

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-2723 of 2022

(Dr. Shahbaz Haider v Federation of Pakistan & others)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul-Karim Memon

Date of hearing and Judgment: 22.08.2025

M/s Faizan Hussain Memon and Muhammad Nasir
advocates for the petitioner.

Ms. Wajiha M. Mehdi, Assistant Attorney General

Mr. Sandeep Malani, Assistant Advocate General

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: Through this constitution petition petitioner has prayed to direct the respondents to grant him a "proforma promotion" (promotion with retrospective effect) to Associate Professor from March 2016 and to Professor from August 2017, and to set aside the decision of the Provincial Selection Board (PSB-II).

2. A retired doctor, who started at JPMC in 1994, is disputing a denied promotion during his tenure of service. For nearly a decade, promotions at Jinnah Postgraduate Medical Centre (JPMC) were on hold because of a legal battle over whether the hospital should be controlled by the Federal or Sindh government in terms of decision of the Supreme Court on the subject issue, however review petition is pending before the Supreme Court. When promotions finally resumed in 2020, the petitioner was considered for an Associate Professor position, BS-19, even though he was eligible to be a full Professor, BS-20, since 2017. The Provincial Selection Board (PSB-II) rejected the promotion of the petitioner in BS-19 on 11.2. 2022, because the petitioner had been placed in the Assistant Professor role in BS-18 through a service scheme rather than a formal promotion. The petitioner, who is the second most senior professor at JPMC, as per seniority list No.1 claims this decision was/is unfair. He submitted that he was eligible for several promotions over the years: Assistant Professor in 2013, Associate Professor in 2016, and Professor in 2017. He contends that his case should have been reviewed under the Recruitment Notification dated 26th Feb, 1986, which were used for his colleagues, instead of Notification dated 16th December 2021 issued by the Government of Sindh Health Department as the petitioner's services were hired in 1994 by the Federal Government for JPMC. During the ongoing court case, the petitioner's junior colleagues were promoted in May 2023. However, the petitioner was not and retired on January 19, 2023, as a

Medical Officer (BS-18). Due to his retirement, the petitioner had to update the relief requested in his petition, which was allowed to do so on May 22, 2024.

3. The petitioner's counsel argues that his client, a doctor with an MBBS (1988) and an FCPS in Medicine (2002), is highly qualified. He highlights the petitioner's extensive experience at JPMC, first as a Medical Officer from 1994 to 2001 and then as a Senior Registrar from 2002 to 2016. According to a letter from 2018, the doctor's 12 years and 7 months of teaching experience, along with five publications, make him eligible for a Professor position in BS-20. He added that this updated verification of his credentials supersedes an earlier letter from 2017. The counsel submits that with even less experience (6 years, 9 months, and 18 days) and three publications, the petitioner was already considered eligible for an Associate Professor role in BS-19 but was deferred due to his position in BS-18 on a current charge basis as Registrar/Senior Registrar, which is also a teaching cadre post. He submitted that the Pakistan Medical & Dental Council (PMDC) has officially recognized the petitioner's teaching experience in the relevant field. An updated letter from 2018 explicitly states he is eligible for the Professor (BS-20) position based on his qualifications, extensive experience (12 years and 7 months), and research publications. This directly contradicts the respondents' claim that he does not meet the illegibility criteria. Learned counsel referred to the seniority list, Notification dated 26th Feb, 1986 PMDC letter dated 19.09.2017, 22.8.2021 and argued that petitioner was interested current charge to the post of Assistant Professor (Medicine) (BS-18) and post of Associate Professor (Medicine) (BS-19) vide Notification dated 05.06.2017. He further added that Respondent JPMC recommended for his promotion as Professor from back date vide letter dated 22.10.2021. he further submitted that under the new rules 2021, the post of Professor is to be made by promotion from amongst the Associate Professors BS-19. However the case of the petitioner has already been forwarded to the competent authority for promotion in the same rank but his juniors/colleagues were promoted and he was deferred for the reason that he was appointed his Medical Officer BS-17 on 15.05.1994 and was placed in BS-18 under the improvement in service structure of Federal Government, Health Services personal vide Notification dated 04.12.2004 and he was working as Assistant Professor BS-18 on current charge basis with effect from 03.03.2017 as he has not been promoted as Assistant Professor BS-18 on regular basis, as per learned counsel this analogy was/is wrong for th reason that on the similar circumstances his colleagues

were considered and promoted, as such this discrimination cannot be filed in terms of letter issued by the PMDC. He prayed for allowing the instant petition.

4. The respondents admit that promotion cases were delayed due to the legal dispute over JPMC's devolution in terms of Supreme Court's decision, however review petition is pending. They submit that the PSB-II was justified in deferring the petitioner's promotion because the petitioner "does not meet the eligibility criteria." The key reason provided is that the petitioner has been working as an Assistant Professor on a "current charge basis" rather than being regularly promoted to that position. However, the respondents deny that the petitioner was eligible for the promotions to the positions of Assistant Professor, Associate Professor, and Professor on the specified dates. The respondents state that the petitioner's case for promotion to Associate/ Professor "merits no consideration" and this petition may be dismissed.

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

6. Upon retirement, a civil servant typically can not be considered for a regular promotion. However, a proforma promotion can be granted to rectify an injustice. This is relevant when a civil servant, who was eligible and fit for a promotion, was denied it due to an administrative error or delay, such as a postponed Selection Board meeting. The Supreme Court in recent judgment has ruled that in such cases, a civil servant has a legitimate expectation for a proforma promotion to compensate for the lost opportunity. Prima facie, the petitioner's situation seems to fit this exception perfectly, as he was eligible for promotion during his tenure of service as Associate Professor BS-19 as per letter of The Pakistan Medical & Dental Council (PMDC), but the process firstly was delayed by factors outside of his control and secondly he was erroneously deferred, though prima facie, he met the eligibility criteria for the position BS-19 at the relevant time under the old rules of 1986, however after taking over the charge of the JPMC, the Sindh Government notified fresh rules in 2021 changing the criteria for the position.

7. Primarily unjustified delays in proforma promotion cases cause significant hardship for civil servants and lead to more litigation. Supreme court has observed in its various pronouncements. The competent authority should set and enforce a strict timeline for promotion committees to make prompt and fair decisions. This would prevent delays that force

retired employees to go to court to get the rights they are owed under service rules.

8. The petitioner's entire case rests on two key points, eligibility and equity. The Pakistan Medical & Dental Council (PMDC) has officially recognized the petitioner's teaching experience. An updated letter from 2018 explicitly states he is eligible for the Professor (BS-20) position based on his qualifications, extensive experience (12 years and 7 months), and research publications as pointed out by the counsel for the petitioner. This directly contradicts the respondents' claim that he does not meet the criteria. The petitioner's counsel's argument is further strengthened by the fact that his colleagues were promoted under the more favorable 1986 rules, while his case was considered under the newer, more restrictive 2021 rules. This suggests discriminatory treatment, which is a ground for challenging the decision.

9. Rule 7-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, allows for the promotion of retired civil servants. Since the petitioner served and retired from the Government of Sindh's Health Department, this rule is directly applicable. The rule states that a promotion can be approved from the date of the recommendation made by the Provincial Selection Board or Departmental Promotion Committee. It also specifically exempts an officer who retires after the recommendation but before the official notification from having to take charge of the new position. This provision enables the promotion to be finalized even after an employee has retired. The petitioner's case was erroneously deferred for a reason that is no longer valid, so there is no need to discuss it further.

10. Based on the Supreme Court of Pakistan's ruling in Secretary Schools of Education v. Rana Arshad Khan, (2012 SCMR 126), Homeo Dr. Asma Noureen Syed Vs. The Government of Punjab and others 2022 SCMR 1546 and Federation of Pakistan through Secretary, Ministry of National Health Services Vs. Jahanzaib and others (2023 PLC (C.S.) 336 a retired civil servant is entitled to a proforma promotion if their promotion was delayed due to an unjustifiable departmental error. The court held that employees should not be penalized for administrative lapses that occur before their retirement. From the aforesaid law point, it is inferred that a civil servant has a fundamental right to proforma promotion even after retirement. This applies if their promotion was delayed through no fault of their own, and they retired before it could be granted. This right

is upheld by multiple Supreme Court rulings, confirming that employees should not be penalized for administrative shortcomings.

11. Given these points, the petitioner appears to have a solid basis for seeking a proforma promotion, which would grant him the rank and financial benefits retroactively from the date he was first eligible. The PMDC's verification of his eligibility against the Provincial Selection Board's reasons for deferral, which is set at naught to the extent of the petitioner. It is well settled that an employee who was denied a promotion through no fault of his/her own is entitled to the benefits of that promotion from the date the vacancy became available. Since promotions were stalled for a decade due to the dispute over JPMC's status, a situation beyond the petitioner's control, he has a valid claim under the circumstances of the case.

12. We, for the aforesaid reasons, allow this constitutional petition and direct the competent authority/respondents to grant him proforma promotion along with his colleagues in BS-19/20, if they have been granted such rank, by way of circulation. As the petitioner has already retired, therefore, his proforma promotion will not affect the seniority of any person already in service, and he will be entitled to his emoluments and pensionary benefits.

JUDGE

Head of Const. Benches