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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

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

Civil Appeal No. 654/2021

(On appeal from the judgment dated 25.9.2019 passed by the KPK Service Tribunal, Peshawar in Appeal No.1207/2018).

Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar & others

...Appellants

Versus

Fazli Ghufuran

...Respondent

For the appellants:

Mr. Atif Ali Khan Addl.AG. KPK

Khalid Gohar Khan,
Deputy Director-Agricultural Department,
KPK

For the respondent:

Mr. Fazal Shah, ASC

Date of hearing:

16.11.2021

JUDGMENT

Mazhar Alam Khan Miankhel, Judge,-. The Respondent being an employee of Agriculture, Livestock and Cooperative Department since 1982, was promoted as Soil Conservation Inspector (BPS-11) vide office order dated 27th March, 2014. As per recruitment method notified on 28th March, 1997, a quota of 25% was earmarked for promotion of Soil Conservation Inspector (BPS-11) as Soil Conservation Assistant (BPS-17) on the basis of seniority cum fitness.

2. The Seniority list issued in the year 2013, reflected the name of the Respondent at Serial No.4. After promotion of the officials/officers at Serial No.1 to 3, as Soil Conservation Assistant (BPS-17) from amongst the notified quota *ibid*, the Respondent became at the top of the seniority list. After retirement of one Azizullah Khan, Soil

Conservation Assistant (BPS-17) on 12th May, 2015, post *ibid* falling in promotion quota, became vacant/available. The Respondent being at the top of the seniority list, was not considered for promotion despite submission of Departmental Appeal but the Khyber Pakhtunkhwa Service Tribunal, Peshawar ('the Tribunal'), while allowing his appeal, directed the Department to consider the Respondent for promotion against the *ibid* vacant post and also observed it to be a clear-cut case of arbitrary use of official authority and injustice and the Respondent was denied his due right.

3. The Respondent, as per directions of the Tribunal was reconsidered for promotion and was accordingly promoted as Soil Conservation Assistant (BPS-17) on 29th May, 2018, but with immediate effect and not from the date the post was lying vacant, despite the fact that the Respondent was eligible to be considered for promotion since the post became vacant. It is an admitted fact that the post was lying vacant since 13th May, 2015. He, through a Departmental Appeal, asked for his promotion from the date when the post became vacant but the same was not responded. He then preferred service appeal before the Tribunal. His appeal was accepted vide impugned Judgment dated 25th September, 2019 with the direction for an antedated promotion from the date the post became vacant.

4. Hence the present appeal by the Department with leave of this Court dated 12th July, 2021. Relevant part of the same reads as under:-

"The learned Additional Advocate General contends that the respondent has earlier filed Service Appeal No.569 of 2019 claiming promotion to the post of Soil Conservation Assistant (BS-17). Such appeal was disposed of by the KPK Service Tribunal ("Tribunal") on

10.01.2018 where it was noted that the post of Soil Conservation Assistant (BS-17) was lying vacant since 12.05.2015 and the respondent was found eligible for promotion against such post and ultimately, remitted the matter to the petitioner for considering promotion of the respondent. The effective date from which promotion was to be considered was not specifically given in the direction of the Tribunal. The respondent's case was, therefore, considered for promotion and accordingly granted such promotion on 29.05.2018 with immediate effect. The respondent filed second service appeal before the Tribunal claiming that his promotion ought to have been granted from 12.05.2015 when the post became available. Learned Additional Advocate General contends that the second service appeal of the respondent is barred by law in terms of Order II Rule 2 CPC and Rule 23 of the KPK Service Tribunal Rules, 1974 as the respondent cannot be allowed to raise issues piecemeal, in that, in the first service appeal the respondent got the relief pursuant to which he was granted promotion".

'Emphasis provided'.

5. Learned Additional Advocate General, KPK and learned counsel for the Respondent were heard and record of the case perused. Perusal of the record reveals that there is no denial of the service and position/status of the Respondent. There is also no denial of the fact that after promotion of the officials/officers at Serial Nos.1 to 3 of the seniority list, Respondent became senior most, topping the seniority list as a Soil Conservation Inspector (BPS-11). The fact of retirement of one Azizullah Khan, Soil Conservation Assistant (BPS-17) on 12th May, 2015 has also not been denied by the Department. His retirement resulted into a vacant post of Soil Conservation Assistant (BPS-17). Again, it is an undeniable fact, as per record, that the Respondent being the senior most, was entitled for the promotion to occupy the said vacant post of Soil Conservation Assistant (BPS-17) and promotion in the given circumstances had become his legal and

vested right. But the same was denied to him by the Department with no valid reasons and also no fault on his part. He was, once again, compelled to approach the Court of law and accordingly, the Tribunal allowed his appeal declaring him entitled to be promoted; and denying him, his legal right was also declared as an unlawful and arbitrary exercise of authority resulting in injustice to him.

6. The concerned officers of the Department were supposed and morally and legally bound to implement the decision of the Tribunal in accordance with the settled law but it appears that the act of the Department once again was not without tinge of malice and arbitrariness. The decision of the Tribunal though was implemented but with an immediate effect i.e. from 29th May, 2018 and not from the date the post became vacant/available i.e. from 13th May, 2015, as the Respondent was admittedly eligible for promotion on that date. The implementation of the decision of the Tribunal was not as per mandate of law. The law on the subject is very much settled. This Court in the case of Muhammad Amjad and others v. Dr. Israr Ahmed and others (2010 PLC (CS) 760) has very elaborately discussed the issue by referring and discussing almost the entire available case law. We can also lay hand on the case of Luqman Zareen v. Secretary Education (2006 SCMR 1938).

7. We are constrained to observe that such like omissions and commissions are made by the authorities concerned intentionally, purposely and also in a casual manner without application of mind. This becomes very troublesome for the affectee who remains in the courts for the years to seek his legal and due rights. Such type of settled matters when come to the courts, create problems not only for the Government Departments but also for the sufferers of such

reckless and irresponsible conduct of the concerned besides the financial losses and wastage of precious time of the courts and the parties concerned. The persons at the helm of affairs, if perform their function with due diligence, then much can be saved, precious of all, is the time and the one who is entitled for his due right, gets the same well within time.

8. This promotion order with immediate effect, once again, compelled the Respondent to struggle for his accrued right. The Tribunal once again came to his rescue and ordered his promotion from the date, the post fell vacant. Needless to observe, that this would further entitle him to be placed in the seniority on the place he would have been, if promoted on his due date. The learned Additional Advocate General when confronted with the situation, he was unable to satisfy us.

9. The written reply filed by the Appellants/Department to the service appeal of the Respondent before the Tribunal was nothing short of a conceding stance that since no date was there in the judgment dated 10th January, 2018 (*the earlier one*), so, therefore, Respondent was promoted with immediate effect. It is nothing but a sham plea of defence. We have also noted that there is no reason and justification or any fault of the Respondent, shown by the Appellants/Department, for not promoting him from the date when the vacancy fell vacant. We are also unable to understand as to what important question of law of public importance was involved in this appeal which led the Department to file this appeal. It was nothing but a frivolous petition and then the appeal. The Government despite having a full-fledge law department, with qualified and competent officers therein, but even then such type of frivolous petitions and

appeals are filed, we think, it is done without their consultations. We have also come across with many petitions/appeals filed beyond the prescribed period of limitation with no sufficient cause justifying the delay to be condoned. We, have asked for the reports from the Chief Secretary of the Province in many cases, in this regard and we expect that all these issues would be checked in future. The points raised at the time of granting of leave, never remained their plea of defence before the Tribunal. It is nothing less than an afterthought. This second round of litigation, as argued at leave granting stage, cannot be held to be barred by Rule 2 of Order II of CPC and similarly provisions of Rule 23 of the KPK Service Tribunal Rules, 1974 were also not applicable as the Respondent feeling aggrieved from the order of promotion dated 29th May, 2018 with immediate effect, gave him a fresh cause of action as he was entitled for promotion, being eligible candidate, from the date when the vacancy fell vacant and was denied such right for no fault on his part rather it was the fault of the Department/Government. Let us observe that by raising such legal pleas was nothing but an attempt to seek leave of this Court to file appeal.

10. Hence, this Appeal being meritless is dismissed as such with no order as to costs.

Islamabad,
16th November, 2021
Sarfaraz/-
'Not approved for reporting'