

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Constitutional Petition No. D-3637 of 2026  
(Faheem Hussain versus Province of Sindh and others)

| Date | Order with signature of Judge |
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Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Muhammad Jaffer Raza

**Date of hearing & order: 03.09.2026**

Mr..Faheem Hussain, petitioner in person.  
Mr. Ali Safdar Depar, AAG.  
Mr. Mumtaz Ali Shah, APG.  
Ms. Manzooran Gopang, Senior Law Officer, Law Department,  
Government of Sindh on behalf of the Secretary, Law Department  
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**ORDER**

**Adnan-ul-Karim Memon, J.** Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

*“a. Hold and declare that since the petitioner having excellent track record as apparent from his ACRs already submitted (mentioned annexure P/16 & P/17refer) and after completing length of his service in (BPS-18) and also being stood at Serial Number 2 of the Final Seniority List (2025) for Deputy Prosecutors General (BPS-18) he is entitled for consideration of promotion to the post of Additional Prosecutor General (BPS-19), strictly in accordance of Guidelines as notified. Promotion*

*b. Declare the act of respondent No. 1 & 2 regarding non- circulating /providing of the Seniority List for Deputy Prosecutors General (BPS-18) during the current year (2026) is illegal, unjust, malafidy, unlawful and without any legal justification.*

*c. Declare the non-holding of Selection Board by the respondent No. 1 & 2 for the promotion of petitioner is illegal and violative of relevant rules/law and so also against the landmark judgments passed by the Honourable Supreme Court and the Federal Constitutional Court of Pakistan.*

*d. Direct the respondent No 1 & 2 to conduct/hold the Selection Board for the posts of Additional Prosecutors General (BPS-19) and consider the case of petitioner in accordance with the Promotion Policy Guidelines duly issued by the Government of Sindh for promotion against the posts of Additional Prosecutors General (BPS-19) against lying vacant posts and so also grant effect from the date of occurrence of vacancy and eligibility of the petitioner for promotion.*

*e. To restrain/refrain the respondents from taking any adverse action against the petitioner.”*

2. The petitioner, serving as Deputy Prosecutor General (BPS-18) in Criminal Prosecution Department, Government of Sindh, seeks a direction for convening of the Departmental/Selection Board for his consideration for promotion to the post of Additional Prosecutor General (BPS-19) against vacant promotional posts.

3. Petitioner who appears in person submits that he was appointed as Deputy Prosecutor General vide notification dated 15.11.2018 after serving as Lecturer Law, and joined on 16.11.2018 while retaining lien over his previous post. He adds that his past service was/is protected and reckoned for pay and pensionary purposes pursuant to orders of the competent authorities and the judgment of the Sindh Service Tribunal. The petitioner claims to have completed the requisite length of service and stood at Serial No.2 in the Final Seniority List of Deputy Prosecutors General (BPS-18) circulated on 12.03.2025. He submitted that three BPS-19 promotional posts are lying vacant, which needs to be filled on merit. He emphasized that despite his representation dated 05.01.2026, the Prosecutor General's request dated 22.11.2025, and forwarding of his ACRs and requisite documents on 25.03.2026, the Departmental Promotion Board has not been convened. He further relies upon an undertaking given by the law secretary before the Hon'ble Supreme Court to initiate the process for filling the vacant posts through promotion. He prayed to allow this petition.

4. The Senior Law Officer, Law Department submits that the Prosecutor General, Sindh, is neither the competent nor the promoting authority for BPS-19 and has no power to convene the Promotion/Selection Board or make the final appointment. However, the Prosecutor General has repeatedly requested the competent authority to expedite the promotion process. It is further submitted that the competent authority has also issued the Final Seniority List for 2026, and the petitioner's claim is liable to be considered in accordance with the said list and the applicable service rules alongwith his batchmates. The judgments relied upon by the petitioner, according to the law officer, impose no independent obligation upon Respondent No.3 beyond his lawful administrative role. She prayed for disposal of this petition in terms of the comments.

5. Learned AAG, while opposing the petition, submits that the petitioner has no vested or enforceable right to promotion to the post of Additional Prosecutor General (BPS-19), as promotion is subject to the applicable service rules, prescribed criteria, availability of vacancies, determination of eligibility, and recommendation of the competent Departmental Promotion Board / Committee. Mere placement at Serial No.2 in the seniority list, possession of a good service record, or completion of the requisite length of service does not confer an automatic right to promotion. It is further submitted that the Prosecutor General, Sindh, being neither the competent promoting authority nor vested with the power to convene the Departmental Promotion Board or make appointments to BPS-19, cannot be faulted for non-convening of the Board, particularly when he has already taken up the matter with the competent authority for expeditious consideration. The petitioner's case is required to be considered based on the Final Seniority List for 2026 and in accordance with the applicable statutory rules

and promotion policy, and no direction can be issued to promote or consider him except through the procedure prescribed by law. He added that undertaking or representations relied upon by the petitioner do not create any independent or vested right in his favour, nor can they override the statutory requirements governing promotion. Consequently, the petition, being premature and misconceived, is liable to be dismissed.

6. We have considered the respective submissions and examined the record in the light of the order dated 21.05.2026 passed by the Hon'ble Supreme Court in *Qalandar Bux's case*.

7. It is correct as a matter of settled law that mere inclusion of an officer in the seniority list, completion of the requisite length of service, or possession of a good service record does not, by itself, confer a vested or indefeasible right to promotion. Promotion is to be earned through the process prescribed by the applicable service rules, upon determination of eligibility and suitability by the competent authority and subject to availability of the post. However, the aforesaid principle does not answer the real controversy involved in the present petition. The petitioner is not asking this Court to straightaway appoint him as Additional Prosecutor General (BPS-19), nor can such relief be granted in disregard of the prescribed procedure. His principal grievance is that, despite the availability of promotional posts, completion of the requisite service, his placement in the seniority list, submission of the relevant ACRs/documents and repeated requests for initiation of the process, the competent Promotion Board has not been convened. The question, therefore, is not whether the petitioner has an absolute right to promotion, but whether an eligible officer has a corresponding legal right to have his case considered by the competent authority in accordance with law and whether the administrative authorities can indefinitely defer or keep in abeyance the very process through which such consideration is required to take place.

8. In this regard, the order dated 21.05.2026 passed by the Hon'ble Supreme Court assumes considerable significance. The Hon'ble Supreme Court was seized of the larger issue concerning the shortage of prosecutors in the Province of Sindh. The competent Provincial authorities, including the Secretary Law, appeared before the Hon'ble Supreme Court and specifically informed the Court that the process for promotion and fresh appointment of Additional Prosecutors had already been initiated. The Secretary Law further undertook before the Hon'ble Supreme Court to complete the process within four weeks. The Hon'ble Supreme Court recorded the said undertaking and, finding the submissions satisfactory, expected the authorities to resolve the shortage of prosecutors within the shortest possible time.

9. The aforesaid direction cannot be read in isolation or confined merely to an abstract administrative aspiration. Once the competent authority voluntarily placed before the Hon'ble Supreme Court a definite undertaking that the process of promotion and fresh appointment of Additional Prosecutors would be completed within four weeks, and the Hon'ble Supreme Court proceeded on the basis of that undertaking, the respondents were obliged to implement the same in its letter and spirit.

10. The expression "process for promotion" necessarily encompasses all consequential and indispensable steps required for completion of that process, including preparation/finalization of the relevant seniority position, scrutiny of eligibility, placement of eligible officers before the competent Departmental/Selection Board, consideration of their service record and ACRs, recommendation of the Board and consequential action by the competent authority. It would defeat the very object of the Supreme Court's direction if the authorities are permitted to state that the process had been "initiated" while withholding the essential step of convening the Departmental Promotion Board indefinitely.

11 It is equally significant that the respondents themselves do not dispute the existence of a promotional mechanism or the availability of the competent authority for considering promotion to BPS-19. Rather, the Senior Law Officer has stated that the Prosecutor General has repeatedly taken up the matter with the competent authority for expeditious completion of the promotion process. This position substantially neutralizes the objection that the Prosecutor General himself lacks the power to make the final appointment. The petitioner does not seek appointment by the Prosecutor General; he seeks completion of the lawful process by the competent authorities. The fact that Respondent No.1 or Respondent No.2 may not themselves be the final appointing or promoting authority cannot constitute a justification for failure of the competent authority to convene the Board and undertake the exercise mandated by the applicable rules and, more importantly, undertaken before the Hon'ble Supreme Court.

12. The objection of the learned AAG that the petitioner has no vested right to promotion is, therefore, accepted only to the limited extent that no direction can be issued for his automatic promotion. It cannot, however, be accepted as a justification for denying him consideration altogether. There is a fundamental distinction between a right to promotion and a right to be considered for promotion in accordance with law. The former is dependent upon suitability, eligibility and the decision of the competent authority; the latter cannot be defeated by administrative inaction where the conditions for consideration have arisen, and the prescribed mechanism exists. The petitioner's placement at Serial

No.2, completion of the requisite service and availability of promotional vacancies may entitle him to be considered for promotion, however, relevant circumstances requiring his case and his eligible colleagues to be placed before the competent forum for consideration as per law.

13. The contention that the petitioner's case cannot be considered only based on the Final Seniority List for 2026 also does not justify non-convening of the Promotion Board. If a revised or updated seniority list has lawfully been finalized, the competent Promotion Board shall naturally proceed based on that list and the applicable service rules. The existence of the 2026 seniority list is, therefore, not an impediment to convening the Promotion Board; rather, it supplies the current basis upon which the eligible officers of the prosecution department are to be considered. In such circumstances, *prima facie*, the petitioner has right to insist upon consideration based on seniority position availability of posts. However, the respondents use the updating of the seniority list as a reason to postpone the exercise which the Hon'ble Supreme Court had already expected from them to complete the same within the stipulated period as discussed *supra*.

14. These circumstances demonstrate that the matter was/is already within the knowledge of the respondent-department and that the relevant material had also been placed before them for consideration of the promotion of the petitioner. In such circumstances, continued failure to convene the Departmental Promotion Board cannot be justified as such the respondents are equally responsible for defiance of the orders passed by the Supreme Court in time and consequences can follow.

15. We are also unable to accept the submission that the undertaking before the Hon'ble Supreme Court creates no obligation whatsoever upon the respondents. The undertaking assumes a different legal character when it was made by the competent Provincial authority in proceedings before the Hon'ble Supreme Court, was recorded by that Court, and formed the basis upon which the Court proceeded to conclude the matter concerning the administrative steps required to address the shortage of prosecutors. The respondents were/ are consequently required to act consistently with that undertaking and with the expectation expressed by the Hon'ble Supreme Court. Equally such analogy rules cannot be invoked as a pretext for frustrating the very process which the competent authority represented before the Hon'ble Supreme Court would be completed within four weeks.

16. We, therefore, of the considered view that appropriate direction needs to be issued for consideration of promotion of the petitioner along with those of all eligible officers for the objectively assessment

by the competent Departmental/Promotion Board in accordance with the applicable service rules, promotion policy, seniority, ACRs, eligibility criteria and availability of vacancies. The Board shall remain free to assess comparative suitability in accordance with law and make its recommendations without being influenced by the observations contained in this order.

17. The competent authority of the respondents is accordingly required to convene the Departmental/Promotion Board and undertake the entire exercise of consideration for promotion to the available BPS-19 posts strictly in accordance with law and the applicable rules/policy, giving effect to the order dated 21.05.2026 of the Hon'ble Supreme Court in its letter and spirit. The aforesaid exercise shall be undertaken and completed within four weeks, as undertaken before and directed in substance by the Hon'ble Supreme Court, commencing from the date of receipt of this order. The petitioner's case shall be considered along with all other eligible officers based on the applicable 2026 seniority position and the relevant service record. The competent authority shall thereafter pass consequential orders in accordance with the recommendations of the Board and the governing law.

18. In consequence, the petition is disposed of in the above terms.

JUDGE

JUDGE

Shahzad Soomro