

2023 P L C (C.S.) 431**[Lahore High Court]****Before Jawad Hassan, J****IJAZ AKHTAR****Versus****SECRETARY TO GOVERNMENT OF PUNJAB and others**

Writ Petition No.7102 of 2011, heard on 15th November, 2020.

(a) Administration of justice---

----Where the law requires an act to be done in a particular manner, it ought to be done in that manner only, and such a dictate of law cannot be termed as a technicality.

Muhammad Anwar and others v. Mst. Ilyas Begum and others PLD 2013 SC 255 ref.

(b) Civil service---

----Proforma promotion---Meaning and scope of proforma promotion stated.

The concept of proforma promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his right for such promotion or a legal restraint was posed against his claim owing to any departmental proceedings inquiry etc. against him and the said obstacle is done away with ultimately then in such a situation, his monetary loss and loss of rank is remedied through proforma promotion.

A civil servant has a fundamental right to be promoted even after his retirement through awarding pro forma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own and he is retired on attaining the age of superannuation without any shortcoming on his part pertaining to deficiency in the length of service or in the form of inquiry and departmental action taken against his right of promotion.

It is fundamental right of a civil servant to be promoted even after his retirement by awarding pro forma promotion provided such right accrued during his service and his case could not be considered for no fault of his own and that he should not be penalized for lapses and negligence on part of the department.

Arshad Ali v. WAPDA and others 2020 PLC (C.S.) 1226 ref.

(c) Civil service ---

----Promotion---Promotion cannot be claimed as matter of right.

Secretary School of Education and others v. Rana Arshad Khan and others 2012 SCMR 126 ref.

Muhammad Boota for Petitioner.

Ms. Maria Farooq, Assistant Advocate General along with Zafar Zia, Secretary Local Government Board and Muhammad Ahmad, Admin Officer (Regulations) for Respondents.

Date of hearing: 15th November, 2020.

JUDGMENT

JAWAD HASSAN, J.----The Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") and assailed order dated 13.03.2008 whereby his claim for grant of promotion/proforma promotion was rejected. He has also challenged order dated 26.05.2010 (the "impugned order") whereby appeal filed by him under Rule 20 of the Punjab Local Council Service (Appointment and Conditions of Service) Rules, 1983 (the "Rules") was dismissed being devoid of merit by the Secretary Local Government Board.

2. The case of the Petitioner, in nutshell, is that he retired on 05.03.2006 on attaining the age of superannuation and has been non-suited by the Respondents for consideration of his proforma promotion from BS-16 to BS-17 and was superseded while junior officers were granted proforma promotion. He has mainly relied on an order passed on 16.08.2002 in favour of one Rao Muhammad Jamil. He filed application for grant of proforma promotion which was rejected in terms of order dated 13.03.2008 and said order was assailed through filing of appeal under Rule 20 of the "Rules" and that too was dismissed vide the "impugned order". Now he has prayed for directions to the Respondents to grant him proforma promotion from BS-16 to BS-17 with effect from the date his juniors were promoted inter alia on the grounds of withdrawal of surcharge order and incomplete service record.

3. Report and parawise comments were filed on behalf of the Respondents. Learned law officer vehemently denied the stance taken by the Petitioner solely on the grounds that he is not entitled for the relief claimed for after his retirement as there was surcharge order against him and he had incomplete service record and more so his case for proforma promotion was considered thrice by the Board but deferred due to above said reasons. She prayed for dismissal of this petition on the ground that the impugned order has rightly been passed by the Respondents.

4. I have heard learned counsel for the parties and gone through the available record.

5. It is settled law that where the law requires an act to be done in a particular manner, it ought to be done in that manner only, and such a dictate of law cannot be termed as a technicality. Reliance has been placed on "Muhammad Anwar and others v. Mst. Ilyas Begum and others" (PLD 2013 (SC) 255). Perusal of the "impugned order" reveals that the Petitioner was granted promotion in BS-16 by the Punjab Local Government Board in terms of order dated 27.06.1990 and was considered for promotion from BS-16 to BS-17 along with others in Board's meeting held on 18.04.2003 however, his case was superseded owing to pendency

of surcharge order amounting to Rs.50,000/- issued on 09.02.1999 and non-receipt of his ACR for the year 2001. Thereafter, his case was again considered for proforma promotion twice on 06.05.2004 and 21.02.2005 but was superseded for the above reasons. The primary ground as taken by Petitioner for refusing him proforma promotion is that the Respondents had granted the same benefit to one Rao Muhammad Jameel from BS-18 to BS-19 after his retirement in terms of order dated 16.08.2002 therefore, he is also entitled for the relief on same footing. The said stance of the Petitioner is fully negated by the Respondents stating that above named person was granted proforma promotion after his retirement as he was already enjoying move over in BS-19 as Chief Cooperation Officer, Multan and was placed under suspension w.e.f. 02.08.1993 due to his arrest who subsequently was acquitted by Special Judge Anti-Corruption, Lahore vide orders dated 28.10.1999 and 19.10.2000 and thereafter the competent authority granted proforma promotion just to receive arrears of salary/pensionary dues treating his suspension period w.e.f. 02.09.1993 to 09.05.1994 on duty. It is to be noted that promotion is generally an advancement in rank, which is granted based on acquiring extra qualifications or enhancement of skills or awarded in lieu of longstanding services of the employee as a token of satisfaction and appreciation over services rendered by him. The concept of Proforma Promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his right for such promotion or a legal restraint was posed against his claim owing to any departmental proceedings inquiry etc. against him and the said obstacle is done away with ultimately then in such a situation, his monetary loss and loss of rank is remedied through proforma promotion. In a plethora of judgments, it has been concluded that a civil servant has a fundamental right to be promoted even after his retirement through awarding pro forma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own and he is retired on attaining the age of superannuation without any shortcoming on his part pertaining to deficiency in the length of service or in the form of inquiry and departmental action was so taken against his right of promotion but in the case in hand, the Petitioner's case was considered by the Respondents thrice during his service but deferred meaning thereby his right of proforma promotion was not accrued during continuance of his service. It is worthwhile to observe that there is no impediment in the way of an employee to claim anti-dated promotion if he otherwise fulfills criterion but it is also by now a well settled principle of law that promotion cannot be claimed as matter of right. Reference in this respect can be made to "Secretary School of Education and others v. Rana Arshad Khan and others" (2012 SCMR 126). Moreover, this Court in "Arshad Ali v. WAPDA and others" (2020 PLC (C.S.) 1226) has held that it is fundamental right of a civil servant to be promoted even after his retirement by awarding pro forma promotion provided such right accrued during his service and his case could not be considered for no fault of his own and that he should not be penalized for lapses and negligence on part of the department, which precisely is not the position in the instant case.

6. In view of above, it is clear that the Respondent No.1 has passed the well-reasoned order after examining all the record and providing proper opportunity of hearing, therefore, I see no merit in the instant petition and the same is hereby dismissed.

MWA/I-1/L Petition dismissed.

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