JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

W.P. No.4656/2018
Ikram-us-Saqlain Haider & 3 others
versus
Federation of Pakistan through Secretary Communication & 2 others

Petitioners by: Hafiz S.A. Rehman, Advocate.

Respondents by: Raja Muhammad Aftab Ahmad, AAG.
Mr. Muhammad Shoaib, Advocate for Respondents No.2 & 3.

Date of Hearing: 17.12.2019.

MOHSIN AKHTAR KAYANI, J: Through the captioned writ petition, the petitioners seek direction to be issued to respondents to promote them to the post of General Manager (BPS-19).

2. Brief facts referred in the instant writ petition are that the petitioners had been initially appointed in NHA in BPS-17 followed by promotion in BPS-18 on 11.05.1999 against the post of Deputy Director (Engineering) and currently the petitioners are working on Acting Charge basis against PC-I post as Director (Engineering) since 10.01.2001. The National Highway Council (NHC) in its 14th Meeting held on 10.02.2004 approved filling of 10% vacancies of BPS-17 to BPS-19, whereby 213 employees in Grades 1 to 20 had been promoted against PC-I strength, including the petitioners. The petitioners had appealed to the President, NHC with the contention that due to non-availability of positions in regular cadre, they were promoted on the strength of PC-I. In this regard, one Mian Muhammad Asghar of the NHA moved the Islamabad High Court and Federal Service Tribunal seeking his promotion to BPS-20 w.e.f. the date he was appointed/promoted as General Manager on Acting Charge Basis, whereby the NHA appointed the said employee as General Manager (Engr) in BPS-20 against the regular post. However, the petitioners have not been meted out with such conduct and appeal filed by them to the Chairman NHA remained unattended leaving them to be considered promoted on the strength of PC-I. Hence, the instant writ petition.

3. Learned counsel for petitioners contended that the petitioners are not being treated in accordance with law and have been meted out with discrimination in violation of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973; that the discretion being exercised is patently arbitrary, unjust and unfair besides fanciful and as per whims and wishes of the authorities concerned; that the petitioners had been promoted in BPS-18 about 19 years ago and have been working on Acting Charge Basis since 2009 & 2011, which also negates the principle of law laid down by the apex Court in different pronouncements as the petitioners are entitled to be promoted from the date when they were appointed on Acting Charge Basis, therefore, direction may be issued to the respondents to regularly promote the petitioners as General Manager in BPS-19 w.e.f. 10.01.2011.

4. Conversely, learned counsel for respondents No.2 & 3 opposed the instant writ petition and contended that the NHA is a statutory body and the petitioners being regular and permanent employees of the same are civil servants in terms of Section 2(b) of the Civil Servants Act, 1973, therefore, the invoking constitutional jurisdiction in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is patently unlawful as the petitioners being civil servants have alternate remedy available to them to approach the Federal Service Tribunal; that the apex Court time and again reiterated that in presence of alternate efficacious remedy available to the petitioners the jurisdiction of a High Court is barred; that the Federal Service Tribunal has exclusive jurisdiction to look into and decide the questions relating to terms and conditions of service of the petitioners, therefore, the instant writ petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioners, who claim to be the employees of National Highway Authority/respondent No.3, working as Deputy Director (Engineering), presently posted as Director (Engineering) w.e.f. 10.01.2011 on Acting Charge basis against PC-1 post. The petitioners contend that National Highway Council in its 14th meeting held on 10.02.2004 has approved filling of

10% vacancies in BPS-17 to BPS-19 in technical and non-technical cadres against project PC-1 posts through promotion of employees held on NHA's regular strength through Departmental Promotion Committee. The said quota was further enhanced in the 22nd meeting of NHC held on 19.05.2019 to 100% for BPS-19 to BPS-20 and in the 23rd meeting of NHC held on 11.01.2011 from 10% to 30% for BPS-17 and BPS-18, but the petitioners have not been promoted on regular basis rather their positions have been stuck and made stagnant to BPS-18, despite the elapse of 20 years as they are performing their duties on Acting Charge basis.

7. It is trite law that every citizens has to be dealt in accordance with law and discrimination among the employees should not be made part of any policy, order or action of the Departments / Authorities in terms of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, whereas different regular positions were available in the National Highway Authority since October, 2017, but they have not been settled by way of regular promotion, which has been highlighted in the instant writ petition.

8. Learned counsel for the petitioners has been confronted with Section 13, Chapter-IV (Establishment) of National Highway Act, 1991, which is reproduced as under:-

> *"**Appointment of officers, servants etc.**---(1) The Authority may from time to time employ such officers and servants, or appoint such experts or consultants, as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit.*
>
> *(2) Notwithstanding anything contained in sub-section (1), any rules made, or orders or instructions issued by the Authority, or in the terms and conditions of service of any person employed by or serving under the Authority, the Authority may at any time terminate the services of any person, after giving him not less than sixty days notice or pay for the period by which such notice falls short of sixty days.*
>
> *(3) Service under the Authority is hereby declared to be service of Pakistan and every person holding a post under the Authority, not being a person who is on deputation to the Authority from any province, shall be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1973."*

9. The above referred provision deals with the concept of appointment, promotion as well as terms and conditions of the service of employees of

National Highway Authority and also provides the mechanism to redress the grievance if any on the actions of National Highway Authority, wherein the status of petitioners have been declared to be the civil servant by using the term ***"shall be deemed to be civil servant"***, similarly, for the purposes of any grievance, a forum has been provided as envisaged under Service Tribunals Act, 1973, learned counsel for the petitioners claims that the Service Tribunals could only adjudicate upon the cases of promotion and fitness criteria, as such, jurisdiction of this Court cannot be invoked under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

10. In order to resolve the controversy, I have gone through the prayer made by the present petitioners in this regard, which is reproduced as under:-

> *"It is therefore, most humbly prayed that an appropriate writ may graciously be issued to the respondents directing them to regularly promote the petitioners in BPS-19 as General Manager who are at present on Acting charge basis since 10-1-2011, w.e.f. the date of Departmental Promotion Committee i.e. January 10, 2011, recommendations and subsequently approval of National Highway Executive Board, with all consequent benefits."*
>
> *Any other relief this Hon'ble Court deem fit and proper in the circumstances of the case may also be granted.*
>
> *Cast be also awarded."*

11. The above referred prayer and the arguments advanced by learned counsel for the petitioners reflect that the petitioners are aggrieved with their stagnant position in the respondent Authority and as such they are performing their duties on Acting Charge basis, despite availability of positions, they have not been considered for regular promotion.

12. I have also gone through the National Highway Authority's Service Rules, 1995, notified on 09.03.1995, whereby Chapter-2, Rule 11 (4) deals with the Acting Charge appointment which categorically stated that *"Acting Charge appointment shall not mean an appointment by promotion on regular basis for any purpose including seniority nor the same shall confer any vested right for regular promotion"* ***(referred in Rule 11 (6)(7).***

13. Keeping in view the above background, the only question left for determination of this Court is as to whether the present petitioners have any right to approach the Tribunal provided under Civil Servant Act, 1973 being civil servant or otherwise, the answer is **"yes"** and the forum provided under the law is the same as provided in Article 212(1)(a) of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the bar contained in Article 212 (2) of the Constitution of Islamic Republic of Pakistan, 1973, left nothing in favour of present petitioners, who could not agitate all these matters before this Court in any manner as such the petitioners are civil servant by all means under the law as referred in Section 13(3) of the NHA Act, 1991, therefore, this Court has no jurisdiction to enter into the arena and the question raised by the petitioners in this writ petition. Reliance is placed upon ***2015 SCMR 253 (National Assembly Secretariat through Secretary Vs. Manzoor Ahmed and others)*** and ***2016 PLC (C.S) 779 [Peshawar] (Mullana Ihsan Ul Hadi Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and 4 others).*** However, the question of fitness of the petitioners could only be considered by the National Highway Authority, Executive Board as per their requirement as and when the Board meeting is convened in future for the purpose of promotion.

14. While considering the legal position on record, the instant writ petition is not maintainable and same is hereby ***DISMISSED***.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: **09.01.2020**.

JUDGE

RAMZAN

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