Order Sheet

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

C.P No. D- 1329 of 2023
[Asif Ali Khawaja and others v. Province of Sindh & others]

C.P No. D- 1430 of 2023
[Hidayatullah and others v. Province of Sindh & others]

C.P No. D- 1769 of 2023
(Rizwan Ali Chang and others v. Province of Sindh and others)

C.P No. D- 1770 of 2023
[Anwer Ali Chhalgari and others v. Province of Sindh & others]

BEFORE:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Petitioners: through Ms. Sadaf Nafees Advocate

Respondent: HMC through Mr. Imdad Ali R. Unar, Advocate

Mr. Rafiq Ahmed Dahri, Addl. A.G.

Date of hearing
& decision: 13.10.2026

O R D E R

ADNAN-UL-KARIM MEMON, J. - The petitioners have filed these constitutional petitions under Article 199 of the Constitution, seeking payment of salaries in their promoted scales, release of arrears from the dates of promotion orders, and protection against withholding of their salaries.

2. The case of the petitioners is that, pursuant to the order dated 29.09.2021 passed in C.P. No. D-1572/2016, promotion orders dated 09.11.2021 were issued, whereafter the contempt application was disposed of on 07.12.2022. The petitioners were subsequently allowed to join, and their pay was verified and fixed by the Local Fund Audit Department, Hyderabad. However, despite such verification, they were transferred to Town Municipal Corporation Tando Fazal in their previous pay scales and were not paid salaries in the promoted scales.

3. Learned counsel contended that withholding of lawful salaries of the petitioners based on such promotion order and according to their new promoted scale as prior February 2023 to June 2023 is unconstitutional and not called for. He relied upon the case of Mst. Ghosia Naz v. Deputy Education Officer (1997

PLC (CS) 666). Learned counsel further submits that in terms of orders passed by this court the competent authority vide order dated 9.11.2021 promoted the petitioners on clear vacant post on the schedule of establishment as such the petitioners cannot be deprived of such promotion against clear vacant post. She prayed to allow these petitions.

4. Learned counsel for the Respondent No.3 has opposed the petition, contending that the petitioners were granted upgradation from BPS-05 to BPS-11, which does not amount to promotion. It is asserted that the earlier constitutional petition was disposed of after redressal of their grievance regarding upgradation, whereas the question of promotion was left to the Secretary to Government of Sindh, Local Government Department. He alleges that the promotion orders dated 09.11.2021 were manipulated and that the signature of the former Chief Municipal Officer, Mushtaque Ahmed Soomro, was forged. He emphasized that an inquiry conducted pursuant to notification dated 25.07.2023 reportedly declared the promotions illegal and untenable. It is further contended that promotions could only be made against available sanctioned posts after approval by the competent authority and completion of the prescribed procedure. He relied upon Rule 13 of Sindh Local Councils Employees (Service) Rules, 2017 and argued that without such mechanism no promotion could take place. He submitted that once upgradation is made no promotion could take place under the law. Accordingly, he maintains that the petitioners are not entitled to salaries or arrears in the claimed promoted scales and seeks dismissal of the petitions.

5. Respondent No.5 in the comments states that the petitioners' pay fixation was verified by the Local Fund Audit Department through letters dated 06.06.2024 and 11.06.2024. However, it maintains that responsibility for payment of salaries and allowances rests with the concerned municipal authorities and successor councils, while the relevant service record and last pay certificates are to be transmitted by the competent offices.

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

7. This Court vide order dated 29.09.2021 passed in C.P. No. D-1572/2016, observed that the issue of upgradation had already been resolved through notification dated 03.05.2018, leaving only the matter of time-scale promotion for consideration. As the proposed interveners were similarly placed as the

petitioners, their application for impleadment was allowed. This Court directed the Chief Municipal Officer Tando Jam, to complete the requisite exercise within two weeks and the Secretary to Government of Sindh, Local Government Department to ensure its completion in accordance with law and grant final approval within three weeks. The petition was disposed of accordingly, along with the listed applications.

8. The controversy essentially revolves around the petitioners' entitlement to salary in the claimed promoted scales and the consequential arrears. The order dated 29.09.2021 passed in C.P. No. D-1572/2016 did not, by itself, confer promotion upon the petitioners; rather, it left the matter of time-scale promotion to be processed by the competent authorities in accordance with law. The subsequent issuance of orders dated 09.11.2021 and verification of pay fixation by the Local Fund Audit Department are relevant circumstances, but do not, in isolation, conclusively establish the legality of the promotions, particularly when their authenticity and validity have been disputed by the municipal authorities.

9. In these circumstances, the allegations regarding manipulation of the promotion orders, including the alleged forgery of the signature of the former Chief Municipal Officer, involve disputed questions requiring examination of the original record and the outcome of the inquiry initiated vide notification dated 25.07.2023. Such allegations cannot be resolved merely on the basis of the parties' assertions. At the same time, the petitioners cannot be denied their lawful salary and admissible benefits, if their entitlement is established in accordance with the applicable rules and valid orders of the competent authority. The responsibility of the concerned municipal authorities to process and disburse salary, as reflected in the comments of Respondent No. 5, must also be addressed by the competent forum.

10. Accordingly, these petitions are disposed of with directions to the Secretary to Government of Sindh, Local Government Department, in coordination with the concerned municipal authorities, to examine the original promotion orders dated 09.11.2021, the relevant service record, pay-fixation verification letters dated 06.06.2024 and 11.06.2024, and the findings of the inquiry conducted pursuant to notification dated 25.07.2023. After providing the petitioners an opportunity of hearing and passing a reasoned order in accordance with law, the competent authority shall determine whether the petitioners were validly promoted or granted time-scale benefits and, consequently, whether they are entitled to salaries and arrears in the claimed scales. This exercise shall be

completed within eight weeks from the date of receipt of this order. If the petitioners' entitlement is established, their admissible salaries and arrears shall be released without unnecessary delay. Conversely, if their claim is found untenable, the reasons shall be duly recorded and communicated to them.

JUDGE

JUDGE

Karar_Hussain / PS*