

P L D 2011 Supreme Court 516**Present: Sarmad Jalal Osmany and Amir Hani Muslim, JJ****GHULAM SHABBIR---Petitioner****Versus****MUHAMMAD MUNIR ABBASI and others---Respondents**

Civil Petition No.657-K of 2010, decided on 2nd March, 2011.

(Against judgment dated 27-10-2010 of the High Court of Sindh at Karachi, passed in Civil Petition No.D-863 of 2009).

(a) Sindh Civil Servants Act (XIV of 1973)---

---S. 9-A---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, R.8-B---Constitution of Pakistan, Arts.199 & 212---Out of turn promotion---Issuance of writ of quo warranto--Scope---Out of turn promotion given on the basis of performance of civil servant, which essentially pertained to fitness for promotion, was not within the exclusive domain of Service Tribunal and High Court could be approached for issuance of writ of quo warranto---Principles.

A writ of quo warranto is not issued as a matter of course. The court can and will enquire into the conduct and motive of the petitioner. However, no precise rules can be laid down for the exercise of discretion by the court in granting or refusing the same and each aspect of the case is to be considered. In such cases it is not necessary that the petitioner be an aggrieved person and further that if it is established that the petitioner has approached the court with ulterior motive, mala fide intention etc. relief can be declined. In the present case, out of turn promotion was challenged without claiming any superior right by the petitioners on the ground that such promotion was not warranted under the law. This was not to say that the terms and conditions of service of either petitioner or private respondents were in issue so as to bring the case exclusively within the domain of the Service Tribunal. Eligibility for appointment or promotion to a particular post concerned the candidate's qualification etc. and as such was exclusively within the domain of the Service Tribunal. However, out of turn promotion concerned his eligibility for the same and not his fitness. Eligibility criteria were whether the incumbent had passed the departmental examination or possessed the required seniority etc. Such was not the case in the present matter as the civil servant was given out of turn promotion on the basis of his performance which essentially pertained to fitness for promotion and hence not within the exclusive domain of the Service Tribunal. Opposing party had correctly approached the High Court in Quo Warranto.

(b) Constitution of Pakistan---

---Art. 199---Writ of quo warranto, issuance of---Principles.

(c) Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974---

---R. 8-B---Out of turn promotion---Validity---Few merit certificates given by judicial and executive authorities and recommendations from the Provincial Home Minister, could not be made basis of out of turn promotion---Out of turn promotion was not only against the Constitution but even against injunctions of Islam---Reward or award should be encouraged for meritorious public service but should not be made the basis of out of turn promotion---Such a promotion should be, if at all, regulated through proper process as per Rule 8-B of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974---Supreme Court observed that rules should be framed for such purpose.

Dr. Ahmad Salman Waris, Assistant Professor, Services Hospital, Lahore v. Nadeem Akhtar PLD 1997 SC 382; Government of Punjab v. Rana Muhammad Iqbal 1993 SCMR 1814 and Farhat Abbas v. I.G. 2009 SCMR 245 ref.

M.M. Aqil Awan Senior Advocate Supreme Court and A.S.K. Ghori, Advocate-on-Record for Petitioner.

Masood A. Norani, Advocate Supreme Court and Ghulam Qadir Jatoy, Advocate-on-Record for Respondents Nos. 1-3.

Abdul Fateh Malik, A.G. Sindh for, Respondents Nos. 4-6.

Date of hearing: 2nd March, 2011.

JUDGMENT

SARMAD JALAL OSMANY, J.---This petition impugns the order of the learned Sindh High Court dated 27-10-2010 in C.P. No.863 of 2009, whereby the same was allowed and notification of the Sindh Government giving the petitioner out of turn promotion declared to have been passed without lawful authority.

2. Briefly stated the facts of the matter are that the petitioner was an Assistant Engineer (BPS-17) serving in the Works and Services Department of the Government of Sindh. Vide Notification No.SOEII(W&S)13-34/92 dated 26-1-2008 he was promoted out of turn as Executive Engineer with immediate effect which was challenged by the Private Respondents before the learned Sindh High Court in C.P. No.863 of 2009 which as stated above was allowed and the notification set aside as being unlawful and so also Petitioner declared to be holding the office of an Executive Engineer without lawful authority.

3. In support of this petition Mr. M M. Aqil Awan learned Advocate Supreme Court has submitted that a writ of quo warranto could not be issued by the learned Sindh High Court as out of turn promotion falls within terms and conditions of service of a civil

servant which is within the exclusive domain of the Service Tribunal as per Article 212 of the Constitution. For this submission he has relied upon Dr. Ahmad Salman Waris, Assistant Professor, Services Hospital, Lahore v. Nadeem Akhtar (PLD 1997 SC 382). Continuing on the same lines learned Advocate Supreme Court further submitted that the case concerns eligibility for promotion which again is to be only considered by the Service Tribunal whereas fitness is to be considered by the Departmental Promotion Committee. In support he has cited Government of Punjab v. Raja Muhammad Iqbal (1993 SCMR 1814). Learned Advocate Supreme Court further submitted that whether or not the petitioner was fit to be given out of turn promotion per section 9-A of the Sindh Civil Servants Act was a question of fact and hence could not be the subject matter of a writ petition. Finally, per learned Advocate Supreme Court in similar circumstances, this Court has upheld out of turn promotion based on outstanding performance of a civil servant per the case of Raja Muhammad Iqbal (supra).

4. The Learned Advocate-General has not supported the arguments of the learned Advocate Supreme Court on the ground that in a number of petitions the learned Sindh High Court has remanded put of turn promotion cases to the Departmental Promotion committee and hence, this matter should also be so remanded. He further submitted that section 9-A of the Sindh Civil Servants Act, 1973 been repealed on 26-2-2008, hence in any event the matter has become academic in nature as the petitioner's case was initiated by the Sindh Home Minister vide letter dated 5th May, 2008 which has referred to section 9-A. However, vide Notification No. SORI(SGA&CD)2-10/2005 dated 29-5-2009 Rule 8-B of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 has been revived. According to such rule no civil servant is to be recommended for out of turn promotion award or reward under section 9-A of the Sindh Civil Servants Act, 1973 unless the department is satisfied that the civil servant concerned fulfils the requirement of the said section and no departmental or Anti-Corruption inquiries or other cases are pending against him. So also out of turn promotion shall be a one time promotion during the entire service career of the civil servant etc. Finally, that the recommendations for out of turn promotion are to be placed before a committee comprising of the Additional Chief Secretary, Sindh, Senior Member Board of Revenue, Sindh, Secretary to Chief Minister and Administrative Secretary of the department. Hence per learned A.-G. in the matter of out of turn promotions, reward or award this is to be routed through the said committee which is the proper way to deal with such cases.

5. Mr. Masood Norani learned Advocate Supreme Court appearing for the Private respondents has submitted that vide impugned judgment all the arguments of Mr. Awan have been answered. According to him the summary for the out of turn promotion was initiated by the Sindh Home Minister based upon a few certificates given to the petitioner by various official functionaries. Hence the ultimate promotion of the petitioner is in total violation of all norms of justice, fair play and rules. In support this submission he relied upon Farhat Abbas v. I.G. (2009 SCMR 245).

6. We have heard both learned Advocate Supreme Courts as well as learned A.-G. so also perused the record.

7. Insofar as maintainability of the Petition is concerned it would be seen that per settled law a writ of quo warranto is not issued as a matter of course. The Court can and will enquire into the conduct and motive of the petitioner. However, no precise rules can be laid down for the exercise of discretion by the Court in granting or refusing the same and each aspect of the case is to be considered. There is also no cavil with the argument that in such cases it is not necessary that the petitioner be an aggrieved person and further that if it is established that the petitioner has approached the Court with ulterior motive, mala fide intention etc. relief can be declined. In the petition before the learned Sindh High Court the Private respondents were not claiming any superior right but had only challenged the out of turn promotion on the ground that it, was not warranted under the law. This is not to say that the terms and conditions of service of either petitioner or private respondents were in issue so as to bring the case exclusively within the domain of the Service Tribunal. So far as the cases cited at the bar by Mr. Awan are concerned again there is no cavil with the argument that eligibility for appointment or promotion to a particular post concerns the candidate's qualification etc, and as such is exclusively within the domain of the Service Tribunal. However, we do not agree with Mr. Awan's submission that out of turn promotion of the petitioner concerns his edibility for the same and not his fitness. Eligibility criteria are whether the incumbent has passed the departmental examination or possesses the required seniority etc. Such is not the case in the present matter as the petitioner was given out of turn promotion on the basis of his performance which essentially pertains to fitness for promotion and hence not within the exclusive domain of the Service Tribunal. In this regard we can do no better than refer to the case of Nadeem Akhtar v. Ahmad Salman (supra). Consequently, in view of the foregoing discussion we hold that the Private Respondent correctly approached the learned Sindh High Court in Quo Warranto.

8. As to the technical objections raised by learned Advocate-General it would be seen that when the case was initiated i.e. section 9-A was no longer on the statute book. Hence the petitioner could not have been given out of turn promotion based on the same. However, as the merits were argued extensively at the Bar we propose to consider the same. It would be seen that the case was based on a few merit certificates given by Judges of the learned Sindh High Court and by the petitioner's department. In our opinion such certificates given by judicial and executive authorities and recommendations of the Sindh Home Minister cannot be made the basis of out of turn promotion as has been done. Such out of turn promotions should be, if at all, regulated through proper process as per Rule 8-B of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. In this regard reference can also be made to Muhammad Nadeem v. I.-G. (supra) where this Court has recognized that out of turn promotions are not only against the Constitution but even against the Injunctions of Islam. It was further observed that reward or award should be encouraged for meritorious public service but should not be made the basis of out of turn promotion and hence rules should be framed for this purpose. In view of the foregoing discussion, we find no merit in this petition which is dismissed. Leave is refused.

M.A.K./G-4/SC Leave refuse

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