

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-6684 of 2022
(Hina Imran v Federation of Pakistan & others)

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

Date of hearing and order 01.09.2025

Mr. Gul Muhammad Farooqui advocate for the petitioner.
Ms. Wajiha Mehdi, Assistant Attorney General.

ORDER

Adnan-ul-Karim Memon, J: The petitioner requests this court to order the respondents to:

- a. Convene a Departmental Promotion Committee (DPC) to consider her for promotion from BPS-10 to BPS-16 based on her seniority and qualifications, as she has been in the same role for 18 years.
- b. Compensate her for the injustice she has suffered.
- c. Grant any other relief the court deems appropriate.

2. The petitioner states that she was hired as a Research Assistant (BPS-10) on a contract in 2003, and her service was later regularized in 2008. She has worked diligently for 18 years in the same position and is eligible for promotion to BPS-16 under a 50% departmental quota, according to the rules. However, the respondent has not convened a Departmental Promotion Committee (DPC) to fill the vacant posts. The petitioner, being the senior-most candidate, has repeatedly requested consideration for her promotion since 2019 but has yet to receive a response. She is now requesting this court to order the respondents to convene a DPC and consider her for promotion, as well as to provide compensation for the injustice she has suffered.

3. The learned counsel for the petitioner submitted that her service was regularized in 2008 after her initial contract appointment. Despite working as a Research Assistant (BPS-10) for 18 years, she has not been promoted. The counsel stated that she is eligible for a promotion to BPS-16 under a 50% departmental quota, as per the 2005 Gazette of Pakistan SRO and ESTA Code. He pointed out that another official on the seniority list was promoted to BPS-17 in 2017, but the respondents have failed to convene a Departmental Promotion Committee (DPC) to consider the petitioner for promotion, thus violating her service rights. The counsel further submitted that the petitioner, who holds a Ph.D. in Zoology and is a gold medalist with several publications, was unfairly treated in violation law. Despite being a qualified candidate who was even considered for a

Director General (BPS-20) position, the respondents promoted her to Inspector (BPS-11) in 2023. He argues this promotion is a deliberate misuse of power, as it was based on the new 2022 rules instead of the 2005 rules, which would have allowed her to be promoted to Biochemist (BPS-16). He points to the case of Mr. Liaquat Haroon, a former Research Assistant (BPS-10) who was promoted to Biochemist (BPS-16) in 2017 and then to Assistant Director (BPS-17) in 2024, as evidence of this discriminatory and unfair practice. He lastly submitted that the old rules are fully applicable in the case of the petitioner, whereas the new rules of 2022 are non applicable, which has no retrospective effect. In support of his contentions, he relied upon the case of Controller General of Accounts Vs Abdul Hameed, **2023 SCMR 111**.

4. The learned Assistant Attorney General has argued for the dismissal of a petition filed by Mrs. Hina Imran, a Research Assistant (BPS-10), inter alia grounds that the petitioner, Mrs. Hina Imran, has no legal standing (**locus standi**) to file the petition and that it is based on false information and malicious intent. She contends the petition is not valid in this court because the petitioner should have first pursued her grievances with the Federal Service Tribunal (FST), as it is the proper venue for such service matters. The core of her argument is that the petitioner is not eligible for the promotion she seeks. She emphasized that while she was regularized in 2008 as a Research Assistant (BPS-10), the rules regarding her promotion have changed in 2022. The learned AAG states that the 2005 rules, which the petitioner cites for a promotion channel to Biochemist (BPS-16), are no longer in effect. She further argues that under new rules, the post of Biochemist (BPS-16) is a direct recruitment position and not a promotion for a Research Assistant. She also argued that a BPS-10 employee cannot bypass intermediate grades (like BPS-11 or BPS-12) to be promoted directly to BPS-16, citing established precedent for ministerial staff. She claims the petitioner's only promotion channel is to the post of Inspector (BPS-11), not Biochemist (BPS-16). The learned AAG clarified that a previous promotion to Biochemist (BPS-16) filled the 50% promotion quota, and the next available position is designated for initial appointment, not promotion. She concludes that since the petitioner is not entitled to the promotion and has no valid claim, a Departmental Promotion Committee (DPC) cannot be convened for her. The petitioner was also informed that her requests were forwarded to higher authorities. Learned AAG requesting this court to dismiss the petition, arguing that it is not legally valid, the petitioner has no right to the promotion she seeks, and she has not followed the correct legal procedure.

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

6. We have been informed that the respondents one of the two vacant Biochemist (BS-16) positions has been kept vacant, subject final decision of approval this court vide letter dated 12.8.2024.

7. The petitioner's case is based on a claim of discrimination. She claims that the respondent organization applied its promotion rules inconsistently, favoring a colleague while denying her a rightful promotion. Her colleague, Mr. Liaquat Haroon, was promoted under the older, more favorable SRO 2005 rules to a higher position (BPS-16). In contrast, she was given a lower-level promotion (BPS-11) under the newer SRO 2022 rules.

8. The Supreme Court in the recent judgment has held that the laws should apply to the future, not the past. This is based on the idea that people's actions should be governed by the laws that existed at the time. Courts are generally hesitant to apply laws retroactively, especially if doing so would harm vested rights, rights that have already been established under existing laws. For a law to be applied retroactively, its language must be explicitly and unequivocally clear. The amendments to the recruitment rules in this case were made under general rules that govern appointments and qualifications. However, these rules do not specify whether the amendments should be applied retroactively. Therefore, according to the principle of statutory interpretation, the amended rules should not affect rights that were already established.

9. Prima facie, the department's explanation that the vacant post is for "initial appointment" and not promotion as a mere pretext to deny her the opportunity of being considered for such promotion in terms of law laid down by the Supreme Court in the case of Controller General of Accounts Vs Abdul Hameed, **2023 SCMR 111**.

10. The petitioner who met the promotion criteria before the new rules came into effect should be considered under the old rules.

11. This court is disposing of the subject petition with direction to the respondents' competent authority to reconsider its decision and evaluate the petitioner for promotion to the next rank, in terms of law laid down by the Supreme Court in the case of Controller General of Accounts Vs Abdul Hameed, **2023 SCMR 111**, without any discrimination. This must be completed within two months.

JUDGE

Head of Constitutional Benches