

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 30-L OF 2018

(On appeal against the judgment dated 03.11.2017 passed by the Lahore High Court, Lahore in Writ Petition No. 26075/2014)

Federation of Pakistan through Secretary Establishment, Islamabad
...Appellant(s)

VERSUS

M.Y. Labib-ur-Rehman and others

...Respondent(s)

For the Appellant(s): Mr. Sajid Ilyas Bhatti, Addl. Attorney General
Syed Rifaqat Hussain Shah, AOR

For the Respondent (1): In person

Date of Hearing: 09.07.2021

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JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- The instant appeal has been filed by the appellant under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, calling in question the vires of the impugned judgment dated 03.11.2017 passed by the Lahore High Court, Lahore, whereby the Constitutional petition filed by the respondent No. 1 was allowed and a direction was issued to the appellant to grant antedated promotion to the respondent in BS-21 with effect from 09.10.2002 instead of 30.03.2010 and further to grant him proforma promotion in BS-22 with effect from 04.05.2005. The appellant was also burdened with special cost of Rs.200,000/- for entangling the respondent in unnecessary litigation for years and intentionally frustrating the findings of this court in his favour.

2. The facts in brief are that the respondent joined civil service of Pakistan in the year 1974. Eventually, he was promoted to BS-20. He was considered for further promotion to BS-21 in the years 2001 to 2006. However, as he could not meet the minimum threshold required for promotion, the Central Selection Board recommended him for supersession. In the year 2007, the case of the respondent was deferred due to incomplete Personal Evaluation

Report. In the year 2008 & 2009, he was again considered for promotion but his case was recommended for supersession. The case of the respondent was once again considered in the year 2009 but the Central Selection Board again deferred the same on the ground that he had not earned PER for one full year. Being aggrieved, the respondent filed Service Appeal before the Federal Service Tribunal, Islamabad, with a prayer that the PERs earned during the service when the respondent was placed in BS-19 commencing from the period November, 1992 to April, 1998 be treated as PERs to have been earned in BS-20 and the same be considered and re-quantified for the purpose of promotion to BS-21. The Service Tribunal after taking into consideration all facts and circumstances dismissed the appeal of the respondent vide judgment dated 24.04.2004. However, a direction was issued to re-examine the case of the respondent in its entirety. In pursuance of the direction issued by the Federal Service Tribunal vide judgment referred above, a summary was en-routed to the President of Pakistan through Prime Minister but the same was turned down vide order dated 27.01.2007. In the second round of litigation, the respondent preferred to challenge the order dated 27.01.2007 before the Federal Service Tribunal but the same was dismissed vide judgment dated 21.07.2009. The order of the Service Tribunal was assailed before this Court by filing Civil Petition No. 1791/2009, which was converted into appeal and allowed vide order dated 26.03.2010 with a direction to the appellant to re-evaluate the grievances of the respondent. Pursuant to the order of this Court, the case of the respondent was thoroughly probed by the Central Selection Board and finally it refused to grant him BS-22. However, his promotion to next grade i.e. BS-21 was notified vide order dated 30.03.2010 and on the very next day i.e. 31.03.2010, he after attaining the age of superannuation retired from service. Thereafter, the respondent while availing another forum under the law filed a Constitutional Petition No. 27499/2012 before the Lahore High Court, Lahore praying therein for the grant of antedated promotion to BS-22. The learned High Court without questioning the maintainability of the said petition transmitted the copy of the Constitutional petition to the quarter concerned to be treated as representation for its consideration. The appellant considered the

case of the respondent for the third time in compliance with the order passed by the High Court but again the Central Selection Board maintained its earlier decision of supersession with approval of the competent authority. The respondent once again filed a Constitutional Petition No. 26075/2014 before the Lahore High Court, Lahore with a prayer for antedated promotion in BS-21 and proforma promotion to BS-22, which petition succeeded vide impugned judgment. Hence, this appeal by leave of the Court.

3. At the very outset, the learned Additional Attorney General inter alia contended that the judgment of this Court in the earlier round of litigation has been complied with in letter and spirit while granting the respondent promotion to BS-21 yet he assailed Constitutional jurisdiction of the High Court calling in question the same grievances, which had been earlier decided by altogether a different forum; that the respondent could not have approached two different forums at the same time seeking the same relief, which is squarely hit by Article 212(2) of the Constitution of Islamic Republic of Pakistan, 1973; that the learned High Court has wrongly assumed the jurisdiction and acceded to the prayer of the respondent, which was uncalled for specially when it is an admitted fact that the respondent has never touched the minimum threshold, which was essential for the promotion whereas the High Court has assumed the jurisdiction of Central Selection Board while passing the impugned judgment and not only transgressed its jurisdiction rather has passed the judgment, which is against the law on the subject.

4. On the other hand, respondent No. 1 (in person) has defended the impugned judgment. The main stay of the arguments advanced by the respondent is that he has been deprived of his right without any fault at his part rather he has been subjected to victimization without any blemish on his part; that he has agitated his grievance for a period of 18 years and finally the same was redressed by the High Court in the second round of litigation; that he was fully justified/entitled for the antedated promotion, which was denied to him without any justiciable reasoning.

5. We have heard learned Law Officer as also the respondent in person and have perused the available record.

We have extensively perused the available record and even the conduct of the respondent, which is spread over a span of 18 years. The career of the respondent as civil servant remained smooth till he was placed in BS-20. We have noticed that the competent authority declined to promote the respondent in next scale on the basis of clear and sound foundation. It is an admitted fact that the respondent was superseded for six consecutive years commencing from 2001 to 2006. Similarly, in 2007 due to incomplete PERs the case of the respondent was not considered whereas on the following two years i.e. 2008 & 2009, the case of the respondent was deferred on the similar grounds i.e. he could not meet the minimum threshold of 75% marks. The respondent twice approached the Federal Service Tribunal for redressal of his grievances. In the second round of litigation the order of Service Tribunal dismissing respondent's appeal was challenged before this Court, which leaves no room that the respondent was fully conversant with the scheme of the law and the forum to agitate his grievances. After exhausting the appropriate remedies available under the law, the respondent preferred to file Constitutional petition in the year 2012 wherein the question of maintainability was not raised and the same was transmitted to the competent authority by treating it as a representation but the competent authority maintained its earlier decision. The second Constitutional petition in which the respondent succeeded and which is impugned before us was primarily hit by the principle of res judicata and consequently ought to have been not entertained by the High Court in view of the bar contained under Article 212 of the Constitution of Islamic Republic of Pakistan. The High Court without indulging into the question of maintainability passed the order in cyclostyle fashion while assuming the jurisdiction which is not vested in it. This Court in the recent judgment dated 21.05.2021 titled as '**Khalilullah Kakar Vs. PPO Balochistan**' passed in Civil Appeal No. 909/2020 etc has candidly held that Article 212 of the Constitution specifically places an embargo on all other courts except the Service Tribunal to assume jurisdiction. It is now established that any lis relating to terms and conditions of service is within the domain of administrative courts and tribunals established under Article 212 and even if the element of mala fides, ultra vires or coram non judice is pressed into, the

same can be entertained and decided by the said courts in its jurisdiction. There is no denial to this fact that the bare reading of the said Article is of significant importance especially with reference to its exclusive jurisdiction to entertain matters relating to terms and conditions of service. Hence, in all eventualities any petition relating to terms and conditions of service is to be dealt with by administrative courts and tribunals specifically established for its adjudication in pursuance of Article 212 of the Constitution. As a general principle, the framers of the Constitution while inserting the said provision have ousted the jurisdiction of other courts including the High Court under Article 199 of the Constitution. There are certain exceptions depending upon the facts and circumstances on case to case basis because of the reason that the law is not static and the same is growing day by day, therefore, it cannot be said with certainty that in all eventualities the service issues cannot be called in question in Constitutional jurisdiction before the High Court. The Constitutional jurisdiction is always considered as extraordinary, which is to be exercised in extraordinary circumstances if so warranted, hence, the Constitutional jurisdiction cannot be curtailed *stricto sensu* leaving some room for its application where it is so demanding for safe administration of justice and fair play. The superior courts while exercising Constitutional jurisdiction must satisfy themselves that they may not interfere or infringe the jurisdiction of any other statutory forum in any manner when an equally efficacious / adequate remedy is available under the statute for the redressal of the grievances of the litigants. Hence, the superior courts should be reluctant to frustrate the statutory remedies while exercising their Constitutional jurisdiction, which otherwise has to be exercised sparingly while enabling to advance the legislative intent.

6. Now, we will consider the merits of the case. The learned High Court while passing the impugned judgment put much stress on the point that this Court in the earlier round of litigation had allowed the appeal of the respondent by observing that he has been deprived of his right, which was denied to him for technical reasons. We have perused the earlier judgment of this Court and found that this Court only sent back the matter to the appellant department for considering respondent's case in view of the

seniority list and the rules on the subject and nowhere in the judgment it was directed that the respondent be given antedated promotion. We have been informed that in compliance with the judgment of this Court, case of the respondent was processed by circulation and on the recommendation of the Central Selection Board and after approval of the competent authority, he was promoted to BS-21 vide notification dated 30.03.2010. So far as grant of antedated promotion to the respondent in BS-21 with effect from 09.10.2002 is concerned, we have noted that the respondent was considered for promotion by the Central Selection Board in the years 2001 to 2006 but was recommended for supersession due to the reason that his quantified score was below the minimum threshold prescribed for promotion. In the year 2007, his case was deferred due to incomplete Personal Evaluation Reports. In the year 2008 & 2009, he was again considered for promotion but his case was recommended for supersession due to the same reason i.e. he could not meet the minimum threshold. Again in the year 2009, his case was considered for promotion but was deferred due to reason that he had not earned Personal Evaluation Report for one full year. The respondent did not challenge his supersession for the years 2001 to 2006 and only filed Service Appeal before the Federal Service Tribunal in the year 2008 with the prayer that PERs earned by him in BS-19 during the period from November, 1992 to April, 1998 be treated as PERs to have been earned in BS-20 and be re-quantified for the purpose of promotion to BS-21 but the same stood dismissed and on appeal before this Court, the matter was sent to the department for consideration and ultimately, he was given BS-21 with effect from 2010. We have been informed that pursuant to the order passed by the learned High Court in Writ Petition No. 27499/2012 on 21.02.2013, the case of the respondent was again placed before the Central Selection Board in February, 2014 to review its earlier recommendation for supersession. The Board had reopened the cases of earlier supersessions after more than 14 years and after thoroughly checking the record maintained its earlier decision. As far as the question that as the employees junior to the respondent have been promoted, the respondent also deserves the antedate promotion is concerned, this Court in the case of Abdul Ghani Chaudhry Vs. Secretary Establishment, Islamabad (1998

SCMR 2544) has held that civil servant who was consciously superseded after considering his service record by the departmental promotion committee cannot regain his original seniority or subsequent promotions so long the order of the promotion committee superseding him stands in the field and supersession of the civil servant in such a case is neither advertent nor same falls in the category of deferment, so as to entitle the civil servant, on subsequent promotion, to regain his original seniority. In this view of the matter, the antedated promotion with effect from 09.10.2002 could not have been granted to the respondent and only his promotion to BS-21 with effect from 30.03.2010 was justified. Rule 4(i) of Civil Servants (Promotion to the Post of Secretary BS-22 and Equivalent) Rules, 2010, clearly mandates that two years' service in BS-21 is mandatory for consideration for promotion to BS-22. As the respondent did not have the minimum service of two years at the time of his superannuation on 31.03.2010, therefore, he could not have been given proforma promotion to BS-22. Under the aforementioned circumstances, it is established without any hesitation that the impugned judgment passed by the High Court is the result of misreading and non-reading of record and the law on the subject, hence, is not sustainable in the eyes of law. As a consequence, this appeal is allowed and the impugned judgment is set aside.

CHIEF JUSTICE

JUDGE

Islamabad, the
9th of July, 2021
Not Approved For Reporting
Khurram