HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-2760 of 2016

[Mushahid Mallah and others vs. Province of Sindh and others]

Before:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE MUHAMMAD JAFFER RAZA

Petitioners:	By Mr. Shakir Ali Talpur advocate
Respondents 1to3:	By Mr. Ayaz Ali Rajper Assistant A.G Sindh
Respondents 4&5:	By Mr. Muhammad Azam Khan advocate
Date of hearing	23.10.2026
Date of Decision	23.10.2026

O R D E R

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ADNAN-UL-KARIM MEMON J:- The petitioners being Manpower Survey Officers (BPS-11), appointed on 23.11.2007 and 18.10.1993 respectively, have filed the instant Constitution Petition seeking upgradation of their posts and consequential financial benefits on the ground of discrimination.

2. Learned counsel for the petitioners contend that the Finance Department, through notifications dated 17.08.2007, 25.05.2012 and 04.08.2016, upgraded various posts in provincial departments, including posts initially carrying the same or lower grades, while the petitioners were denied similar benefits; that several junior employees, including clerks and head clerks, were granted successive upgradations from BPS-11 to BPS-14 and BPS-14 to BPS-16, thereby placing them above the petitioners in rank and pay. Learned counsel relying upon the principle of equality under Article 25 of the Constitution and the order passed in Constitution Petition No. D-2304 of 2010, seeks directions for upgradation of petitioners posts, retrospective financial benefits and protection against discriminatory treatment.

3. Learned AAG submits that the upgradation of various posts was made pursuant to the Government of Sindh's policy, and the petitioners' department has neither the authority to upgrade their posts nor any role in formulating such policy; that no rules provide for upgradation of the posts of Manpower Survey Officers, and the petitioners' representations were not entertained for want of relevant rules; that the placement of the petitioners' post above that of Assistant in the budget does not establish seniority, as both posts carry BPS-11, and the former may have been so ranked due to its promotion prospects to Manager (BPS-16); that the petitioners'

grievance, if any, arises from the Government's upgradation policy and not from any act of their department. He lastly argues that an alternate remedy is available and this petition is not maintainable.

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

5. The petitioners seek upgradation of their posts of Manpower Survey Officers (BPS-11) by relying upon the Finance Department notifications dated 17.08.2007, 25.05.2012 and 04.08.2016, whereby certain posts in provincial departments were upgraded pursuant to the Government's policy. However, upgradation is not an automatic or vested right merely because employees of other departments, holding posts of the same or lower basic pay scale, have been granted such benefit. Upgradation is essentially a policy matter falling within the domain of the competent Government authority and must be determined in accordance with the applicable policy, prescribed service structure, nature of duties, qualifications, recruitment rules and relevant financial implications. The petitioners failed to establish that the cited notifications or a specific statutory rule expressly extend the same benefit to their posts, or that the Government has treated genuinely similarly situated employees differently without any rational basis; no enforceable right to upgradation can be recognized under Article 25 of the Constitution.

6. The successive upgradations granted to clerks and head clerks in other departments do not, by themselves, establish discrimination, as the respective posts may differ in duties, service structure, promotion prospects and policy considerations. Similarly, the placement of the petitioners' posts above that of Assistant in the budget does not confer any superior right to pay or upgradation, particularly when both posts carry BPS-11. The order passed in Constitution Petition No. D-2304 of 2010 may assist the petitioners only if its factual and legal basis is demonstrably applicable to their case, which they failed to point out.

7. In view of the above, the petitioners have not established, on the material presently available, any vested right to upgradation or retrospective financial benefits merely based on parity with employees of other departments. The contention of learned AAG that the petitioners' department lacks the authority to formulate or independently implement the Government's upgradation policy carries weight; nevertheless, the absence of departmental authority does not absolve the competent Government authority from considering a lawful claim founded upon an applicable policy or demonstrable discriminatory treatment.

8. The plea of an alternate remedy, by itself, is not conclusive and must be examined in light of the nature of the relief sought and the jurisdiction of the available forum. Accordingly, the petition, insofar as it seeks a direct judicial

direction for upgradation and consequential arrears without establishing entitlement under the applicable policy or rules, is liable to be dismissed. However, in the interest of fairness, the competent authority, including the Finance Department, needs to examine the petitioners' pending representations, if any, by comparing their posts with the similarly situated posts and by considering the cited notifications and order in C.P. No. D-2304 of 2010, and to pass a reasoned order in accordance with the applicable policy and law at his end. Such consideration shall not be construed as a direction to grant upgradation or as recognition of any automatic entitlement to retrospective financial benefits.

9. This petition stands disposed of in the above terms.

JUDGE

JUDGE

Karar_Hussain/PS*