

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro

Constitution Petition No. D-5694 of 2023

(Nazeer Ahmed v. Province of Sindh through Secretary Local Government Department and others)

Petitioner : Through Mr. Ali Asadullah Bullo, Advocate

Respondents : Through M/s. Hakim Ali Shaikh and Sageer Ahmed Abbasi, Additional Advocates General, Sindh

Date of hearing : 29.01.2026

Date of judgment : 29.01.2026

JUDGMENT

Muhammad Saleem Jessar, J:- Through this petition the petitioner has prayed as under:-

- i. Declare the impugned Notifications dated: 23-07-2020 and 05-07-2023 as illegal and in violation of Section 21 of General Clauses Act 1897 and set aside the same only to the extent of Petitioner.
- ii. Direct the Respondent No.3 to release all back benefits and consequential benefits of BS-17 to the Petitioner.
- iii. Direct the Respondents to post the Petitioner against the Position of BS-17 of Accounts Branch instead of BS-14.

2. Learned counsel for the petitioner submits that the petitioner was granted upgradation in the post from BPS-11 to BPS-16 and subsequently was granted Grade-17 by changing of nomenclature of the post through notification dated 25.10.2012. He submits that the petitioner has withdrawn the benefits of upgradation order dated 27.06.2011 until his retirement on attaining the age of superannuation on 31.12.2024. However, the respondents are bent upon to recover the benefits of upgradation after his retirement, which is patently illegal, *malafide* and without lawful authority. He has placed reliance on unreported orders; dated 14.04.2021 passed by Hon'ble Supreme Court of Pakistan in Civil

Appeal No.1237 of 2020 (*Province of Punjab through Secretary, Finance Department, Civil Secretariat, Lahore etc. v. Atta Muhammad Zafar*), and dated 13.11.2025 passed by this Court in C.P No.D-3946 of 2015 (*Muhammad Abid v. Province of Sindh and 2 others*).

3. Learned Additional Advocate General, Sindh submits that the petitioner was granted upgradation vide order dated 27.06.2011 however the petitioner was promoted to the post of Senior Accountant by notification dated 25.10.2012 in Grade-17. The petitioner has withdrawn the benefits of upgradation, so also promotion, which were not permissible under the law. He further submits that the department had already withdrawn the upgradation benefits vide notification dated 30.07.2020, which remained unchallenged. He further submits that the petition suffers from *laches* and the petitioner has withdrawn the salary beyond the permissible limits, as such the same has been recovered from his pensionary benefits and the action was initiated when the petitioner was in service. He prayed to dismiss the petition.

4. Heard the arguments and perused the material available on record.

5. From scanning of the material available on record it transpired that the petitioner alongwith other employees was granted upgradation vide notification dated 27.06.2011. Subsequently, the petitioner alongwith other colleagues was granted promotion in Grade-17 and was appointed as Senior Accountant vide notification dated 25.10.2012. Under the law, the petitioner was entitled either for the upgradation of the post or promotion. Since the petitioner was promoted in the post, which was over and above to the upgraded post, therefore, he continued to avail perks on the promotion post until his retirement and derived benefits of both the positions during the service, which were not admissible under the law.

6. The Government is competent to recover the amount withdrawn in excess by the employee while he is in service in terms of Rule 1.8 of the West Pakistan Pension Rules, 1963, which reads as under:-

“1.8. (a) Good conduct is an implied condition of every kind of pension. Government may withhold or withdraw a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service, provided that before any order to this effect is issued, the

procedure regarding imposition of the penalty of removal from service shall be followed.

(b) Government reserves to themselves the right of recovery from the pension of Government pensioner on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence, or fraud of such Government pensioner during his service, provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government pensioner.

(c) In case the amount of pension granted to a Government servant be after wards found to be in excess of that to which he is entitled under the rules, he shall be called upon to refund such excess.

(d) Except with the previous sanction of the Provincial Government, no pensioner shall, within a period of two years from the date of his retirement take part in any election or engaged in political activity of any kind."

7. Moreover, the upgradation awarded to the petitioner was withdrawn vide notification dated 23.07.2020, which was challenged by the petitioner through the instant petition in the month of November, 2023, as such the petition was filed three years after the impugned notification, which *prima facie* suffers from *laches*. Though *laches* being not law of limitation, but it governs that a person sleeping over his rights is not entitled for any relief, the petitioner in the present case is accused of laxity and delay, as such the petition is not maintainable on the said score too.

8. The case laws relied upon by the petitioner are distinguishable from the facts and circumstances of the present case, thus not attracted with due reverence.

9. In the wake of above discussion, this petition being without merits is dismissed accordingly alongwith pending application(s), if any.

**JUDGE
HEAD OF CONST. BENCHES**

JUDGE

B-K Soomro

Approved for reporting