

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

Constitutional Petition No. D-6200 of 2022  
*(Zakir Hussain Samo v Province of Sindh & others)*

Date	Order with signature of Judge(s)
------	----------------------------------

For Directions:-  
For hearing of CMA No. 6303/2024 (Contempt)

**Date of hearing and order 25.08.2025**

Mr. Muhammad Arshad Khan Tanoli advocate for the petitioner  
Mr. Ali Safdar Depar, AAG  
Asad Iqbal Arain, Assistant Director ACE on behalf of Chairman E & ACE  
Muhammad Shahid Nizamani on behalf of Respondent No.2  
Bhooromal, Additional Director, Law SGA&CD.

**ORDER**

Pursuant to this Court's order dated August 15, 2025, which once again directed a compliance report for the original order dated December 18, 2023. The relevant portion of the December 18, 2023, order is as follows:

*"In view of hereinabove facts and circumstances of this case, it appears that a case for exercising discretion has been made out Since the Petitioner stands retired now, therefore, this Petition is allowed to the extent that eligibility of the Petitioner be considered for proforma promotion to Grade-19, and if found eligible, he shall be promoted accordingly."*

Upon receiving the above order, the Chairman of the Enquiries & Anti-Corruption Establishment was promptly directed to frame the mandatory rules required under Sub-Rule 2(3) of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. These rules were officially framed and notified on April 22, 2025, establishing that a Deputy Director (Executive) (BS-18) must have a minimum of twelve years of service in BS-17 and above to be eligible for promotion to Director (Executive) (BS-19) on a seniority-cum-fitness basis. Subsequently, the Chairman of the Enquiries & Anti-Corruption Establishment submitted a working paper on the petitioner to the Provincial Selection Board-II to ensure compliance with this Court's order. The Board reviewed the petitioner's case and found that his total combined service in BS-17 and BS-18 was only ten years and six months. This falls short of the mandatory twelve-year service requirement by one year and six months, rendering him ineligible for promotion to BS-19.

This Court had explicitly directed that the petitioner's case for proforma promotion be considered "if found eligible." As he was not found to meet the mandatory eligibility criteria, the order dated December

18, 2023, has been complied with in its entirety learned AAG stressed and prayed that the contempt proceedings be withdrawn.

The petitioner's counsel argued that the petitioner, a Deputy Director (BS-18) at Serial No. 1 on the seniority list, was/is eligible for a proforma promotion to the BS-19 post of Additional Director. He argued that despite having the required seniority and fitness, and a history of promotions based on departmental recommendations, he has been overlooked during his tenure of service. The counsel asserts that the department's failure to convene a promotion committee meeting timely manner and consider him for the promotion, after he completed 12 years of service in BS-17, was/is a violation of his constitutional rights to equal treatment and a failure of public duty. He highlights that others in similar situations within the Sindh government have been promoted, and the petitioner, being fully eligible and fit, has a vested right to be considered now for proforma promotion after his retirement. The counsel claims that the delay and discrimination by the respondents are unconstitutional and prays for the court to nullify the purported compliance report and direct the department to grant him proforma promotion. In support of his contention he relied upon the case of Muhammad Ishaque & others v M/s Zeal Pak Cement Factory Ltd. **2024 SCMR 628**. He lastly prayed for allowing the instant petition.

The learned Assistant Advocate General (AAG) argued that this court may not be hearing this case, citing Article 212 of the Constitution, which he believes bars such matters. He pointed out that despite this clear constitutional provision, this court not only previously entertained the case but is now also handling a contempt petition. Furthermore, the AAG contended that since the respondent department has already denied the petitioner's proforma promotion, this Court cannot order them to promote him in next rank as proforma promotion as he lacks the required length of service for BS-19. He supported this position by referencing a Supreme Court decision in the case of Chief Secretary Punjab Vs Ms. Shamim Usman (**2021 SCMR 1390**). He prayed for the dismissal of the listed application

We have heard the learned counsel for the parties on the listed application and perused the record with their assistance.

A retired government employee of ACE is seeking a pro forma promotion to BPS-19, submitting his eligibility based on his service history from 1996 to 2013, including his promotion to Deputy Director (BPS-18). His counsel claims he was eligible for the BPS-19 promotion after 12 years of service in BPS-17 and received an order for this proforma promotion on December 18, 2023, which remains unimplemented.

In response, the Secretary (Services) disputes the claim, stating the petitioner lacks the required service length. The learned AAG further argues that the BPS-19 position's recruitment rules were not in effect at the time of the petitioner's retirement, and the post was only officially re-designated on February 7, 2025. Additionally, the AAG states that rules do not allow for antedated promotions on selection Post.

A minimum of 12 years of service in BPS-17 and above is generally required for promotion to a BPS-19 post as per the Sindh Civil Servants Promotion Rules 2022. However, this is not the only criterion. Promotions are also based on seniority-cum-fitness, an efficiency index score of at least 60, mandatory training, and the availability of a vacant post. Additionally, an antedated promotion is not permitted under the rules.

A civil servant is entitled to proforma promotion if they had the fitness, eligibility, and seniority for promotion at the relevant time, but were denied it due to administrative oversight or delays in the Departmental Promotion Committee (DPC) or Selection Board meetings. However, in the present case, rules require a minimum of 12 years of service in BS-17 and above for a Deputy Director (BS-18) to be promoted to Director (BS-19). The Provincial Selection Board-II subsequently reviewed the petitioner's case and found his combined service in BS-17 and BS-18 was only 10 years and 6 months, which is 18 months short of the mandatory requirement, thus making him ineligible for the BS-19 promotion.

The principle is that courts should transfer and not overstep bounds by issuing direct promotion orders, which are typically an executive function. The court's role is not to act as a promotion board but to correct any illegalities or injustices in the administrative process. This Court's original order, which stated the petitioner's eligibility for proforma promotion should be "considered," supports this view. It did not order the promotion itself, but rather directed the relevant authorities to evaluate the petitioner's case according to the law. We have been informed that under the newly framed rules that require 12 years of service for promotion to BS-19. If the petitioner can prove that these rules were created specifically to bar his promotion, or if they are applied discriminatorily, this Court might step in however this has not been demonstrated in this case.

This Court can order a review of the eligibility criteria only to ensure that the petitioner's constitutional rights are not violated. The core of the court's authority lies in ensuring procedural fairness and correcting

administrative overreach, rather than making the substantive decision of who gets promoted.

Prima facie substantial compliance report has been made as such no further action is required as this court considering the case facts, ordered that his eligibility for a pro forma promotion to Grade-19 be reviewed, and if he is found eligible, he should be promoted accordingly, which has been done As such Contempt Application is dismissed.

JUDGE

Head of Constitutional Benches