JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2385 of 2020
Sajjad Rasheed Mirza and others
Versus
Federation of Pakistan and others

Dates of Hearing:	12.04.2022 and 22.03.2023.
Petitioners by:	M/s Abdul Rahim Bhatti and Faisal Rahim Bhatti, Advocates.
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney General. Barrister Adeel Aftab, for respondents No.2 to 4.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioners, who are serving as Managers in the House Building Finance Company Limited (**"HBFCL"**), impugn the revised Promotion Policy for Officers – 2019 issued vide circular No.30 dated 16.11.2018. Furthermore, the petitioners impugn the office orders dated 20.08.2019, 30.08.2019, and 20.07.2020 whereby officers junior to them were promoted as Assistant Vice Presidents in HBFCL. These promoted officers are impleaded as respondents No.5 to 30 in this petition.

2. During the course of the arguments, learned counsel for the petitioners abandoned the challenge to the said office orders dated 20.08.2019, 30.08.2019, and 20.07.2020 whereby respondents No.5 to 30 were promoted as Assistant Vice Presidents. Learned counsel for the petitioners clarified that the petitioners only seek a declaration to the effect that they are entitled to be considered for promotion under the promotion policy approved in the meeting dated 19.12.2005 of the Board of Directors of House Building Finance Corporation.

3. The House Building Finance Corporation (**"HBFC"**) was established under Section 3 of the House Building Finance Corporation Act, 1952 (**"HBFC Act"**) to provide financial facilities for the construction, reconstruction, repair, and purchase of houses. In exercise of the powers conferred by Section 42(2)(j) and (jj) of the HBFC Act, the Board of Directors of HBFC, with the

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sanction of the Federal Government, made the House Building Finance Corporation Service Regulations. These Regulations were published in the official Gazette on 18.10.1957.

4. Section 36 of the HBFC Act provided that no provision of law relating to the winding up of companies or corporations shall apply to the HBFC and it shall not be wound up save by order of the Federal Government and in such manner as it may direct.

5. In exercise of the powers conferred by Section 36 of the HBFC Act, the Federal Government, through Order (SRO 941(I)/2009) dated 31.10.2009, ordered that the HBFC shall be wound up by transferring and vesting in the House Building Finance Corporation Limited (**"HBFCL-Corporation"**) all the assets, contracts, liabilities, proceedings, business, and undertakings of HBFC as provided in Schedule-I of the said Order. Paragraph 25 of the said Order provided that it would be effective from 25.07.2007. The stated objective of issuing the said Order was the reorganization of HBFC to ensure good governance, autonomy, delivery of high quality and viable financial services to the general public and adequate returns to the stakeholders. Paragraph 1 of the said Order provided that HBFC shall stand dissolved on the sixtieth day from the effective date.

6. On 13.06.2006, HBFCL-Corporation had been incorporated under the provisions of the erstwhile Companies Ordinance, 1984. On 06.08.2007, the Securities and Exchange Commission of Pakistan issued a certificate for commencement of business to HBFCL-Corporation.

7. By virtue of paragraph 18 of the said Order dated 31.10.2009, the employees of HBFC who were in service of HBFC before the effective date became the employees of HBFCL-Corporation. Paragraph 18 also protected the terms and conditions of service of such employees. For purposes of clarity, paragraph 18 of the said Order is reproduced herein below:-

> *"18. The employees of HBFC who were in the service of HBFC before the Effective Date shall stand transferred to and become employees of the Company as of the Effective Date on the same terms and conditions of their service and rights including*

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pension benefits to which they were entitled as employees of HBFC. The terms and conditions of service and pension benefits of any such employees shall not be revised to their disadvantage by the Company except in accordance with law or with the consent of such employees;"

8. On 18.02.2011, HBFCL-Corporation's name was changed to House Building Finance Company Limited ("HBFCL-Company"). It was not until 18.05.2018 that the HBFC Act was repealed through the House Building Finance Corporation (Repeal) Act, 2018.

9. The letter dated 27.01.1998 from the Internal Finance Wing of the Finance Division (Government of Pakistan) shows that the Board of Directors of the HBFC was empowered to determine the overall policy making in respect of its operations. By virtue of the said letter, the said Board was to determine evaluation criteria for the performance of employees and be responsible for determining any other policy matter.

10. Prior to the conversion of the statutory body of HBFC into HBFCL-Corporation, the Board of Directors of the HBFC in its meeting dated 19.12.2005 approved the promotion policy for its employees. This promotion policy was to be a part of the HBFC Employees Service Rules-2005, and sets out the parameters and criteria for the promotion of the employees.

11. After the conversion of HBFC into HBFCL-Corporation and the change of its name to HBFCL-Company, the Board of Directors of HBFCL-Company, in its meeting dated 31.10.2018 approved the Promotion Policy for Officers-2019. Paragraph 10 of the said Policy sets out promotion parameters which are different to the earlier Promotion Policy dated 19.12.2005.

12. For purposes of comparison, the promotion parameters under the Promotion Policy dated 19.12.2005 and the Promotion Policy dated 31.10.2018 are set out herein below:-

HBFC Promotion Policy, 2005		***HBFCL Promotion Policy, 2019***	
1.	*Length of stay for promotion 5 years from 6th year. one marks Each (10)*	*1.*	*Length of stay for promotion. 3 years from 4th year two marks each maximum (10)*
2.	*PER Reports = 75% marks*	*2.*	*PER Reports = 50% marks*
3.	*Operation Duty = 5 Field / Branches marks*	*3.*	*Operation duty (Nil) Field*
4.	*Performance of Field Office /*	*4.*	*Performance of Field Office*

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	HQs/Zones (05)		***Zone/Regional Office = (Nil)***
5.	***Qualification improvement (05 Marks)***	***5.***	***Qualification Improvement But change level of Qualification / Field (10 Marks)***
6.	***Interview = Nil***	***6.***	***Interview (30 Marks)***
	10+75+05+05+05 (100 Marks)		***50+10+10+30 (100 Marks)***

13. The petitioners were admittedly considered for promotion under the Promotion Policy dated 31.10.2018, the parameters whereof are different from the Promotion Policy dated 19.12.2005. The petitioners assert that since by virtue of paragraph 18 of the Order dated 31.10.2009, the terms and conditions of their service applicable to them on the effective date, *i.e.* 25.07.2007, were protected and they could not have been considered for promotion under the Promotion Policy dated 31.10.2018. It is on this basis that the petitioners seek a direction to the HBFCL-Company to reconsider them for promotion under the Promotion Policy dated 19.12.2005.

14. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that since the Order (SRO 941(I)/2009) dated 31.10.2009 was issued by the Federal Government in exercise of the statutory power, *i.e.* Section 36 of the HBFC Act, the petitioners had a vested right to be considered for promotion to the posts of Assistant Vice Presidents under the Promotion Policy dated 19.12.2005; that the petitioners' consideration for promotion under the Promotion Policy dated 31.10.2018 amounts to alteration of the terms and conditions of their employment to their detriment; and that the Promotion Policy dated 19.12.2005, being an integral part of the terms and conditions of the petitioners' service, was protected under paragraph 18 of the said Order dated 31.10.2009 issued by the Federal Government. Learned counsel for the petitioners prayed for a direction to be issued to respondents No.2 to 4 to reconsider the petitioners for promotion to the posts of Assistant Vice Presidents in accordance with the Promotion Policy dated 19.12.2005. In making his submissions, learned counsel for the

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petitioners placed reliance on the law laid down in the case of Zarai Taraqiati Bank Limited Vs. Said Rehman (2013 SCMR 642).

15. On the other hand, learned counsel for respondents No.2 to 4 submitted that the Board of Directors of HBFCL-Company were empowered to change the promotion parameters in the Promotion Policy dated 19.12.2005; that the petitioners did not have any vested right for the Promotion Policy dated 19.12.2005 to remain applicable to them for all times to come; that the petitioners were well aware that they were to be considered in accordance with the Promotion Policy dated 31.10.2018 and they had voluntarily participated in the promotion process; that it was only after they were not able to obtain the requisite marks for promotion that they cried foul and started asserting that they could only be considered for promotion under the Promotion Policy dated 19.12.2005; that prior to their consideration for promotion, the petitioners did not make a representation seeking to be dealt with under the Promotion Policy dated 19.12.2005; that the Promotion Policy dated 19.12.2005 does not have any statutory force and therefore cannot be enforced by this Court in exercise of its Constitutional jurisdiction; and that all promotions made by the HBFCL-Company were without any discrimination and strictly in accordance with the Promotion Policy dated 31.10.2018. Learned counsel for respondents No.2 to 4 prayed for the writ petition to be dismissed.

16. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 3 to 13 above and need not be recapitulated.

17. The process whereby the HBFC was corporatized, restructured and converted into a company limited by shares is set out in paragraphs 3 to 8 above. It is an admitted position that all the petitioners were in employment of the HBFC when the Promotion Policy dated 19.12.2005 was issued. As mentioned above, the said Policy is an integral part of the HBFC Employees Service Rules-2005. The said Policy sets out the promotion

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parameters which are admittedly different to the ones set out in the Promotion Policy dated 31.10.2018.

18. Through Order (SRO 941(I)/2009) dated 31.10.2009 issued in exercise of powers conferred by Section 36 of the HBFC Act, the Federal Government *inter alia* held out an assurance to the employees of the HBFC that their transfer to become employees of a Company would be *"on the same terms and conditions of their service and rights including pension benefits to which they were entitled as employees of House Building Finance Corporation"* and that the *"terms and conditions of service and pension benefits of any such employee shall not be revised to their disadvantage by the Company except in accordance with law or with the consent of such employees."*

19. It is not disputed that the Order dated 31.10.2009 had been issued by the Federal Government in exercise of statutory power, i.e. Section 36 of the HBFC Act. The said Order had the status of subordinate or delegated legislation deriving authority and legal cover from the provisions of the HBFC Act. The said Order had the same force as the provisions of the statute under which it was issued. In the case of Ahmed Hassaan Vs. Government of Punjab (2005 SCMR 186), the Hon'ble Supreme Court held *inter alia* that *"rules made under a statute must be treated for all purposes of construction or application exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction and application."* Additionally, in the case of Ubedullah Khan Vs. Muhammad Ayoob (2003 YLR 1555), the Division Bench of the Hon'ble High Court of Sindh held that *"rules have the same force as the provisions of the statute under which they are framed."*

20. The vital question that needs to be answered is whether the petitioners could have been considered for promotion to the positions of Assistant Vice Presidents in accordance with the Promotion Policy, 2019 which was admittedly made after the issuance of the Order dated 31.10.2009 and the date on which the said Order was made effective, i.e., from 25.07.2007. As

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mentioned above, paragraph 18 of the said Order protects the terms and conditions of the employees of HBFC who were in service before the effective date. Paragraph 18 also contains an assurance to the effect that the terms and conditions of service of such employees shall not be revised to their disadvantage *"except in accordance with law or with the consent of such employees."*

21. There is nothing on the record to show that while making the Promotion Policy, 2019, consent of the petitioners was obtained so as to make the said policy applicable to them. The comparison between the Promotion Policy, 2005 and the Promotion Policy, 2019, given in paragraph 12 above shows that the criterion for promotion under the said two policies was different. It is also an admitted position that none of the petitioners objected to being considered for promotion under the Promotion Policy, 2019. It is only after they came to know about the result of the promotion process in which none of them were promoted that they decided to take a volte-face by asserting that they should have been considered for promotion under the Promotion Policy, 2005, which was in vogue when the Order dated 31.10.2009 became effective.

22. Ordinarily, the Board of Directors of a company can change promotion policies. Therefore, a change in a promotion policy through a resolution of a Board of Directors of a company would entail no violation of the law. In the case of Muhammad Ishaque Vs. Government of Punjab (2005 SCMR 980), it was held *inter alia* that promotion was not a vested right of an employee and the government was always competent to enhance educational qualifications for the purposes of promotion. In the case of Dr. Muhammad Hussain Vs. Principal Ayub Medical College (PLD 2003 S.C. 143), it was held that the government is competent to enhance, alter or amend the prescribed qualification for a particular post which cannot be objected to as qualification for a particular post cannot be kept unchanged for decades to safeguard the interest of a particular incumbent.

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23. The provisions of paragraph 18 of the Order dated 31.10.2009 are not unique or one of a kind. Similar assurances, *albeit* in different terminology for the protection of terms and conditions of employees of statutory bodies on the conversion of such bodies into companies limited by shares can be found in Section 9 of the Pakistan Telecommunication Act, 1991; Section 36 of the Pakistan Telecommunication (Re-organization) Act, 1996; Section 5 of the Oil and Gas Development Corporation (Re-organization) Ordinance, 2001; and Section 6 of the Agricultural Development Bank of Pakistan (Re-organization and Conversion) Ordinance, 2002. These provisions have been judicially interpreted in the judgments of the Superior Courts.

24. For instance, Section 36 of the Pakistan Telecommunication (Re-organization) Act, 1996 was interpreted by the Hon'ble Supreme Court in the cases of Masood Ahmed Bhatti Vs. Federation of Pakistan (2012 SCMR 152), Pakistan Telecommunication Employees Trust Vs. Muhammad Arif (2015 SCMR 1472) and Muhammad Riaz Vs. Federation of Pakistan (2015 SCMR 1783). Section 36 of the said Act is reproduced herein below:-

> ***"36. Terms and conditions of service of employees.–***
> ***(1) No person transferred to the Company pursuant to subsection (2) of section 35, hereinafter referred to as "Transferred Employee", shall be entitled to any compensation as a consequence of transfer to the Company: Provided that the Federal Government shall guarantee the existing terms and conditions of service and rights, including pensionary benefits of the Transferred Employees.***
>
> ***(2) Subject to subsection (3), the terms and conditions of service of any Transferred Employee shall not be altered adversely by the Company except in accordance with the laws of Pakistan or with the consent of the Transferred Employees and the award of appropriate compensation.***
>
> ***(3) At any time within one year from the effective date of the order vesting property of the Corporation in the Company, the Federal Government may, with the prior written agreement of a Transferred Employee require him to be transferred to or revert him back and be employed by the Authority, National Telecommunication Corporation, Trust or the Federal Government on the same terms and conditions to which he was entitled immediately before such transfer."***

25. Section 36 of the Pakistan Telecommunication (Re-organization) Act, 1996 had provided *inter alia* that the terms and

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conditions of service of employees could not be altered adversely by Pakistan Telecommunication Company Limited *"except in accordance with the laws of Pakistan or with the consent of transferred employees and the award of the appropriate compensation."* The Hon'ble Supreme Court in the case of Masood Ahmed Bhatti Vs. Federation of Pakistan (*supra*) had interpreted Section 36 in the following terms:-

> ***"17. Section 36 of the Reorganization Act also has relevance in determining the controversy which arises in these appeals. Subsection (2) of section 36 gives protection to the terms and conditions of service of employees such as the appellants who stood transferred from the Corporation to PTCL on 1-1-1996. Their terms and conditions of service cannot be altered adversely by PTCL "except in accordance with the laws of Pakistan or with the consent of the transferred employees and the award of appropriate compensation". When this legal provision is read together with section 35, it becomes abundantly clear that by operation of the Reorganization Act, the terms and conditions of service of the appellants as on 1-1-1996 stood conferred on them as vested rights under the said law."***

26. The said provision in Section 36 of the Pakistan Telecommunication (Re-organization) Act, 1996 is almost identical to paragraph 18 of the Order dated 31.10.2009 which provides *inter alia* that the terms and conditions of service and pension benefits of employees of HBFC *"shall not be revised to their disadvantage by the Company except in accordance with Law or with the consent of such employees."* Therefore, this Court while determining whether the employees of HBFC were entitled to be considered for promotion in accordance with the Promotion Policy which was applicable at the stage of the effective date, (i.e., 25.07.2007) of the Order dated 31.10.2009 would be bound to follow the law laid down by the Hon'ble Supreme Court in the said judgment. Since the Promotion Policy that was in vogue on the said effective date was the Promotion Policy, 2005, the petitioners ought to have been considered under the said Policy and not the Policy which was subsequently made by HBFCL-Company.

27. In the case of Zarai Taraqiati Bank Limited Vs. Said Rehman (2013 SCMR 642), the employees of the Agricultural Development Bank of Pakistan (which was established under the

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provisions of the Agricultural Development Bank of Pakistan, 1956) had filed writ petitions seeking their consideration for promotion in accordance with the Promotion Policy, 1999 and circulars issued by the Bank prior to its conversion into a company limited by shares by virtue of the provisions of the Agricultural Development Bank of Pakistan (Re-organization and Conversion) Ordinance, 2002. Section 6 of the said Ordinance had provided that the employees of the Agricultural Development Bank of Pakistan *"shall be subject to the same rules and regulations as were applicable to them before the effective date."* The writ petitions filed by the employees of the Agricultural Development Bank of Pakistan were allowed by the Hon'ble Peshawar High Court and the appeal filed by *Zarai Taraqiati* Bank Limited before the Hon'ble Supreme Court was dismissed through the said judgment. It was held that the Promotion Policy, 1999 stood incorporated by way of legislative reference in the statute and had acquired statutory status for the employees who stood transferred and had become employees of the company called *Zarai Taraqiati* Bank Limited.

28. On the basis of the law laid down by the Hon'ble Supreme Court in the cases of Masood Ahmed Bhatti Vs. Federation of Pakistan and Zarai Taraqiati Bank Limited Vs. Said Rehman (*supra*), I am inclined to grant the prayer sought in the instant writ petition that the petitioners (who were employees of HBFC on the effective date) were entitled to be considered in accordance with the Promotion Policy, 2005 which was applicable to them before the effective date.

29. It ought to be mentioned once again that the petitioners did not object to being considered in accordance with the Promotion Policy, 2019 along with other employees of HBFCL-Company who had been employed after the issuance of the Order dated 31.10.2009. It was only after they did not succeed in being promoted that they filed the instant petition for consideration in accordance with the Promotion Policy, 2005 which is less stringent than the Promotion Policy, 2019. Therefore, the employees who had been subjected to the rigours of the

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promotion process under the Promotion Policy, 2019 and have already been promoted, their cases would be past and closed. The petitioners had abandoned their prayer to seek the setting aside of the promotion of the promoted employees. If the petitioners are considered for promotion in accordance with the Promotion Policy, 2005 and as a result of such process are promoted as Assistant Vice Presidents, this shall in no manner prejudice or operate to the detriment of the employees already promoted having being subjected to the promotion process under the Promotion Policy, 2019.

30. As regards the question as to whether a writ can be issued directing HBFCL-Company to afford protection to the terms and conditions of service of the employees who were in service from the effective date of 25.07.2007 in terms of paragraph 18 of the Order dated 31.10.2009, it may be stated that employees of HBFCL-Company had filed Constitution petition No.D-527/2010 before the Hon'ble High Court of Sindh seeking such protection. The Hon'ble High Court of Sindh vide order dated 18.10.2011 had dismissed the Constitution petition on the ground that the relationship of such employees with HBFCL-Company was that of master and servant. The appeal (C.A.No.26-K/2012) filed by the employees before the Hon'ble Supreme Court was allowed vide order dated 06.02.2014 and the matter was remanded to the Hon'ble High Court of Sindh with the direction to decide the Constitution petition in accordance with the law. For purposes of clarity, paragraph 3 of the said order is reproduced herein below:-

> *"3. Learned A.S.C for the respondent Nos. 1 to 3, when confronted with the proposition of law raised in the leave granting order, applicable to the facts of the present case, candidly conceded that those employees of House Building Finance Corporation, who were in service before change of its status as House Building Finance Corporation Limited, by virtue of clause 18 of S.R.O dated 25.07.2007, as reported above, will not be governed by the principle of Master and Servant, but will have their remedy under Article 199 of the Constitution before the High Court as held in the cases reported as Masood Ahmed Bhatti and others vs. Federation of Pakistan through Secretary M/O Information Technology and Telecommunications and others (2012 SCMR 152) & Zarrari Taraqiati Bank Limited and others vs. Sajid Rehman and others (2013 SCMR 642).*

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31. In view of the above, the instant petition is allowed in terms mentioned in paragraphs 26 and 28 to 30 above. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 24.03.2023.

(JUDGE)

APPROVED FOR REPORTING

*Ahtesham**

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