

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-5050 of 2025

[Shah Muhammad V. Province of Sindh and another]

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

1. For order on office objection.
2. For hearing of Main Case.

Date of hearing and Order: 09.03.2026

Mr. Talha Abbasi, Advocates for Petitioner.

Mr. Abdul Jaleel Zubedi, A.A.G.

Dr. Liaquat Ali Abro and Mr. Nadeem A. Qureshi, Law Officers, Law Department,
Government of Sindh.

ORDER

Adnan-ul-Karim Memon, J. – Petitioner Shah Muhammad has filed this Constitution Petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeking following relief:-

- i. *Direct the Respondent No.2 to implement Order dated 28.11.2024 of Chief Minister Sindh and grant the Petitioner BS-18 w.e.f 22.01.2005 on the basis of time scale along-with all back and consequential benefits.*
- ii. *Grant any further/additional relief(s) as this court may deem proper in the circumstances of the case; and*
- iii. *Grant costs of the petition.*

2. It is the case of the petitioner that he served in the office of the Official Assignee, High Court of Sindh, Karachi, and retired on 31.03.2020 after rendering more than 37 years of meritorious service. He submitted that he was initially appointed as Assistant (BPS-11) on 02.08.1984, later granted Selection Grade in BPS-15, promoted to Superintendent (BPS-16) in 1996, and subsequently awarded Selection Grade BPS-17 with effect from 22.01.2000. It is submitted that after completing more than 19 years in BPS-17, the petitioner sought grant of incentive of higher grade on time-scale basis as there were no promotional avenues available to the post of Superintendent in the said office. However, his request was declined by the Finance Department on the ground that he had already been granted Selection Grade BPS-17.

3. Learned counsel for the petitioner argued that the refusal was unlawful and based on a misconceived premise because the grant of selection grade does not

extinguish the right of time-scale progression, both being distinct schemes intended to provide financial relief where promotion prospects are limited. He further submitted that similarly placed employees, including Private Secretaries and teaching staff, had been granted such incentives, and denial of the same to the petitioner amounts to discrimination and violates Articles 4, 9, 18, 25 and 27 of the Constitution. It was also contended that the petitioner had earlier approached this Court through CP No. 2707 of 2019, which was disposed of on 02.04.2021 with directions to the Law Department to reconsider his case in light of the judgment of the Supreme Court in the case of *Kaneez Zehra Kazmi v. Syed Hassan Naqvi*. He added that despite these directions, the respondents declined the claim. Counsel further submitted that the petitioner later filed a representation before the Chief Minister Sindh, which was allowed on 28.11.2024 directing that necessary action be taken in accordance with law. However, the Law Department failed to implement the said directive and instead issued a letter dated 17.12.2024 reiterating its earlier stance that the petitioner's request had already been regretted by the competent authority. According to learned counsel, such refusal amounts to arbitrary exercise of authority and undermines the lawful directive of the Chief Executive of the Province. He relied upon the cases reported in PLD 2022 S.C 728 and 2014 PLC (C.S) 1306. He prayed to allow this petition by directing the law department to implement the order of the Chief Executive of the Province of Sindh.

4. Conversely, learned Assistant Advocate General, assisted by the law officers representing the respondents, submitted that the petitioner had already been granted Selection Grade BPS-17 with effect from 22.01.2000 and therefore was not entitled to further up-gradation to BPS-18 on time-scale basis. He contended that the Finance Department had categorically advised that there is no provision in the rules to grant double benefit in the form of both selection grade and time-scale up-gradation to the next higher scale. It was further argued that the petitioner had repeatedly raised the same issue before various forums and courts, and the competent authority, after examining the matter in consultation with the Finance Department and the Services Wing of SGA&CD, had already rejected the request on merit. According to the learned AAG, the impugned communication merely reiterated the earlier decision based on the applicable rules and record, therefore the petitioner's claim was/is not tenable. He prayed to dismiss the petition.

5. We have heard learned counsel for the parties and perused the material available on record.

6. The controversy in the present petition essentially revolves around whether the petitioner, after having been granted Selection Grade BPS-17 and having served for a considerable period in the said grade without any promotional avenue, is entitled to the grant of incentive of a higher grade (BPS-18) on time-scale basis,

and whether the refusal of the respondents to implement the directive issued by the Chief Minister Sindh dated 28.11.2024 is lawful.

7. It is an admitted position that the petitioner served the Government for more than 37 years and remained in BPS-17 from 22.01.2000 until his retirement on 31.03.2020. The record further reflects that the petitioner had no promotional avenue available in the office of the Official Assignee. The concept of time-scale or incentive up-gradation has been introduced by the Government primarily to address stagnation in service where promotional prospects are limited or non-existent. The Supreme Court of Pakistan in the case of *Kaneez Zehra Kazmi v. Syed Hassan Naqvi* has recognized that up-gradation or grant of higher scale in such circumstances is an incentive measure intended to provide financial relief without affecting the rights of other employees and without creating additional vacancies.

8. The objection raised by the respondents that the petitioner had already been granted Selection Grade BPS-17 and therefore cannot be considered for time-scale up-gradation is not entirely sustainable. Selection grade and time-scale progression operate in different fields; the former is granted as recognition of service within the same cadre, whereas the latter is designed to address stagnation due to lack of promotional opportunities. The mere grant of a selection grade does not automatically bar consideration for time-scale up-gradation where the applicable policy permits such incentive and the employee fulfills the prescribed conditions. The superior courts have consistently held that beneficial service policies meant to remove stagnation must be interpreted in a manner that advances their object rather than defeats it.

9. At the same time, it is equally settled that grant of a higher grade or up-gradation must have a lawful basis in the applicable statutory rules or policy. Administrative authorities cannot confer financial benefits in the absence of enabling provisions in the service rules or relevant policy framework.

10. The respondents have taken the position that no rule exists permitting the grant of both benefits simultaneously; however, the record shows that the petitioner's case was directed to be reconsidered by this Court in CP No. 2707 of 2019 in light of the principles laid down by the Supreme Court. Moreover, the matter was subsequently considered at the highest executive level and the Chief Minister Sindh issued a directive dated 28.11.2024 requiring the concerned department to take necessary action in accordance with law and applicable policy, therefore, the stance of the respondent is erroneous as they are bound under the law to obey the command of Chief Executive of Sindh.

11. Once such direction was issued by the competent executive authority, the administrative department was required to process the matter in accordance with

the applicable rules and place the same before the competent forum for implementation or lawful decision. The impugned communication dated 17.12.2024 merely reiterates the earlier stance of the department without demonstrating that the directive of the Chief Minister was examined in light of the relevant policy framework or that a fresh consideration was undertaken as required.

12. Administrative authorities are bound to act fairly, reasonably and in accordance with the directions of the competent authority, and failure to do so renders the decision vulnerable to judicial review, in such circumstances, we deem it fit and proper to direct the law department to place the case before the competent authority for decision on merits.

13. It is a settled principle that public functionaries must exercise their authority in a transparent and lawful manner, and where an employee demonstrates long service coupled with stagnation in a post without promotional prospects, his case for incentive up-gradation deserves fair and meaningful consideration. The refusal to reconsider the petitioner's case despite judicial and executive directions is not consistent with the principles of good governance and administrative fairness.

14. In view of the above discussion, this petition is disposed of with the direction to the Respondent No.2 / Law Department to place the case of the petitioner for grant of incentive of higher grade on time-scale basis before the Chief Executive of the Province in accordance with the principles laid down by the Supreme Court in *Kaneez Zehra Kazmi v. Syed Hassan Naqvi*, as well as the directive issued by the Chief Minister Sindh dated 28.11.2024. The said exercise shall be undertaken within a period of one month from the date of receipt of this order.

15. Needless to observe that if the petitioner is found entitled under the applicable policy decision of the Chief Executive of Sindh, he shall be granted the consequential benefits strictly in accordance with such policy.

16. The petition stands disposed of in the above terms, along with pending applications, if any. No order as to costs.

JUDGE

JUDGE