

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No.D-5617 of 2025  
(Muhammad Yaseen v Government of Sindh & others)

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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:- 26.02.2026

Ms. Naheed advocate for the petitioner.

Mr. Malik Altaf Hussain Advocate for the respondent

Mr. Abdul Jalil Zubedi, AAG

**ORDER**

**Adnan-ul-Karim Memon, J.** – The petitioner Muhammad Yaseen has filed the captioned Constitutional Petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer(s): -

- a) *To direct the respondents to act and perform their official duties in accordance with the law;*
- b) *To direct the respondent No.5 to award the promotion from his initial date of appointment, i.e., 05.08.2009, from BPS-16 to BPS-17 to the petitioner as per seniority of Nursing staff, which is protected w.e.f 05.08.2009 as per letter dated 10.10.2012, previous services rendered by him/her on contract basis in KIHD as Nurse-Aid is protected as per rules;*
- c) *To direct all respondents to issue all the benefits for promotion to the post of BPS-17, w.e.f. Due date of the promotion of the petitioner as per the rules of the KIHD/KMC;*

2. The petitioner is presently serving as a BPS-16 Staff Nurse at the Karachi Institute of Heart Diseases (KIHD), KMC, F.B. Area, Karachi. He submitted that he was initially appointed as Nurse-Aid (BPS-6) on a two-year contract by CDGK/HRM in 2009 and served with distinction. However he was subsequently regularized as a permanent employee in BPS-6 on 27-06-2012, with prior contractual service duly counted towards probationary period, as reflected in the regularization letter (Annexure C). During service, the petitioner also completed a Diploma in Nursing and attended relevant workshops. He submitted that in 2012, he applied for and was appointed as a BPS-16 Staff Nurse, with explicit protection of prior service as Nurse-Aid. He added that despite this, his seniority has not been properly recognized. The tentative seniority list issued by KIHD initially placed the petitioner at Serial No.42 and later at Serial No.15, without reflecting the full seniority from 2009. Applications submitted on 25-05-2023 and 29-11-2023 requesting correction of seniority and promotion have not been considered. He further averred that it came to his notice that junior staff had been promoted to BPS-17 while his seniority rights,

protected under the appointment letter of 10-10-2012, have been ignored, despite an unblemished record and long service; he continues to face discrimination and denial of legitimate promotion.

3. Learned counsel for the petitioner submitted that the respondents have failed to perform their official duties and deprived the petitioner of vested rights. She seeks direction to the No.5 to grant the petitioner promotion from BPS-16 to BPS-17, effective from the initial date of appointment, i.e., 05-08-2009, in recognition of seniority protected under the appointment and service letters and service benefits.

4. Learned counsel for the respondents, without filing the comments deny the allegations made by the petitioner. It is submitted that the petitioner's claims regarding seniority, promotion, and discrimination are misconceived, factually incorrect, and not supported by the record. The petitioner has failed to establish any legal right to the relief claimed. Learned counsel submits that the petitioner was initially appointed on a contract basis as Nurse-Aid (BPS-6) in 2009. Such contractual service is governed strictly by the terms of the contract, and regularization into permanent service is subject to the rules and policy of the Karachi Metropolitan Corporation (KMC) and Karachi Institute of Heart Diseases (KIHD). While the petitioner claims that prior service should be counted towards seniority, it is submitted that seniority lists are prepared according to the official rules, notifications, and verification of service records. Any discrepancies in serial numbers in tentative lists do not automatically entitle the petitioner to promotion. It is further submitted that promotions from BPS-16 to BPS-17 are governed by the rules, merit, and availability of sanctioned posts. However, the respondents have followed the due process and considered all eligible staff as per rules, and the petitioner's assertion that junior staff have been promoted while he has been ignored is denied. However, all promotions were/are processed according to eligibility, performance, and seniority verified in accordance with service rules. He added that no act of discrimination has occurred, and no vested rights of the petitioner have been infringed. The respondents counsel further submit that applications dated 25-05-2023 and 29-11-2023 for consideration of seniority and promotion were considered in accordance with policy. Any delay or administrative action complied with procedural requirements and cannot be construed as a denial of lawful rights. The petitioner has been provided the opportunity to raise grievances through proper channels as per KIHD/KMC rules. He submitted that the petitioner has alternative remedies available under the KMC service rules, departmental grievance procedures, and administrative review. Filing of the present constitutional petition is premature, as no final adverse order has been communicated to the petitioner regarding promotion or seniority. In view of the above, it is submitted that the petitioner's claims are without merit. The

respondents have acted lawfully, fairly, and in accordance with rules. He prayed to dismiss the petition with costs, as there is no violation of the petitioner's legal rights.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. It is a well-settled principle in service jurisprudence that contractual service does not automatically confer seniority unless there is a specific rule or statutory provision to that effect. Under civil/public servants' rules, seniority for the purposes of promotion is normally reckoned from the date of regular appointment, not from the date of initial contractual engagement. It is well settled that service rendered on contract or ad-hoc basis cannot be counted towards seniority where regularization is a separate and distinct act; retrospective seniority is not a legal entitlement unless expressly provided in the service rules or policy, The Supreme Court, has repeatedly emphasized that regularization of service is a fresh appointment to the permanent stream, and a contract appointment cannot be equated with regular service for purposes of seniority or promotion unless a law or rule specifically provides otherwise. Therefore, the petitioner's claim to have his seniority counted from 05-08-2009 the date of his initial contractual appointment is legally unsupported unless KIHD/KMC service rules or a valid policy specifically grants such retrospective effect. In absence of such a rule or policy, seniority must be reckoned from the date of regular appointment.

7. It is also well settled that promotion itself is not an absolute or vested right but is granted on the basis of rules governing seniority-cum-fitness and availability of sanctioned posts. It is well settled that while eligible employees have a right to be considered for promotion, they cannot claim promotion as a matter of entitlement unless the relevant rules mandate it.

8. Accordingly, even if the petitioner's seniority were recalculated from an earlier date which is not supported by law, promotion cannot be claimed as a right, it remains subject to the same seniority-cum-fitness criteria and availability of posts. Merely being senior if seniority were accepted from an earlier date does not override the rule-based process for promotion unless expressly provided in service rules.

9. The petitioner's allegation that junior staff have been promoted while he was ignored does not, prima facie, demonstrate discrimination unless it can be shown that the respondents violated clear service rules, or acted arbitrarily or mala fide. Without such proofs and where seniority computation is in accordance with rule a mere delay or differential treatment does not suffice to establish discrimination under the Constitution.

10. It is also a sound legal position that when a petitioner has alternative efficacious remedies under service rules, departmental grievance procedures, or tribunal jurisdictions, a constitutional petition can be held premature. If no final adverse order regarding seniority or promotion has been communicated, courts often decline interference on the ground of absence of a settled controversy.

11. The petitioner's claim is therefore without legal merit and the petition is dismissed along with pending application(s) with costs.

JUDGE

JUDGE

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