

**IN THE HIGH COURT OF SINDH, KARACHI**

**Constitutional Petition No.D-1077 of 2023**

*(Sain Bux versus Chief Secretary Government of Sindh and others)*

**Constitutional Petition No.D-1086 of 2023**

*(Manshad Ali Kalwar versus Chief Secretary Government of Sindh and others)*

Before:

**Justice Muhammad Karim Khan Agha**

**Justice Adnan-ul-Karim Memon**

**Date of hearing & order: 30.9.2025**

Mr. Ahmed Ali Ghumro, advocate for the petitioners in both petitions.

Ms. Saima Imdad Mangi, Assistant AG

Mr. Raza Mian, DSP Legal-II CPO Karachi.

**ORDER**

**Muhammad Karim Khan Agha, J** Petitioners have filed these Constitutional Petitions with the following prayer(s): -

- a) *“To declare that the Notification No. 705/EII/INSP20-01-2023 is null and void and ultra-vires of the Constitution to the extent of the case of Petitioner due to the reason that the controversy has already been resolved by means of Hon'ble Supreme Court and Hon'ble Sindh Service Tribunal in favor of Petitioner and any instruction contrary to the spirit of said judgments giving back benefit to the Petitioner may also be declare against the law.*
- (b) *To set aside the Letter/ Order dated 08.02.2023 issued by the Respondent No. 3.*
- ( c ) *To direct the Respondent No. 3 to treat the petitioner on par with his batch-mates who have already been promoted as Inspector from 04.10.2019.”*

2. The facts of the case, as narrated by the petitioners, are that in 1995, when the petitioners, selected for the post of Assistant Sub-Inspector (ASI) on merit, were denied appointment. Instead, 53 other individuals, including some who had failed or missed the tests, were appointed due to "political influence." The petitioners took their case to this Court, which, in 2009, ordered the respondent Sindh Police Department to issue their appointment orders. The respondents subsequently appealed to the Supreme Court, which was dismissed as withdrawn in 2010. A later review petition was also withdrawn, being time-barred. Following these rulings, the petitioners finally received their appointment orders in 2010. It is the case of the petitioners that, despite being appointed, they were not promoted to Sub-Inspector (SI). This led them to file a Service Appeal with the Sindh Service Tribunal (SST). In 2014, the SST allowed their appeal and directed that the petitioners' date of appointment be modified to December 24, 1995. Crucially, the SST specified that this modified date would be effective only for seniority and promotion, and the petitioners would not receive monetary benefits for the period they were not physically in service. The respondents' challenge to this SST order in the Supreme Court was also dismissed as withdrawn in 2015. Following the SST and Supreme Court judgments, the petitioners' seniority was revised, effectively backdating it to December 1995 for promotion purposes. Senior

officials consistently reaffirmed this revised seniority, noting that all benefits of seniority, promotion, and modified appointment dates obtained from the courts "remain intact." They emphasized that based on this established, court-mandated seniority, the petitioners became eligible for promotion to the rank of Inspector. However, their promotion was repeatedly thwarted in the Departmental Promotion Committee (DPC) in September 2019; their cases were deferred (not promoted) because they were deemed to have less than five years of service in the rank of SI, a requirement that appears to contradict their revised seniority date. They were again deferred in DPC in December 2022 on the premise that they obtained antedated seniority. Petitioners emphasized that while the courts consistently ruled to grant them their original seniority date for promotion purposes, the department has repeatedly used different reasons to block their actual promotion.

3. Learned counsel for the petitioners has argued that non-compliance of the judgment of Sindh Service Tribunal in Service Appeal No. 105/2014 and CPLA No. 300-K, thereby not promoting the petitioners as Inspector w.e.f 04-10-2019, is in utter disregard of the judicial orders discussed hereinabove, and the conduct of respondent No. 3 is contemptuous. He further submits that it is well well-settled principle of law that the orders passed by the Superior courts are binding on the lower functionaries to the extent of application and interpretation of the relevant law. In the letter dated 08-02-2023, the respondent No. 3 has misapplied the spirit of judgment in Service Appeal Nos. 455, 456, 457 & 462 of 2019 and order dated 20-12-2021 in Civil Petitions Nos. 307-K, 308-K, 318-K & 319-K of 2020. He argued that the concept of ante-dated seniority/back benefits is governed in terms of Rule 12.2 (3) of Police Rules 1934 and Rule 13 of Sindh Civil Servants (Probation, Confirmation & Seniority) Rules 1975, whereas Rule 13 was not the part and parcel or subject of the proceedings before the Supreme Court of Pakistan in the letter dated 08-02-2023. He added that the officials representing the police department on the legal side either intentionally concealed to point out the simultaneous applicability of Rule 13 at the time of hearing before the Sindh Service Tribunal and the Apex court. He emphasized that if these instructions are contrary to the law is accepted that there is no concept of antedated seniority, it will cause loss to the public servants in their careers in the Police Department. He further submits that the plain reading of provisions of law and terms deemed and used in the statutes gives entitlement to retrospective and promotional benefits to the police officials/civil servants. As such, the instructions contained in the letter dated 08-02-2023 are against the spirit of the law and are required to be declared null and void. He further submits that respondent No. 3 has grossly erred in directing to taking away of the benefits gained in pursuance of the orders of the SST and Apex Court. He argued that the controversies and the rights of the Civil Servants so determined at Judicial forums cannot be neglected by the

administrative functionaries, otherwise it will frustrate the entire object of the legislature. He further submits that in case the instructions dated 08-02-2023 are allowed to be implemented at ground level in the Police Department, it will amount to crushing the orders of the judiciary under the feet of the administrative functionaries, and also will be the open contempt of the judicial orders by countering them with irrelevant judgments and the particular reference of specific law. He further submits that by means of the letter dated 08-02-2023, the respondent No. 3 has given an impression as if the judicial orders were wrongly passed and the administrative authorities have the power to regenerate the issues already decided by the judicial functionaries. It will open the floodgates of litigation, which will be fatal to the low-paid employees of the police, besides mental agony to them, including the petitioner, and waste the precious time of judicial authorities. He further submits that the judgments of the Hon'ble Supreme Court & SST mentioned in Para No. 2 of the grounds above was not a judgment in rem and rather it was judgment in personem which has been stretched by the respondent No. 3 beyond its scope and illegally gave color of the view of Hon'ble Supreme Court more particularly in view of reason that Rule 13 of Sindh Civil Servants (Probation, Confirmation & Seniority) 1975, was not the part and parcel of hearing before the Hon'ble Supreme Court and the appeals decided by the Hon'ble Sindh Service Tribunal was just remanded back to the Service Tribunal with reference to the Rule 10 & 11. The Hon'ble Supreme Court did not supersede the earlier judgments decided in the past and the benefits derived therefrom by the concerned Civil Servants/Police Officials, including the petitioner, and honored/implemented by the department. He further submits that according to the verdict of Hon'ble Superior Judiciary reported in 2004 CLC page No. 1019, where authority from one jurisdiction has decided in favor of the petitioner and was not challenged, another authority could not be allowed to initiate the proceedings. The order of the earlier authority had made it a past and closed transaction. In view of this dictum of law and the legal/constitutional position discussed above, the orders of the respondent No. 3 are not sustainable in the eyes of the law. He further submits that it is settled law that the relief granted under the Constitutional Law cannot be taken back by means of an application or drawing an inference with reference to the subordinate legislation. He relied upon the cases of Ghulam Hussain Baluch v. Liaquat Ali Baloch (1999 SCMR 483), the order dated 15.01.2024 passed by the Supreme Court of Pakistan in Civil Petitions No.167-P and 391/2022, and the order dated 30.06.2022 passed by the Supreme Court of Pakistan in C.P. No.1307-K, 1308-K, 1318-K & 1319-K of 2020. He lastly prayed for allowing these petitions.

4. The Learned AAG is arguing for the dismissal of the petitioners' petitions by asserting that the judicial rulings granting them antedated seniority are now unenforceable due to recent, superior judicial pronouncements. The AAG

acknowledges the facts of the petitioners' case but contends their modified seniority is illegal. Submitted that the petitioners were initially appointed as Probationer ASIs on September 27, 2010. She admits the Sindh Service Tribunal (SST) allowed the petitioners' appeal (Service Appeal No. 105/2014), modifying their date of appointment to December 24, 1995, based on their initial selection process in 1995. However, the AAG asserts that recent rulings by the Supreme Court of Pakistan (December 20, 2021, and June 30, 2022) and the SST (November 14, 2022) have established a new precedent: ante-dated or modified appointments/seniority are not permissible under the law, regardless of whether they were granted by the department or the SST. She argues that such antedated seniority violates Sections 10 and 11 of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, and Rule 12.2(3) of the Police Rules, 1934. She argued that the department issued a letter (No. 1761-1820/E-II/Insp dated February 8, 2023) to withdraw/cancel all antedated/modified appointments and retrospective seniority benefits previously granted to police personnel (from PC to DSP) by either the department or the SST. She added that all Range Heads were directed to re-align the seniority of affected officers/men, placing them according to their proper, regular date of appointment after thoroughly checking their records. The AAG emphasizes that there is no provision in the Police Rules for the modification of an appointment date. She argued that because the petitioners held a modified/antedated date of appointment, they were not considered in the Departmental Promotion Committee (DPC) held on November 7, 2022, and onwards for promotion to the rank of Inspector. Therefore, the AAG concludes that the petitioners' current constitutional petitions, seeking to restore their modified appointment date and to declare the departmental cancellation notifications (dated January 20, 2023, and February 8, 2023) as void, are not maintainable based on the binding superior court judgments.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. This Court is asked to determine if the petitioners' antedated seniority (1995), granted by prior this Court/SST orders and made final by the Supreme Court's dismissals, constitutes an absolute, vested right (*past and closed transaction*).

7. The aforementioned proposition hinges on the nature of the later Supreme Court and SST rulings that prohibit antedated seniority. An excerpt of the order dated 30.06.2022 passed by the Supreme Court, against the judgment dated 09.09.2000 passed by the learned Sindh Service Tribunal at Karachi in Appeal Nos. 455, 456, 457, and 462 of 201, is reproduced as under:-

*“We have heard the learned counsel for the respective parties and have minutely perused the record.*

2. *Mr. Saulat Rizvi, Addi. Advocate General has primarily argued that the appeals before the tribunal were hopelessly barred by time, firstly, the cause of action accrued to the Petitioner in the year 1992 and they for the first time challenged their seniority in 2010; secondly, the order dated 03.01.2017, reflects that the appeals of the Petitioners were earlier heard and rejected and thirdly, that after rejection of their appeals on 03.01.2017, they had filed a Second Appeal before the Inspector General of Police, which was rejected on 10.05.2019. leading to their approach to the Sindh Service Tribunal. Addi. Advocate General states that the Second Appeal, in accordance with the law itself, was not competent. These points were not considered by the tribunal. Additionally, they were given antedate seniority prior to their regular appointment, and consequently, Sections 10 and 11 were not discussed in the order impugned.*

3 *We, in the circumstances, set aside the impugned order and remand the case back to the Sindh Service Tribunal to consider all these aspects along with relevant documents in respect of their appeals, etc., and to decide the matter within a period of three months strictly in accordance with law. Petitions are converted into appeals and allowed in the above terms. Both parties would be at liberty to place all relevant documents before the tribunal."*

8. Subsequently, the learned SSST vide judgment dated 14.11.2022, modified the earlier judgment and dismissed the aforesaid Appeals, and the respondent department cancelled retrospective seniority of all police officials of the same category vide letter dated 20.1.2023 and 8.2.2023.

9. Primarily, antedated seniority violates Sections 10 and 11 of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, and Rule 12.2(3) of the Police Rules, 1934. There is no provision in the Police Rules for the modification of an appointment date. The other case law cited by the counsel for the petitioners is of no help to him, given the order dated June 30, 2022, passed by the Supreme Court, which he also cited. Besides, his colleagues' earlier petition has already been dismissed by this Court vide order dated 12.9.2025 in CP No.D-1076 of 2023 and connected petition, therefore, no further deliberation on the subject impugned order is required as it has been issued in compliance with the judgment of learned SST and the petitioners have the remedy against that decision before the Appellate Court in terms of Article 212(3) of the Constitution.

10. In view of the above facts and circumstances of the case, we are of the view that the petitioners' current constitutional petitions, seeking to restore their modified appointment date and to declare the departmental cancellation notifications (dated January 20, 2023, and February 8, 2023) as void, are not maintainable based on the subsequent order of the Supreme Court remitting the matters of the colleagues of the petitioners on the same facts and circumstances/annology of the case.

11. These petitions are dismissed along with pending application(s).

HEAD OF CONST. BENCHES

JUDGE

SHAFF