

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Constitutional Petition No. D-3496 of 2022

*(Zulfiqar Ali Memon & others v Federation of Pakistan & others)*

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| Date | Order with signature of Judge(s) |
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**Before;**  
**Muhammad Karim Khan Agha, J;**  
**Adnan-ul-Karim Memon, J**

**Date of hearing and order 11.8.2025**

Malik Altaf Hussain advocate for the petitioners

Ms. Wajiha Mehdi, Assistant Attorney General

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**ORDER**

**Muhammad Karim Khan Agha J:-** Through the captioned Constitutional petition, the petitioners request this Court to:

1. Declare that the act and omission of the respondents to notify the promotion of the petitioners as ACIR BS017) vide Notification dated 28.12.2016 with immediate effect instead of from the date of accrual of vacancies in their quota is violation of principles of law enunciated by the Supreme Court in this regard and prejudicially affects the legitimate expectation of the petitioners.
2. To direct the respondents to notify the promotion of the petitioners as ACIR (BS-17) with effect from 14.01.2011, the date of accrual of vacancies in their quota forthwith.

2. The main submission of the petitioners' counsel is that the petitioners' promotion to Assistant Commissioner Inland Revenue (ACIR) (BPS-17) may be backdated to January 14, 2011, which is when the vacancies became available in their respective quota under the law. The petitioners' counsel argued that the failure of the respondents to promote them at that time, and instead promoting them with "immediate effect" on December 28, 2016, violated legal principles as enunciated by the Supreme Court from time to time and their legitimate expectations. Learned counsel has submitted that the principle enunciated in the order dated 29.04.2025 passed by this Court in the case of Ayaz-ul-Islam v Government of Pakistan (C.P. No. D-1398 of 2018) is applicable in this case as the petitioners' case for promotion from the date vacancies in their quota arose. In support of his contention he has relied upon the cases of Khalid Mehmood, Chief Secretary Government of Punjab, and others, 2013 SCMR 544, and Executive District Officer (Revenue) Bahawalpur and others v Muhammad Attique and another, 2017 SCMR 399. He prayed for allowing the instant petition.

3. However, the opposing view is that the petitioners' request lacks merit on the analogy that having the minimum length of service does not give a person a right to promotion. The learned AAG submitted that appointments and promotions are always prospective, meaning they take effect from the date they are made and/or departmental promotion committee was/is convened, not from an earlier date when a vacancy may have occurred in their quota. Learned AAG submitted that the delay in promotions of the petitioners was a result of a stay order issued by this Court on January 14, 2011. This Court specifically directed that a certain number of vacancies should not be filled. However, the DPC (Departmental Promotion Committee) could not meet to consider the promotions of the petitioners due to these court orders, but the stay order was not vacated until December 5, 2016. She prayed for dismissal of the instant petition.

4. We have learned counsel for the parties and have perused the material available on record with their assistance and the case law cited at the bar.

5. The question before us is whether promotion of a civil servant could be antedated or prospective.

6. The petitioners, who were initially appointed as Income Tax Officers (BS-16) in 2005, are challenging the effective date of their promotion to Assistant Commissioner Inland Revenue (ACIR-BS17). While their promotion was officially notified on December 28, 2016, they submit that it should be backdated to January 14, 2011, when the vacancies first became available.

7. The dispute originated from the 2009 reorganization of the Federal Board of Revenue (FBR), which created the new Inland Revenue Service (IRS). In 2011, a group of Senior Auditors filed a petition before this Court, leading to a court-ordered stay that prevented the FBR from filling 121 vacancies in BS-17. This stay was eventually vacated on December 5, 2016. Following the vacation of the stay, a Departmental Promotion Committee (DPC) was convened and recommended the petitioners for promotion on December 27, 2016. The promotion was formally approved the next day, effective immediately. The petitioners appealed this decision to the Federal Service Tribunal (FST), arguing for a backdated promotion to 2011. On June 20, 2019, the FST dismissed the appeal, ruling that promotions are typically approved from the date of the DPC's recommendations. It was further observed that the mere existence of a vacancy does not automatically grant a right to promotion. As appointments are generally prospective, not retrospective, and backdating them could negatively affect the rights of other officers. The petitioners then appealed to the Supreme Court of Pakistan, but their appeal was withdrawn on November 12, 2021, with the observation that they could pursue other legal

remedies if available. It is well settled that holding the minimum length of service required does not automatically guarantee the right to a promotion. According to the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, promotions are contingent on the recommendations of the appropriate Departmental Promotion Committee (DPC) or Selection Board.

8. The Supreme Court in the recent judgment has held that the legal concept of legitimate expectation is a key principle in administrative law. It suggests that a person may have a reasonable expectation that a public authority will treat them in a particular way. This expectation is not a formal legal right but can arise from a promise, an assurance, a consistent practice, or a policy established by the authority. Essentially, this doctrine acts as a check on administrative authorities, obligating them to act fairly and transparently.

9. In various legal cases, including *Uzma Manzoor and others vs Vice-Chancellor Khushal Khan Khattak University* (2022 SCMR 694), the Supreme Court has affirmed that a legitimate expectation can stem from an express promise or a regular, established practice. The expectation must be justifiable and can be inferred if it is based on a legal, customary, or established procedure. However, a legitimate expectation does not automatically become a legal right; instead, it's a principle used to ensure fairness in administrative decisions.

10. The case of *Tariq Aziz-ud-Din and others* (2011 PLC (C.S.) 1130), the Supreme Court directed all authorities—judicial, quasi-judicial, and administrative must exercise their powers and discretion reasonably and fairly. This is essential for upholding the rule of law, preventing injustice, and achieving good governance. The Supreme Court emphasized that good governance requires a strong and honest bureaucracy that implements the law impartially. Therefore, promotions in civil services must be based on merit, following the law and Constitution, rather than on favoritism or nepotism. This ensures the integrity and purity of the administration, which is the backbone of the government.

11. The legal principle, including *Secretary to Government of the Punjab Vs Muhammad Khalid Usmani* (2016 SCMR 2125), is that ad hoc, officiating, or temporary appointments should be a short-term, exceptional measure, not a long-term practice. These temporary arrangements are a "stopgap" and are discouraged because they create insecurity and anxiety for civil servants, undermining transparency, certainty, and good governance. Prolonging such appointments defeats the purpose of the law and can create a legitimate expectation for regularization in the minds of the employees. Courts have consistently held that government departments must prioritize filling posts with regular, merit-based

appointments in the shortest time possible, rather than keeping positions notionally vacant with temporary arrangements for extended periods.

12. The Supreme Court in the recent judgment, *The Province of Sindh through Chief Secretary & others Vs Ghulam Shabbir and others*, passed in (**Civil Appeals Nos.52-K to 71-K of 2022**) vide judgment dated 30.12.2025 has observed that the competent authority was/is expected to carefully consider the promotions of candidates who hold acting charge positions. This consideration should be retroactive, dating back to when the promotional posts first became vacant. However, the service tribunal's decision was not deemed illegal because it simply directed the competent authority to re-evaluate the case rather than making the final promotion decision itself.

13. However in the present case, the situation is altogether different as the case of the petitioner No.1 has already been set at naught by learned Federal Service Tribunal, maintained by the Supreme Court as pointed out as such this Court is not in a position to upset the Notification dated 28.12.2016, more particularly in terms of Article 212 of the Constitution as the issue is more alive to be agitated under Article 199 of the Constitution. This petition stand dismissed along with pending application(s) if any.

Head of Const. Benches

Judge