

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik and Syed Mansoor Ali Shah, JJ**Dr. ZOHARA JABEEN and others---Appellants****Versus****MUHAMMAD ASLAM PERVAIZ and others---Respondents**

C.As. 762-L to 766-L of 2012, decided on 2nd December, 2020.

(On appeals from the judgments of Punjab Service Tribunal, Lahore dated 26.03.2012, passed in Appeals Nos.3776 to 3780/2010)

(a) Punjab Civil Servants Act (VIII of 1974)---

----S. 7(2), proviso---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 8(2), Explanation---Batch of 'promotees'---Seniority---Scope---Where civil servants were selected for promotion in a "batch" or as a "group of persons" then the date of promotion of all the persons in the batch or the group shall be the date when anyone of them was first promoted to the post and they shall retain their inter se seniority---Word "batch" used in S. 7 of Punjab Civil Servants Act, 1974 ('the Act') had been interchangeably used as "group of persons" in R. 8 of Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---Promotees in the same grade, when considered and recommended for promotion for the next grade in the same Departmental Promotion Committee (DPC) passed for a "batch" or "group of persons" and therefore as would be considered to have been promoted from the date when the first amongst the batch was promoted and would also retain their inter se seniority of the lower post.

(b) Punjab Civil Servants Act (VIII of 1974)---

----S. 7---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 8---District Population Welfare Officers---'Promotees' and 'direct appointees'---Seniority---Scope---Direct appointees/respondents were appointed through initial appointment on 3-12-2003, a day after the promotion of the first promotees out of the batch of promotees; hence the direct appointees would fall under the promotees in the seniority list---Appeals were allowed.

Malik Muhammad Awais Khalid, Advocate Supreme Court for Appellants (in all cases).

Amir Sana Ullah, Advocate Supreme Court for Respondent No. 1.

Ch. Zafar Hussain Ahmed, Additional A.G., Ali Bahadur, Secretary, Population Welfare Department, Khalid Pervaiz, Additional Secretary along with Tania Malik, D.S. and Arooj Naseem, S.O. for Respondents Nos. 2 to 4.

Date of hearing: 10th November, 2020.

ORDER

SYED MANSOOR ALI SHAH, J.---The question that arises in this case is regarding the seniority between the appellants (promotees) vis- -vis the respondents (direct appointees), both appointed to the post of District Population Welfare Officer/Deputy Director (Non-Technical) (BS-18) close in time to each other in the manner described hereunder.

2. Briefly the facts are that the direct appointees (respondents) were recommended by the Punjab Public Service Commission (PPSC) and appointed vide order dated 03.12.2003 as Deputy Director/District Population Welfare Officer (Non-Technical) in BS-18. On the other hand the appellants were recommended for promotion by the Departmental Promotion Committee (DPC) on 24.11.2003, however, their notifications for promotion were issued successively as follows: the promotion notification of Dr. Naureen Asghar was issued on 2.12.2003, while that of Dr. Zohra Jabeen and Dr. Farkhanda Almas, who were recommended for promotion in the same DPC but subject to the completion of their ACRs for the year 2001-2002 were notified for promotion on 10.4.2004 and 24.11.2004, respectively. Dr. Zubda Riaz (appellant No.3), however, was initially deferred in the DPC held on 24.11.2003 and was later on considered in the DPC held on 12.10.2007 and notified for

promotion on 26.4.2008. The seniority list prepared by the department placed the appellants over the respondents, who were appointed through direct recruitment. The respondents made a representation before the Chief Secretary, which was dismissed on 27.9.2010, whereafter they preferred an appeal before the Punjab Service Tribunal, which was allowed through the impugned judgment, holding that the respondents were senior to the appellants, with the direction to the department to re-draw the seniority list accordingly. To consider the question of seniority between the appellants and the respondents, leave was granted by this Court on 20.12.2012.

3. To answer the question regarding seniority between the appellants and the respondents, proviso to section 7(2) of the Punjab Civil Servants Act, 1974 ("Act") and Rule 8(2) along with its Explanation under the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 ("Rules") need to be examined. Both the provisions are reproduced hereunder:

"Section 7. Seniority.---(1)

(2) Seniority in a post, service, or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post:

Provided that civil servants who are selected for promotion to a higher post in one batch shall on their promotion to the higher post retain their inter-se seniority in the lower post.

Rule 8. The seniority inter se of persons appointed to posts in the same grade in a functional unit shall be determined:

(2) The seniority of the persons appointed by initial recruitment to the grade vis- -vis those appointed otherwise shall be determined with reference to the date of continuous appointment to the grade; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment; provided further that inter se seniority of person belonging to the same category will not be altered.

Explanation- In case a group of persons is selected for initial appointment at one time, the earliest date on which any one out of the group joined the service will be deemed to be the date of appointment of all persons in the group. Similarly in case a group of persons is appointed otherwise at one time in the same office order the earliest date on which any one out of the group joined the service will be deemed to be the date of appointment of all persons in the group. And the persons in each group will be placed with reference to the continuous date of appointment as a group in order of their inter se seniority."

According to the above provisions, if civil servants are selected for promotion in a "batch¹" or as a "group of persons²" then the date of promotion of all the persons in the batch or the group shall be the date when anyone of them was first promoted to the post and they shall retain their inter se seniority. The word "batch" used in section 7 of Act has been interchangeably used as "group of persons" in Rule 8. Ordinary dictionary meaning of the word "batch" is "people dealt with as a group or at the same time".³ Therefore, appellants, in the same grade, when considered and recommended for promotion for the next grade in the same Departmental Promotion Committee (DPC) pass for a "batch" or "group of persons" and therefore as per the above provisions will be considered to have been promoted from the date when the first amongst the batch was promoted and will also retain their inter se seniority of the lower post. In this legal background, the three appellants were recommended for promotion to BS-18 in DPC dated 24.11.2003. One of them i.e., Dr. Naureen Asghar was promoted on 2.12.2003, thus the entire batch of appellants/promotees who were recommended for promotion in the same DPC namely Dr. Zohara Jabeen and Dr. Farkhanda Almas shall be considered to have been appointed w.e.f 2.12.2003, the date of promotion of Dr. Naureen Asghar, one of the promotees, from the same batch or group of persons. Further their inter se seniority amongst the promotees shall be the same as maintained in the lower post as per the provisions discussed above. However, Dr. Zubda Riaz (appellant No. 3) who was deferred in the DPC held on 24.11.2003 on the ground that she was on a long leave and was subsequently recommended in the DPC held on 12.10.2007 (after almost four years)

and promoted on 26.4.2008 cannot be considered to be from the same batch as that of the other appellants selected in the year 2003 and therefore the above provisions do not come to her rescue. Her seniority will be fixed according to the date of her promotion. The respondents were appointed through initial appointment on 03.12.2003, a day after the promotion of the first promottee out of the batch of promotes, hence the respondents will fall under the appellants. Therefore, the seniority of the appellants Nos.1 and 2 shall be re-fixed above the respondents in the manner discussed above and of appellant No.3 according to her date of promotion. For the above reasons the impugned judgment of the Tribunal dated 26.03.2012 is set aside and these appeals are allowed accordingly.

MWA/Z-9/SC Appeals allowed.