

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-22 of 2021
(Muhammad Aminuddin Ahmed Siddiqui v Province of Sindh & others)

Date	Order with signature of Judge(s)
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Before:
Justice Mohammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

Date of hearing and order:- **15.5.2025**

Mr. Munawar Ali Memon advocate for the petitioners
Mr. Ali Safdar Depar, Assistant AG

ORDER

Adnan-ul-Karim Memon, J The petitioners request this court to:

- (a) Declare the withdrawal of their BPS-16 upgradation and reversion to BPS-11 illegal, unauthorized, unconstitutional, against natural justice, discriminatory, and in violation of court orders and the 2020 Rules.*
- (b) Suspend and set aside the July and November 2020 reversion orders.*
- (c) Restrain respondents from reducing their salary from BPS-16 or recovering any amounts paid due to the upgradation, and from taking adverse action against them for filing this petition.*
- (d) Declare the non-promotion of petitioners from BPS-11 to BPS-16 discriminatory and in violation of the 2020 Rules.*
- (e) Direct the respondents to immediately consider their promotion and not reduce their salary from BPS-16 pending this consideration.*

2. Sindh Council Accountants, governed by 1982 rules, were appointed in BPS-11 in 2010. The Government of Sindh Finance Department issued Notification in 2012 upgraded Accountants to BS-17 and Sub-Accountants to BS-14. Subsequently, the Local Government Board upgraded Assistant Accounts Officers (BS-16 to BS-17), Accountants (BS-16 to BS-17), and placed experienced BS-11 Accountants in BS-16 for pay purposes. Petitioners positions were upgraded to BS-16. Earlier this Court’s orders passed in CP D-3483/2010, CP D-1554/2010, CP D-1062/2014, and CP D-1042/2014, affirmed their right to similar treatment and upgradation. However, in July 2020, respondents withdrew all up gradations in terms of decision of the Supreme Court, now the department is seeking recovery proceedings against the petitioners. Petitioners challenged this in earlier CP No.D-3987/2020, resulting in a directive for representation consideration by the respondent department. In November 2020, without compliance, petitioners were reverted to BPS-11 position. However in the

intervening period the respondent department framed 2020 SCUG Rules, placing the Accounts Branch in BPS 14-19 and Accountants in BPS-14. The Secretary then ordered reversion to them in BPS-11, which petitioners averred that this was/is unauthorized and without lawful justification. Petitioners averred that earlier DPC recommended some of the petitioners for promotion to BPS-14 but deferred them due to missing ACRs. Later, juniors of the petitioners were promoted to BPS-16 while they were ignored.

3. Petitioners' counsel argued the demand for ACR/PER for promotion is illegal, as it is the employer's responsibility to maintain and call for ACRs before convening the DPC. Learned counsel, citing Rule 19 of the 2020 SCUG Rules, he emphasized employees' right to access adverse reports for explanation. He contended that the Secretary lacked authority to unilaterally withdraw the Sindh Local Government Board's upgradation, rendering the July and November 2020 reversions invalid and the BPS-16 to BPS-11 salary reduction illegal and without lawful justification. Counsel asserted that the reversion is discriminatory, given that other Sindh government accountants with similar roles retain their upgradations, violating Rule 14 and arbitrarily seeking recovery of accrued benefits in favor of the petitioners. He invoked the legal principle against unilateral withdrawal of granted benefits in terms of decision of the Supreme Court in the case of Shams-ur-Rehman v Military Accountant General Rawalpindi. **2020 SCMR 188** He submitted that the petitioners, with over ten years' service, are entitled to BPS-16 promotion but were unfairly excluded while juniors were promoted discriminatorily, violating Article 25 of the Constitution. He concluded by saying that the unilateral deprivation of BPS-16 is unlawful, against the principles of natural justice, and without a hearing. He prayed for allowing the instant petition.

4. The AAG submitted that the withdrawal of upgradations was necessitated by Supreme Court rulings in **2013 SCMR 1752** and **2015 SCMR 456**, which deemed similar upgradations illegal as they circumvented promotion structures and created undue financial and administrative burdens. The AAG argued that these upgradations were not sanctioned by the rules and were inherently unlawful, justifying their cancellation and the recovery of overpaid salaries. Consequently, the AAG proposed that the petition be dismissed with costs.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. Acknowledging the petition's focus on the withdrawn up-gradation, finally the counsel requested the withdrawal of recovery proceedings initiated against the petitioners who performed the work of higher posts and thus on the principle of locus poenitentiae the benefits paid to them could not be recovered from them,

invoking this principle of *locus poenitentiae* as established in the Shams-ur-Rehman case (2020 SCMR 188), where recovery was denied after nine years of service at a higher grade.

7. In view of the above facts and circumstances of the case, and without touching to the other issues as agitated by the petitioners on merit, we confine ourselves to the extent of recovery proceedings, initiated against the petitioners pursuance of withdrawal of the up-gradation benefits by the department, in terms of decision of the Supreme Court in the Shams-ur-Rehman case supra. This petition is hereby disposed of with the directive that, given the petitioners' service at a higher post and the subsequent withdrawal of the upgradation by Supreme Court order, no recovery proceedings shall be initiated against them, if not earlier acted upon.

8. This petition is disposed of on these terms.

JUDGE

HEAD OF CONST. BENCHES