Further contends that the very departmental appeal filed by respondent No.1 was time barred. He has also relied upon a judgment of this Court reported as Muhammad Aslam v. WAPDA and others (2007 SCMR 513).

3. 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, the Office is directed to fix the appeal expeditiously, preferably, after three months."

5. The learned ASC for the Appellant has vehemently argued that in terms of STEVTA Act and the Rules framed thereunder, the employees transferred from different Government Departments of Sindh to STEVTA were governed under the provisions of Section 15 of STEVTA Act and subsections (2), (3), (4), (5) & (6) thereof all related to the employees transferred by the Government of Sindh for service under the Authority. He laid great emphasis on the fact that in terms of Section 15(5) of STEVTA Act it was categorically stated that the employees transferred under Subsection (1) of Section 15 shall cease to be employees of the Government and would

become employees of the Authority and shall be governed by the rules and regulations applicable to other employees of the Authority. He maintains that the Tribunal not only misinterpreted the provisions of Section 15(2) of the STEVTA Act but ignored the clear and categorical language of subsection 5 thereof to the effect that the nexus of employees of the Government who were transferred to STEVTA ceased to exist for all intents and purposes and the terms and conditions of their service were to be governed under the STEVTA Act and the Rules framed thereunder. He further maintains that the impugned judgment does not take note of the fact that another Bench of the Tribunal had taken a totally different view which could not have been done in the facts and circumstances of the instant case. He further argues that the impugned judgment also does not take notice of the principles of law laid down in Contempt Proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752) and Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456).

6. On the other hand, learned ASC for Respondent No.1 has defended the impugned judgment. He submits that admittedly the parties were civil servants and just by reason of their transfer to STEVTA which is an Authority functioning under the Government of Sindh,

they could not have been taken out of purview of the Act, 1973 and subjected to a different set of rules which may or may not have been in consonance with the process of promotion as provided under the Act, 1973 and the Rules framed thereunder.

7. We have heard the learned counsel for the parties as well as the learned Additional Advocate General, Sindh and have gone through the case record. In the first place, we may note that by virtue of an amendment in STEVTA Act, 2009 subsections (4), (5) and (6) of Section 15 thereof were omitted with the obvious result that the rule which envisaged that employees transferred to STEVTA shall cease to be employees of the Government was removed from the statute book. After omission of the said three subsections, the only clear clause that remained governing the status of the employees transferred to STEVTA was subsection (3) of Section 15, which is to the effect that employees transferred under subsection (2) to STEVTA shall continue to be employees of the Government and could be transferred back to the Government unless absorbed by consent in service of the Authority in such manner as may be prescribed. It is not the case of the Appellant that he had been absorbed in the Authority with consent as envisaged under Section 15(3) of STEVTA Act.

8. Admittedly, the Appellant and Respondent No.1 belonged to two different departments, different cadres and continued to be governed under the Act, 1973 and the Rules framed thereunder despite their transfer/deputation, etc with STEVTA. Such employees had to be promoted through their parent channels under the Rules framed under Act, 1973. We, therefore find ourselves in agreement with the finding recorded by the Tribunal that granting of promotion to civil servants who had been transferred to STEVTA for the time being under the Rules framed by STEVTA was illegal and without lawful authority. In this context, reference may usefully be made to the principles of law laid down in Muhammad Bachal Memon v. Tanveer Hussain Shah (2014 SCMR 1539) where it was categorically held that the terms and conditions of civil servants can only be altered by an Act of the Parliament enacted in exercise of powers under Article 240 of the Constitution of Islamic Republic of Pakistan, 1973. It has neither been argued nor is it the case of the Appellant that STEVTA Act and the Rules framed thereunder were enacted in exercise of powers available under Article 240 of the Constitution. In this view of the matter, it is clear that administrative changes, transfers and postings of civil servants to different departments, agencies or authorities working as a part of the Government or under the Government cannot change

the service structure and the conditions of service including seniority of civil servants which can only be done by a statutory instrument in terms of Article 240 of the Constitution.

9. It is clear and obvious to us that the Provincial Assembly of Sindh did not make any amendments in the Act, 1973 or the Rules framed thereunder in order to change, modify or alter the terms and conditions of service of those transferred to STEVTA. We are therefore in no manner of doubt that for the purpose of promotion, STEVTA could not exclude the applicability of the Act, 1973 and the Rules framed thereunder and apply its own rules to the Appellant as well as Respondent No.1. All employees of STEVTA who had been transferred/posted to STEVTA from different departments of Sindh Government continued to be employees of the Government and various aspects of their service including seniority and promotion are governed by the Act, 1973 and they have to follow the channels of promotion available in their own departments and cadres under the Act, 1973 and the Rules made thereunder.

10. We have also gone through the judgments cited by learned ASC for the Appellant and find that they are of no help to the case of the Appellant and are distinguishable on law as well as fact. Further, reliance

of the learned ASC on a judgment of the Tribunal dated 21.10.2015 in Appeal No.757 of 2015 is also misplaced on account of the fact that it proceeded on different sets of facts and circumstances, which were limited to that particular case and did not lay down the entire law on the subject. We also notice that the grievance of the Appellant in the said matter related to transfer of certain employees/Respondents who belonged to the academic cadre and their promotion to posts in administrative cadre was challenged, which according to him, was not permitted. However, the question before the Tribunal in that case was not whether the parties were governed by the provisions of STEVTA Act or the Act, 1973 and the Rules framed thereunder. We also find that the impugned judgment of the Tribunal dated 24.02.2021 is well reasoned, proceeds on correct principles of law on the subject and does not suffer from any legal or jurisdictional defect or error that may furnish basis or justification for interference by this Court. The learned ASC for Appellant has also failed to point out any illegality in the impugned judgment that may furnish ground, basis or justification to interfere in our appellate jurisdiction.

11. Above are the reasons for our short order of even date, which for ease of reference is reproduced as under:

“We have heard the learned counsel for the parties so also the learned Additional Advocate General, Sindh, and have also gone through the record of the case. For reasons to be recorded later, the appeal is dismissed.”

ISLAMABAD, THE

8th of November, 2021

ZR/*

~~Not Approved For Reporting'~~