

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-2418 of 2017
(S.M. Kalim Makki versus Province of Sindh & others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 12.02.2026

Mr. Ali Hussain Almani advocate for the petitioner

Mr. Sadaruddin advocate for respondent No.4

Mr. Abdul Jalil Zubedi AAG.

ORDER

Adnan-ul-Karim Memon, J. – The petitioner S.M. Kalim Makki has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a. *To declare that the petitioner's status is that of a BPS-20 officer;*
- b. *Declare and hold that the impugned notification declaring the petitioner as an office in BPS-19 is illegal, without lawful authority, and liable to be quashed.*
- c. *Direct the respondents to implement the judgment of the DSCP in its true perspective by appointing the petitioner to a non-cadre post in BPS-20;*
- d. *In the alternative, direct the respondent No.1 to decide the petitioner's representations dated 28.11.2016 and 22.12.2016 on their merits in accordance with law;*
- e. *Grant costs of the petition.*

2. The case of the petitioner, as per his pleadings, is that he was initially appointed in Sindh Small Industry Corporation (SSIC) in the year 1993, and his post was later upgraded to BPS-19. However, upon right-sizing in 2000, he was declared surplus and placed in the Services, General Administration & Coordination Department (SGA&CD) Surplus Pool for absorption. He was subsequently absorbed under Rule 9-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, and later inducted into the Provincial Secretariat Service (PSS). It is averred that after completing the mandatory Senior Management Course (SMC), he was duly promoted to BPS-20 in 2009 on the recommendation of the Provincial Selection Board (PSB) and served as Secretary/equivalent in various departments of the Government of Sindh. Petitioner further averred that although the Supreme Court, in its judgment dated 12.06.2013, reported as **2013 SCMR 1752**, directed that the Petitioner be

absorbed against a non-cadre post, it did not disturb his promotion to BPS-20. However, under the garb of implementing the said judgment, the respondents withdrew his absorption in the PSS cadre, repatriated him to his parent corporation, and treated him as a BPS-19 officer rather in BS-20. Meanwhile he was erroneously retired from service in BS-19. It is submitted that this amounts to an unlawful reversion of the post without a Show Cause notice, inquiry, or lawful authority, in violation of principles of natural justice. The Petitioner maintains that his vested right as a BPS-20 officer, earned after fulfilling all legal requirements, could not be arbitrarily taken away. He therefore seeks a declaration of his status as BPS-20 and direction for his absorption against a non-cadre post in BPS-20 in terms of the Supreme Court judgment.

3. Learned counsel for the petitioner submitted that the petitioner was appointed as Project Director (BS-19) in the Sindh Small Industries Corporation in 1993 through advertisement and was declared surplus on 22.06.2000. He was subsequently absorbed in the Provincial Secretariat Service (PSS) on 30.09.2005 under Rule 9A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1973. It was contended that such absorption on the same scale was made after fulfilling all codal formalities and was, therefore, lawful and valid, and the Supreme Court acknowledged this fact in its pronouncement. Learned counsel submitted that the respondents have grossly misinterpreted the judgment dated 12.06.2013 passed by the Supreme Court of Pakistan. He contended that the Supreme Court had merely directed that the petitioner be absorbed against a non-cadre post and had not ordered, nor even considered, any reversion of the petitioner from BPS-20 to BPS-19. The question of his promotion or grade was never in issue before the Supreme Court. Therefore, in implementing the said judgment, the respondents were required to accommodate the petitioner in a non-cadre post in BPS-20, rather than reverting him to BPS-19. It was further argued that the petitioner had been lawfully promoted to BPS-20 after fulfilling all codal formalities, including successful completion of the mandatory Senior Management Course and recommendation by the Provincial Selection Board. Having been validly promoted, he acquired a vested right in the said grade, which could not be arbitrarily withdrawn. The subsequent placement of the petitioner in BPS-19, according to learned counsel, is without lawful authority and has the effect of nullifying nearly sixteen years of service rendered after he was declared surplus in 2000. Learned counsel also submitted that the impugned action is violative of the principles of natural justice, as the petitioner was neither issued any show cause notice nor afforded an opportunity of hearing before being effectively reduced in rank. No inquiry or proceedings were initiated against him. The impugned notification, therefore, amounts to condemning the petitioner unheard and unlawfully depriving him of the status and benefits attached to BPS-

20. It was lastly contended that the continued insistence of the respondents to treat the petitioner as a BPS-19 officer is unconstitutional, arbitrary, and contrary to due process of law, and thus liable to be set aside. Learned counsel added that in C.P. No. D-3946 of 2015, this Court, vide judgment dated 13.11.2025, held in paragraph 10 that the rule laid down in the case of *Azhar Baloch* supra did not apply to his case. This Court further observed that since the petitioner had already retired from service, the remaining prayers could not be considered. Accordingly, the petition was allowed to the extent that the impugned notifications dated 09.03.2015 and 13.04.2015, whereby the petitioner was reverted to BPS-18, were set aside, with the effect that he was deemed to have retired in BPS-20 and became entitled to all consequential post-retirement benefits. Learned counsel submits that the present petitioner is also entitled to similar treatment. He prayed to allow this petition.

4. Conversely, learned AAG assisted by the counsel for the SSIC submits that the Petitioner, being a surplus employee of SSIC in BPS-19, was initially absorbed against an ex-cadre post and later inducted into the PSS. However, in compliance with the Supreme Court's judgment and subsequent orders, his absorption in the PSS cadre was withdrawn ab initio, and he was repatriated to his parent department, i.e., SSIC/Industries & Commerce Department, with restoration of inter se seniority with his batch-mates. It is contended that once repatriated to his parent department, his status and scale had to correspond with that of his batch-mates therein, and therefore, his claim to continue in BPS-20 is untenable. The AAG prays for dismissal of the petition.

5. Learned counsel for Respondent No. 4/ SSIC submits that after the Petitioner was declared surplus in June 2000, his post was abolished and his service record was transferred to SGA&CD. SSIC counsel asserts that there is no post of BPS-20 in the Corporation and that, after his declaration as surplus, it had no further concern with his service matters. It is further stated that SGA&CD is the competent authority to determine the service status of absorbed employees in accordance with the law, which they did and allowed him to retire from Service in BS-19. He prayed to dismiss the petition.

6. We have heard the learned counsel for the parties at length and have perused the material placed on record.

7. It is an admitted position that the Petitioner was originally a BPS-19 officer of SSIC, who was declared surplus in June 2000 under the right-sizing policy and was thereafter placed in the Surplus Pool of SGA&CD for adjustment. His subsequent absorption in the Provincial Secretariat Service (PSS) was made under Rule 9-A of the Sindh Civil Servants (Appointment, Promotion & Transfer)

Rules, 1974. Rule 9-A permits absorption of a civil servant declared surplus against a post, subject to fulfillment of prescribed conditions; however, such absorption does not create an indefeasible right in the cadre if the same is subsequently declared unlawful or is withdrawn pursuant to a judicial pronouncement.

8. The controversy essentially revolves around the effect of the judgment of the Supreme Court dated 12.06.2013 reported as 2014 PLC (C.S.) 82, whereby the absorption of the Petitioner and others in the PSS cadre was set aside and it was directed that they be adjusted against non-cadre posts. The said judgment attained finality.

9. In this context, the law is well settled that once an order of appointment or absorption is declared illegal and is withdrawn ab initio, all consequential benefits flowing therefrom fall with it. The Supreme Court in **2013 SCMR 1752** has categorically held that when the initial appointment or induction is void ab initio, any subsequent promotion based thereon cannot be sustained in law. Similarly, in **2015 SCMR 456**, it has been held that no vested right accrues from an illegal or void appointment and that promotion granted on the basis of such appointment is also liable to be withdrawn, as illegality cannot be perpetuated under the guise of equity or legitimate expectation.

10. In the present case, the Petitioner's promotion to BPS-20 in 2009 was admittedly made in the PSS cadre. Once his absorption in PSS was withdrawn ab initio in compliance with the judgment of the Supreme Court, the very foundation for his inclusion in the cadre stood removed. Consequently, the promotion granted in that cadre could not survive independently.

11. The contention that the Supreme Court did not specifically order reversion from BPS-20 to BPS-19 is misconceived, because the withdrawal of absorption in the cadre necessarily restored the Petitioner to his substantive position in his parent department, along with inter se seniority with his batchmates.

12. Under the Sindh Civil Servants Act, 1973 and the Rules of 1974, promotion is cadre-specific and contingent upon holding a lawful position in that cadre. Once the Petitioner ceased to be a lawful member of the PSS cadre, he could not claim retention of a higher scale earned therein. It is also significant that SSIC does not have a sanctioned post of BPS-20, and the Petitioner's substantive post prior to surplus declaration was in BPS-19. Repatriation to the parent department necessarily entailed restoration of his original substantive status.

13. The plea of violation of natural justice is likewise without substance, as the impugned action was taken in compliance with binding directions of the

Supreme Court. An order passed in obedience to a superior Court's judgment does not require a fresh show-cause notice where no independent discretion is exercised.

14. In view of the above legal position, we are of the considered opinion that the withdrawal of the Petitioner's absorption in the PSS cadre was lawful and in compliance with the judgment of the Supreme Court. The promotion to BPS-20, being consequential to such absorption, could not survive after the absorption was declared void ab initio. The Petitioner cannot claim a vested or accrued right in BPS-20 in the absence of a lawful substantive position in that cadre or under the recruitment rules. The impugned notification treating the Petitioner as a BPS-19 officer does not suffer from illegality or lack of lawful authority.

15. Accordingly, the Constitutional Petition, being devoid of merit, is dismissed along with pending application(s), with no order as to costs.

JUDGE

JUDGE