

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Muhammad Saleem Jessar;
Mr. Justice Abdul Hamid Bhurgri.*

C.P No.D-5938 of 2026

[Imtiaz Ahmed Jagirani v. Province of Sindh and others]

Petitioner : Through Mr. Muhammad Talha Abbasi, Advocate

Respondents : Nemo.

Date of Hearing : 16.09.2026

Date of Order : 16.09.2026

ORDER

Abdul Hamid Bhurgri, J.- Through instant petition, the petitioner, presently serving as Additional Controller of Examinations (BPS-18) in the Sindh Public Service Commission, has approached this Court with the grievance that, consequent upon changes in the recruitment/service structure, the post held by him has been left without any further avenue of career progression. On such premise he has prayed, inter alia, for (i) a declaration to that effect; (ii)(a) framing of a service structure providing a promotional channel from BPS-18 to BPS-19; (ii)(b) upgradation of the post presently held by him from BPS-18 to BPS-19; (ii)(c) an open-ended restructuring direction; and consequential reliefs including decision upon his representations/the pending summary and protection of his claim to further progression.

2. We have heard learned counsel for the petitioner and examined the material on record. Learned counsel was confronted with the maintainability of the petition in its present composite form, since the reliefs sought proceed upon legally distinct concepts, upgradation of a post, restructuring of the service/recruitment framework, judicial creation of a promotional avenue, and consequential consideration for promotion, which cannot be conflated into one presently enforceable right.

3. Section 9(1) of the Sindh Civil Servants Act, 1973 provides that a civil servant possessing the prescribed minimum qualifications is eligible for promotion to a higher post which is, for the time being, reserved under the rules for departmental promotion

in the service or cadre to which he belongs. Mere length of service or qualification does not, by itself, create an enforceable right to promotion to a post which is not so reserved. It is the petitioner's own case that, under the presently applicable structure, the post of Controller of Examinations (BPS-19) is not reserved as a promotional post for an Additional Controller of Examinations (BPS-18). Prayer ii(a) nonetheless asks this Court to require creation of precisely such a channel, in substance, to direct alteration of the existing service structure and then preserve the petitioner's claim to progress through the structure so created. That is not a right presently subsisting under the applicable rules, and cannot be conferred by this Court in constitutional jurisdiction.

4. The distinction between upgradation and promotion is well settled. In *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456), the Supreme Court held that upgradation is distinct from promotion, attaches to the post and not the person occupying it, and cannot be employed to benefit an individual by promoting him to a higher post or by circumventing the prescribed service structure; it must instead be justified on considerations of restructuring, reform, or exigencies of service in the public interest. In case of *Federal Public Service Commission v. Anwar-ul-Haq* (2017 SCMR 890), Hon'ble Supreme Court of Pakistan reiterated that upgradation is frequently misconstrued as promotion, that the statutory selection process under section 9(1) of the Act read with the applicable Appointment, Promotion and Transfer Rules cannot be bypassed, and that civil servants are appointed or promoted to posts, not merely to grades.

5. Whether the post presently held by the petitioner has become an isolated or stagnant post warranting upgradation is thus a question legally distinct from, and does not depend upon, his claim for judicial creation of a promotional channel to BPS-19. The former turns on applicable policy and the restructuring/reform considerations recognized in case of *Ali Azhar Khan Baloch* (supra); the latter cannot be granted at all, being contrary to the statutory scheme.

6. We are conscious that jurisdiction under Article 199 of the Constitution is not ousted merely because a civil servant is

involved: where the grievance is shown to relate to the terms and conditions of an individual's service, the exclusive forum is the Service Tribunal under Article 212 of the Constitution; but where what is impugned is a legislative instrument or a challenge with far-reaching effect on the service structure itself, distinct from an individual's terms and conditions, constitutional jurisdiction remains available. A grievance confined to whether a particular post should be administratively upgraded, as opposed to a demand that this Court itself design a promotional channel falls, at least arguably, on the structural side of that line and is not, on that ground alone, foreclosed from this Court's jurisdiction. We record this only to clarify that our dismissal today rests on the composite and non-severable manner in which the present reliefs have been framed, and not on any view that a properly confined grievance limited to upgradation would necessarily lie before the Service Tribunal instead.

7. Given this, we specifically put it to learned counsel for the petitioner, and afforded him the opportunity, to confine the petition to the question of upgradation of the post presently held by the petitioner, offering him leave to withdraw the remaining prayers so as to reformulate the petition accordingly. Learned counsel, after taking instructions, stated in categorical terms at the bar that he was willing to withdraw only prayer clause (i), and intended to press prayer clauses ii(a), ii(b), ii(c) and the consequential prayers together, without severance. We record this exchange specifically because it is dispositive of what follows: the defect in the petition is not cured by a partial withdrawal that leaves the non-maintainable and maintainable prayers bundled together, and the opportunity to cure that defect by confinement was expressly offered and expressly declined.

8. We may clarify that mere plurality of prayers is not, by itself, objectionable; consequential or alternative reliefs flowing from a single enforceable right may properly be sought together. The difficulty here is substantive, not formal: distinct concepts, upgradation, restructuring, judicial creation of a promotional avenue, and consequential advancement, have been combined such that granting any relief would require this Court not merely to enforce an existing right but to first create the very structure from which the asserted right is said to flow, and this Court, having offered the

petitioner the opportunity to disentangle the maintainable component, cannot be asked to perform that severance unilaterally on his behalf.

9. Framing or restructuring a service, prescribing a promotional channel, and determining whether a given post requires upgradation are matters entrusted in the first instance to the competent authority under the governing statutory and policy framework. Judicial review remains available within its constitutionally permissible limits but cannot be used to substitute this Court's own service structure for that of the competent authority, nor to reconstruct a petitioner's prayers for him once a fair opportunity to do so himself has been declined.

10. In view of the foregoing, we are not persuaded to entertain the petition in its present form. The same is accordingly dismissed as not maintainable in its present form, along with all pending application(s), with no order as to costs.

11. It is clarified that we have neither examined nor expressed any opinion on the merits of the petitioner's claim that the post of Additional Controller of Examinations (BPS-18) warrants upgradation, nor on the merits of any representation or summary pending before the competent authority. Dismissal of the present petition shall not preclude the petitioner, if so advised, from instituting appropriate proceedings confined solely to the question of upgradation of the post presently held by him, within the period of limitation available in law, before the forum found competent in light of the nature of that grievance as ultimately framed. The maintainability and merits of any such proceedings shall be considered independently and strictly in accordance with law, without being influenced by any observation made in the present order.

JUDGE

JUDGE
HEAD OF CONST. BENCHES

Ayaz Gul