

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP No.D-1544 of 2025
(Jawed Akhtar Khichi v Province of Sindh and others)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:-
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 18.03.2026

M/s. Sarfaraz Ali Metlo, Barrister Fayaz Ali Metlo,
Farooq Ali, Athar Hussain and Fawad Ai Khichi
Advocates for the Petitioner along with petitioner.
Mr. Abdul Jalil Zubedi AAG
Ms. Seema Zaidi, Addl. P.G
Mr. Waseem Saif Khoso, advocate for applicant/Intervener
Dr. Liaquat Ali Abro, Nadeem Ahmed Qureshi
Law officer, Government of Sindh

ORDER

Adnan-ul-Karim Memon, J.- The petitioner, Jawed Akhtar Khichi, has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking a declaration that, having served as District Public Prosecutor (BPS-19) for over 17 years, he is entitled to promotion to BPS-20 on a time-scale basis along with all consequential back benefits, in light of this Court's judgment dated 01.06.2021 passed in C.P. No. 1736/2013. He further prays for a direction to the respondents to grant him the said higher grade in accordance with the aforementioned judgment. For convenience's sake, an excerpt of the judgment is reproduced as under:

“14. Since the petitioners have confined their prayers to the extent of streamlining the service structure of District Attorneys and Deputy District Attorneys, on this proposition, we are inclined to consider their viewpoint and it would be more appropriate to direct the respondents to take measures and initiate such legislative measures, as may be necessary, to frame the service structure for the post of Deputy/District Attorney (BS-18-19) in higher grade to avoid disparity amongst them, within reasonable time, preferably two months.

15. With these observations, the instant petition stands disposed of along with the pending application(s) with no order as to costs.”

2. The Case of the Petitioner is that he, having been appointed as District Public Prosecutor (BPS-19) through the Sindh Public Service Commission (SPSC) in 2008, rendered more than 17 years of continuous service without any promotion due to the absence of a proper service structure for elevation to BPS-20. He submitted that under the Sindh Prosecutors (Appointment and Conditions of Service) Rules, 2006 (SPACS) Rules 2006, the Petitioner became eligible for promotion after completion of the prescribed period, yet his case was never considered. He averred that similarly placed officers in the Solicitor Wing, namely District Attorneys and Deputy District Attorneys, were granted time-scale promotions to higher grades pursuant to judicial directions and subsequent government notifications, but the same benefit has been denied to the Petitioner, amounting to discrimination in violation of Articles 4, 9, 25, and 27 of the Constitution. Reliance is placed on the judgment dated 01.06.2021, passed by this Court in CP No. D-1736/2013, as well as recommendations of the Law Department, Prosecutor General Sindh, and directives of the Chief Minister, all support

the grant of time-scale promotion. It is thus prayed that he be granted proforma/time-scale promotion to BPS-20 with all consequential benefits, including revision of pension after his retirement.

3. Learned counsel for the intervener adopts the arguments advanced on behalf of the Petitioner and submits that similarly placed Deputy District Public Prosecutors (BPS-18), including the intervener, have also suffered due to the lack of a structured promotional channel. It is argued that despite long years of service and requisite qualifications, their cases for promotion have not been considered, whereas equivalent officers in the Solicitor Wing have been extended time-scale benefits. Counsel contends that denial of similar treatment to prosecutors amounts to hostile discrimination and has resulted in stagnation, frustration, and multiplicity of litigation. It is therefore prayed that the benefit of time-scale promotion be extended uniformly to all eligible prosecutors from BPS-17 to BPS-20 upon completion of the prescribed length of service.

4. Conversely, learned counsel for Respondent No. 3 submits that the relief sought by the Petitioner is subject to government policy, and the Finance Department has already circulated a general framework regarding time-scale promotion for isolated posts. It is contended that the cases of prosecutors are under consideration, and any grant of such benefit would be subject to policy decision and applicable rules. It is further submitted that the Solicitor Wing and Prosecution Service operate under distinct statutory frameworks, and the benefit granted to District Attorneys cannot automatically be extended to prosecutors.

5. Learned Assistant Advocate General, Sindh, while referring to the decision taken in the case of another officer of the same department, submits that the benefit of time-scale promotion granted to District Attorneys was based on the peculiar structure of their cadre, where no further promotional avenues were available. In contrast, the Prosecution Service has a separate statutory regime and hierarchical structure. It is argued that parity cannot be claimed merely based on pay scale or designation, and that any grant of time-scale promotion would require amendments to the relevant rules and restructuring of the service framework. Accordingly, the representation of a similarly placed officer was declined by the competent authority. In view of the above, learned AAAG prayed for dismissal of the petition.

6. After hearing learned counsel for the parties and examining the record, it emerges that the Petitioner was appointed as District Public Prosecutor (BPS-19) through the Sindh Public Service Commission in 2008 and has rendered more than 17 years of service without any promotion. It is also an admitted position that under Rule 10 of the Sindh Prosecutors (Appointment and Conditions of Service) Rules, 2006, an officer initially appointed in BPS-19 becomes eligible for promotion to BPS-20 upon completion of the prescribed length of service. However, such promotion in the case of the Petitioner has not materialized primarily due to the absence of a notified service structure for the next higher post.

7. Before proceeding further on the issue of promotion of the employees of Criminal Prosecution Department Government of Sindh to BPS-20 on a time-scale, it is pertinent to refer to the recommendations of the National Judicial (Policy Making) Committee (NJPMC), the apex statutory body constituted under the National Judicial (Policy Making) Committee Ordinance, 2002, comprising the Honorable Chief Justice of Pakistan and the Honorable Chief Justices of all High Courts. The NJPMC is tasked with judicial policy-making, including reforms in the justice delivery system, reduction of delays, and promotion of efficient and

timely adjudication. The NJPMC, in its meeting held on 20.09.2014, took notice of the deficient service structure of District Attorneys, lack of promotional avenues, and disparity in perks and privileges. It was recommended, inter alia, that certain posts of Assistant Advocate General and Additional Advocate General be reserved for District Attorneys permanently. Pursuant thereto, the Advocate General, Sindh, proposed reserving 10% of such posts for District Attorneys (BPS-19), which was placed before and approved by the competent authority. Consequently, amendments were introduced in the Sindh Law Officers (Conditions of Service) Rules, 1940, through notification dated 10.05.2016 in consultation with the SGA&CD. However, the said amendments could not be implemented, as the posts in question were governed by the Sindh Law Officers Rules, 1940, and not by the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, due to which the notification was kept in abeyance pending further amendment. Another crucial question is whether the recommendations of the NJPMC could override the Sindh Law Officers (Conditions of Service) Rules, 1940. In this regard, the Law Department informed the Chief Minister, Sindh, that the posts of Additional and Assistant Advocate General are tenure-based and subject to the discretion of the Government, whereas District Attorneys (BS-19) are civil servants under the Sindh Civil Servants Act, 1973. Nevertheless, it was proposed that two posts of Additional Advocate General (BS-21) and three posts of Assistant Advocate General (BS-20) be created permanently to accommodate a 10% quota for District Attorneys. However, this proposal was declined by the competent authority vide summary dated 20.05.2019. In the meantime, the learned Advocate General, Sindh, also supported the administrative department's proposal to de-notify the earlier notification dated 10.05.2016. The reliance placed by the Petitioner on the judgment dated 01.06.2021, passed in CP No. D-1736/2013 has been considered. A careful reading of the said judgment reflects that the direction issued therein was confined to District Attorneys and Deputy District Attorneys, with specific emphasis on framing of service structure for that cadre. The said directions were implemented by the Government in the context of the Solicitor Wing, which admittedly operates under a distinct administrative and statutory framework. Therefore, the benefit extended pursuant to the said judgment cannot be claimed as a matter of right by the Petitioner without there being parity in the governing rules and service structure.

8. During the hearing of the case, the learned AAG filed statement providing copy of order dated 23.02.2026 passed by the Chief Secretary Sindh who considered the representation of one of the employee of criminal prosecution department Mr. Muhammad Arif Sitai, Deputy District Public Prosecutor (BS-18), seeking grant of incentive promotion on time-scale basis at par with District Attorneys in the line with the aforesaid judgment passed by this Court. The matter was taken up in compliance with the directions of this Court in CP No. D-3377 of 2022, wherein the Chief Secretary was directed to decide the representation within three months. After affording a personal hearing to Mr. Muhammad Arif Sitai, on 30.01.2026, and considering the stance of the Law, Parliamentary Affairs & Criminal Prosecution Department, it was observed that the service structure of District Attorneys is distinct from that of the Prosecution Service. The incentive time-scale granted to District Attorneys was based on the absence of further promotional avenues in their cadre, whereas the Prosecution Service operates under a separate statutory framework with a defined hierarchical structure and promotional channels. It was concluded that parity cannot be claimed solely on the basis of designation or pay scale when the governing laws and service structures differ. Furthermore, the grant of such a benefit would require amendment of the relevant laws and rules, which

cannot be undertaken in an individual case without statutory backing. Accordingly, the representation of the petitioner was declined.

9. With respect, the findings of the Chief Secretary Sindh, as contained in the order dated 16.01.2026, are legally unsustainable and based on a misapplication of settled principles of service jurisprudence.

10. Firstly, the conclusion that parity cannot be claimed between Deputy District Public Prosecutors and District Attorneys solely on the ground of distinct service structures is misconceived. It is a settled principle of law that equality is to be examined on the touchstone of functions, responsibilities, and the nature of duties, rather than mere nomenclature of service rules. The Supreme Court in *Federation of Pakistan v. Muhammad Aslam* (PLD 2001 SC 720) held that where employees perform similar functions under the same employer, discriminatory treatment in terms of benefits violates Articles 4 and 25 of the Constitution. In the present case, both cadres are law officers of the State performing analogous prosecutorial/legal functions, and thus denial of equal incentive is arbitrary.

11. Secondly, the justification that incentive time-scale was granted to District Attorneys due to a lack of promotional avenues is factually and legally flawed. This Court, in its judgment dated 01.06.2021 in CP No. D-1736 of 2013 extended the benefit not merely on structural deficiency but on the principle of removal of stagnation and equitable treatment within similarly placed legal cadres. The respondents cannot selectively apply the ratio of the judgment to one cadre while denying it to another performing comparable duties.

12. Thirdly, the stance that the Prosecution Service has a distinct statutory framework does not absolve the Government from complying with constitutional guarantees. It is well settled that statutory rules cannot override fundamental rights, as held in *Liaquat Ali v. Federation of Pakistan* (PLD 1999 SC 504). If the existing framework results in discrimination or unequal treatment, the State is under a constitutional obligation to remove such disparity rather than rely upon it as a defense.

13. Fourthly, the observation that the grant of such a benefit would require amendment of rules is equally untenable. The superior courts have consistently held that where a right flows from constitutional guarantees or judicial pronouncements, the Government is duty-bound to align its rules accordingly. In *Secretary, Finance v. Muhammad Aslam* (2006 SCMR 1072), it was held that financial or procedural constraints cannot be used to defeat lawful entitlement.

14. Lastly, the rejection of the representation defeats the very spirit of the direction issued by this Court in CP No. D-3377 of 2022, which required a meaningful and lawful consideration, not a mechanical reiteration of departmental stance. The impugned order reflects non-application of mind and failure to appreciate binding judicial precedent.

15. In view of the above, the impugned order is liable to be annulled as being arbitrary, discriminatory, and violative of Articles 4 and 25 of the Constitution, and the petitioner/interveners/similar employees are entitled to the same incentive time-scale benefit as granted to District Attorneys more particularly in terms of ratio of the judgments passed by this Court as discussed in the preceding paragraphs.

16. At the same time, it cannot be overlooked that the Petitioner and other similarly placed officers have remained stagnated for a considerable period due to the non-availability of a proper service structure, which prima facie calls for the attention of the competent

authority. The recommendations of the Law Department and Prosecutor General Sindh also reflect acknowledgment of this structural deficiency.

17. In these circumstances, it is appropriate to direct the competent authority of the Respondents to expeditiously consider and finalize the matter of service structure and promotional avenues for the Criminal Prosecution Service, in light of this Court's judgment dated 01.06.2021 passed in C.P. No. 1736/2013, and observation recorded hereinabove; and thereafter give meaningful consideration to the case of the Petitioner for all consequential benefits, including pensionary purposes on merits.

18. Accordingly, the petition, along with pending application(s), is disposed of with the above directions.

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