

IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-7622 OF 2018 &
C.P No.D-6110 of 2020

Before

Mr. Justice Mohammad Ali Mazhar
Mr. Justice Amjad Ali Sahito,

Mr. Sarmad Hani, advocate for the Petitioners in
C.P No.D-7622 of 2018 and
Mr. Akhtar Hussain Sheikh, advocate for the Petitioners
In C.P No.D-6110 of 2020
Mr. M. Arshad Khan Tanoli and Mr. Danish Rashid
Advocate for the respondents in C.P No.D-7622 of 2018
Mr. Shahryar Mahar, Assistant Advocate General

Date of Hearing : 21.01.2021, 02.02.2021,
18.02.2021 10.03.2021 &
25.03.2021
Date of Judgment 13.08.2021

J U D G M E N T

AMJAD ALI SAHITO---J., Through this common judgment, we intend to dispose of titled Constitutional Petitions. The Petitioners in these Petitions have impugned Notification + dated 20th March 2018 issued by the Respondent No.1 and have also challenged the vires of the Sindh Civil Servants (Provincial Management Service) Rules, 2018 (hereinafter referred to as the “**PMS Rules, 2018**”). The petitioner in C.P.D.No. 7622 of 2018 has prayed in the following terms:-

- a. Declare that the Sindh Civil Servants (Provincial Management Services) Rules, 2018, are *ultra vires* as having been issued incompetently and without the prior approval of the Provincial Cabinet in violation of law and the judgment of the Hon’ble Supreme Court of Pakistan in the case of Mustafa Impex vs. Federation of Pakistan and other PLD 2016 SC 808.
- b. Declare that the Sindh Civil Servants (Provincial Management Service) Rules, 2018 are *ultra vires* as having been issued in violation of Article 240 of the Constitution of Pakistan, 1973, as well as the judgment of the Hon’ble Supreme Court in the case of

Criminal Original No. 89 of 2011, 2013 SCMR 2015 SCMR 353 and 2015 SCMR 456.

- c. Declare that in any event the Sindh Civil Servants (Provincial Management Services) Rules, 2018, cannot be given retrospective effect and the quota/sharing formula already determined vide Notification dated 23.01.2007 and others and reaffirmed by the Respondent vide statement dated 10.08.2018 cannot be amended or altered nor it could be made applicable to any existing officer till the last officer of existing Ex. PCS and PSS retire from service.
- d. Quash and set aside the impugned Notification dated 20.03.2018 notifying the Sindh Civil Servants (Provincial Management Service) Rules, 2018, and Notification dated 17.08.2018 issued by the Respondents.
- e. Prohibit and restrain the Respondents and their officers from acting on or giving effect to the Rules, 2018, and or altering the quota or sharing formula between Ex.PCS and PSS as is being done pursuant to Notification dated 17.08.2018 of interfering with the present functioning of Ex.PCS and PSS as separate cadres.
- f.
- g.

The Petitioners in Constitution Petition No.D-6110 of 2020 has prayed in the following terms:-

- i. Declare that the initial recruitment process with regards to candidates appearing in Combined Competitive Examination 2018, in relation to the petitioners, started at the time of the advertisement dated 19-02-2018 Declare that West Pakistan Civil Service (Executive Branch) Rules 1964 and Sindh Government Notification dated 10.10.1993 are applicable to the extent of the petitions whose initial recruitment process was stated pursuant to the advertisement dated 19th February, 2018.
- ii. Declare that the Provincial Management Service Rules 2018 do not retrospectively apply to Combined Competitive Examination 2018 therefore the recommendations by

respondent No.3 under the Provincial Management Service Rules 2018, through Press Release dated 25.10.2019, for the appointment of Provincial Management Service (BPS-17), in relation to the petitioners, are illegal, void, unconstitutional and devoid of legal impact on the petitioners' initial appointment process.

- iii. Declare that issuance of Offer letters issued dated 30.01.2020 under Provincial Management Service Rules 2018 are illegal and unconstitutional.
- iv. Direct Respondent No.3 to issue amended recommendations, in relation to the petitioners, as per West Pakistan Civil Service (Executive Branch) Rules 1964.
- v. Direct Respondent Nos. 1 & 2 to issue the petitioners renewed offer letters as Assistant Commissioner from the date of initial appointment of the previous, impugned offer letter without adversely affecting their date of appointment in the Government of Sindh for the purposes of their *inter se* seniority.
- vi. Declare that the Provincial Management Service Rules 2018 were made in contravention with section 26 of Civil Servant Act 1973 and Sindh Government Rules of Business 1986, rendering them void, unconstitutional and illegal and without any legal impact.
- vii.

2. Material facts as pleaded in the aforementioned Constitution Petitions are that the Petitioners have sought quashment of Notification dated 20.03.2018 notifying Sindh Civil Servants (Provincial Management Service) Rules, 2018; and a Notification dated 17.08.2018 issued by the Respondents *inter alia* on the ground that they are ultra vires of Article 240 and 242 of the Constitution of Pakistan, 1973 besides violative of Sindh Civil Servants Act, 1973; and are in defiance of the judgments delivered by the Hon'ble Apex Court. It is further pleaded that Rules 2018 have not been

approved by the Provincial Cabinet and need to be set aside in the light of judgment delivered by the Hon'ble Supreme Court of Pakistan reported in **(PLD 2016 SC 808)**.

3. The Petitioners also alleged that the Sindh Civil Servants (Provincial Management Services) Rules, 2018, cannot be given retrospective effect while amending the quota/sharing formula earlier determined to vide Notification dated 23.01.2007; reaffirmed by the respondents vide official statement dated 10.08.2018 nor it would apply to the existing Ex-PCS Officers till the last officer by declaring Ex-PCS as dying cadre.

4. The notices were issued to the respondents as well as to the Advocate General Sindh.

5. The learned counsel for the Petitioners *inter alia* contended that the Rules 2018 are violative of Articles 240 and 242 of the Constitution, 1973; and in conflict of Sindh Civil Servants Act, 1973 and their rules Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. The learned Counsel further contended that the Rules 2018 are also in violation of the principles laid down by the Hon'ble Supreme Court of Pakistan in the cases reported in 2013 SCMR 1752, 2014 SCMR 1539, 2015 SCMR 456 besides the Rules 2018 are also in violation of Article 4, 8, 9 of the Constitution, 1973. According to the Petitioners Counsel, the Rules 2018 were not approved by the Sindh Cabinet hence in violation of the judgment of the Hon'ble Supreme Court reported in PLD 2016 SC 808.

6. It is contended that the Official respondents are in complete violation of the order passed by the competent authority and direction of Hon'ble Supreme Court in Criminal Original Petition No. 89 of 2012 have framed the Rules, 2018 denying and defeating the rights of the Petitioners guaranteed by the Constitution and Sindh Civil Servants Act. It was next

contended that by the impugned Rules 2018 the Ex-PCS and PSS Cadres were merged against the language of the Sindh Civil Servants Act 1973 which Act was legislated under the Command of Article 240(b) of the Constitution. The learned Counsel submitted that fundamental changes in the service hierarchy in the provincial service structure would destroy the merit on the one hand and would open the back door induction of the civil servants, on the other hand.

7. The Petitioners Counsel contended that Schedule-I attached to the Rules 2018 is ultra vires provides induction of any other officer of equivalent grade into PMS without the requisite competitive process. The rules 2018 ex-facie are violative of the judgments of the Honorable Supreme Court of Pakistan reported in the case of Criminal Original No. 89 of 2011 reported in 2013 SCMR, 2015 SCMR 353 and 2015 SCMR 456. It was further contended that the Rules 2018 can only be given prospective and not retrospective effect as is being done by the official Respondents; that the Rules 2018 violate the rights and interests of the Petitioners who have reached in Ex-PCS Cadre on merits and in case if the Rules 2018 are brought in the field, it will destroy merit criteria. The Ex-PCS officers are governed under the West Pakistan Civil Service (Executive Branch) Rules, 1964; the classification/principles are enumerated in the Rules 1952 have remained in the service structure of the Sindh Civil Servants to date and are protected further through Section 8 of the SCSA, 1973, which compartmentalizes service structure into "Service", "Cadre" and "Post" which terms are not interchangeable and cannot be merged; that there is distinction between the two cadres Ex-PCS and PSS Cadres even after the coming into force the Sindh Civil Servants Act 1973; and continues to remain in force depending upon their distinct classification, dependent on recruitment rules, job description, cadre and seniorities which terms are borrowed from 1952 Rules; that Job description and training of both

Ex-PCS and PSS is different, that the Provincial service group i.e. Ex-PCS and PSS are made on the pattern of the Federal Service Structure i.e. OMG (Officers Management Group) equivalent to PSS and Pakistan Administrative Service (PAS) equivalent to Ex-PCS; those who secure higher marks in the combined competitive exam, are allocated Ex-PCS cadre and are given field training of revenue, quasi-judicial and administrative nature; they then appear for the **“AC-I and AC-II”** exams and have attachment with Account Treasury Officer and Account Officers, Survey and Settlement Directorate, Public Prosecutors, Municipal Services, Deputy Collectors, Health, Education, Revenue Officer and Tapedar, before passing another exam and viva voce conducted by Sindh Public Service Commission and getting a filed posting. The learned Counsel contended that those who secure lesser marks by order of merit are allocated the PSS cadre/secretariat service as Section Officers in BPS-17, the PSS officers are appointed in secretariat Service, however, they are accorded training according to their recruitment rules and department needs. The learned counsel contended that the fundamental rights of the Petitioners under Article 4, 8, & 9 of the Constitution have been violated. He contended that through the Rules 2018 two separate and distinct cadres have been illegally merged which has done away with the entire concept of civil services based on merit; that the merit is the cornerstone of the Sindh Civil Service structure; the merger of these cadres will affect the status of the Ex-PCS Officers which is a separate cadre having distinct recruitment Rules, petitioners are part of this cadre which has been termed as dying cadre with the sole object to defeat judgments of Supreme Court. It was next contended that this Court was misled into believing that the rules sought to be notified i.e. the Sindh Civil Servants (Provincial Management Service) Rules 2006 were actually for training purposes of PSS i.e. Section Officers and this Court had allowed the

Petition of the other side. Per learned counsel when certain Ex-PCS Officers gained knowledge of the Petition, they approached this Court under Section 12(2) of the Civil Procedure Code challenging the order in C.P No.1898 of 2012, wherein it was alleged that the orders were obtained by way of fraud as the real intention of the petitioners was not to seek framing of training Rules but in the garb of these Rules intended to merge the two cadres. The learned counsel contended that Ex-PCS Officers on dismissal of Section 12(2) CPC application filed CPLA No.522-K of 2016 before the Hon'ble Supreme Court of Pakistan whereby no background was given to the Hon'ble Supreme Court of Pakistan as to why the rules were being sought to be framed; the Hon'ble Supreme Court of Pakistan did not examine the draft Rules 2018 and observed while disposing of the Petition that any person aggrieved by the Rules 2018 can approach the appropriate forum. The Sindh Government would now be inducting all those officers of equivalent posts as PMS Officers who otherwise are not eligible to hold such post; that for an instance whether Assistant Director Agriculture who is serving in BPS-17 or Deputy Director in BPS-18 who has not passed the combined competitive exam but have passed regular exams through Public Service Commission could be appointed in PMS Service by virtue of Schedule-I of the PMS Rules 2018; that even otherwise the PMS Rules in Punjab were notified in the Year, 2004, and in KPK they were notified in the Year, 2007, much before the Judgments passed by the Hon'ble Supreme Court of Pakistan; lastly learned counsel prayed that the instant constitution petitions may be allowed.

8. Mr. M. Arshad Khan Tanoli and Mr. Danish Rashid Advocate for the respondents in C.P No.D-7622 of 2018, Learned Assistant Advocate General, Sindh, duly assisted by Mr.Faisal Siddiqui, Advocate vehemently opposed the contentions raised by the learned counsel for the petitioners and contended that, under PMS Rules, the appointment

process is both initial and direct. All officers have to go through the academic and secretariat as well as field training, besides qualifying Assistant Collector Part I & II papers conducted through SPSC for their confirmation, thus the PMS has put in to place a more competitive and qualitative process for officers appointment and promotions; as per Section 26 of the Sindh Civil Services Act, 1973, the government or any person is authorized to make the Rules. Section 26 of the Sindh Civil Services Act, 1973 provides as follows:-

“(1) Government or any person authorized by it in this behalf, may make such rules as appear to be necessary or expedient for carrying out the purpose of this Act, (2) Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act”

9. The learned AAG contended that Sections 7 and 8 of the Act, 1973, define service, cadre, post and promotion and there is no impediment on the competent authority to frame Rules under Section 26 of the Act. The PMS Rules have created the opportunity for both Services and secretariat trainings for officers of the PMS and has enhanced the choice for the government to post the most suitable officers on the challenging assignments; the merit of the selected candidate/officer is protected under seniority list of the candidate within the batch and between the dying cadres through *inter se* seniority; that the difference in job description is not fixed with the Cadre but with the post, it varies from post to post, the cadre of the officer does not matter, for example the post of Deputy Secretary in SGA&CD has the same job description whether the officer posted there is from PSS or Ex-PCS cadres; that the difference in pay scale

also varies from post to post, in Secretariat, officers are entitled for Secretariat and Utility allowances, be the officer from Ex-PCS or PSS, which otherwise is not available in the field posts, in projects, the project allowance is applicable to all officers be he from PSS or Ex-PCS, per learned counsel the Ex-PCS and PSS officers have different training only at the level of BPS 17; whereas, they have same trainings in higher grades (BPS 18 and above). The Ex-PCS officers are provided revenue and judicial training, but not the secretariat training and; whereas, they get their promotion on both Secretariat and Revenue seats as Deputy Secretary and equivalent and above. On the other hand, the PSS officers are not promoted on revenue seats for want of revenue training, this lead to the litigation between these two cadres, resultantly, the PMS was notified to ensure equal opportunities to all provincial cadre officers, that with regard to the PMS notification without cabinet approval, it is submitted that PMS Rules are notified pursuant to contempt notice of the Hon'ble Apex Court to implement orders within one week, therefore the summary was floated, approved and the Rules 2018 were submitted before the Hon'ble Supreme Court of Pakistan to vacate the contempt notice; that the first batch of PMs is appointed through combined competitive exam; 2019 and 186 PMS officers are currently undergoing the PMS training focusing on both revenue and secretariat subjects, the training includes both academic and secretariat/field, thus, a unified cadre is in vogue in Sindh on the pattern of the PMS Punjab and PMS KPK, that with regard to the question that the PMS is the merger of Ex-PCS and PSS cadres and their status in PMS, it is submitted that the PMS is the creation of a new service based on the combined seats of erstwhile Ex-PCS and PSS services, the incumbents of these dying cadres have been protected under their separate *inter se* seniority and their promotion sharing formula is intact that was notified on 23.01.2017 on the recommendation of the sharing formula

committee notified under PMS Rule 5(ii), thus, with inception of PMS the incumbent of the existing cadres have not been affected at all; lastly learned AAG contended that the questions pertaining to other clubbed petitions No. 3409 of 2019, P.7111 of 2018, P.57 of 2016 regarding induction of existing cadres officers in the PMS and the proportionate promotion sharing formula between the Ex-PCS and Ex-PSS; that the Bachal Memon case was that Engineers belonging to two separate departs viz. Department and Directorate of Education Engineering Works had separate cadres and separate seniority lists. Lastly, they prayed that this Court is very much competent to pass an order as deemed appropriate.

10. We have heard learned counsel for the parties and have perused the record.

11. The background of this case is that a C.P No.D-1898 of 2012 Re. Riaz Ahmed Jakhrani and others v. Province of Sindh was filed before this court with the following prayers:-

- a) To direct the official Respondents to notify the draft Rules of Sindh Civil Servants (Provincial Management Service) Rules, 2006 where under Petitioners are made to require to obtain necessary training in the relevant fields so that they may not be discriminated with the Officers of Ex-PCS Cadre and further direct the Respondents to implement the lawful order of competent Authority viz. Chief Minister of Province of Sindh.
- b) To direct the Official Respondents to issue notification in the meanwhile relieving the Petitioners for joining Sindh Civil Services Academy Karachi for pre-Service training, Karachi as it has been done in the case of Ex-PCS Cadre.
- c)
- d)

The case of the petitioners was that the petitioners belonged to the Cadre of Provincial Secretariat Services, (hereinafter referred to as “**PSS**”). The SGA&CD is the Administrative Department of Ex-PCS and PSS cadres. The officers belonging

to both of the cadres had a common channel of promotion; however, the Provincial Government had notified sharing formula for the officers of BPS-18 & BPS-19 vide Notification dated 23.01.2007. The Administrative Department of PSS cadre realized that the officers of PSS cadres should be afforded an opportunity to get training and the same should be channelized through statutory rules. The draft Rules were prepared to achieve the said object under the nomenclature of Sindh Civil Servants (Provincial Management Service) Rules 2006. The law Department to Government of Sindh vetted the draft Rules and referred it back for further necessary action to the Regulation Wing of SGA&CD. The Chief Secretary accorded the approval for submitting the summary to the Chief Minister for final approval of the subject rules to established PMS rules but same was not finalized and finally a Constitution Petition No.D-1898 of 2012 was filed before this Court. After hearing the parties, the Divisional Bench of this Court while disposing of the Petition passed the following order:-

“No doubt a sharing formula has been prescribed for the Cadre post of BPS-18 and 19 meant for officers of Ex-PCS and PSS vide notification dated 23.01.2007. It is also a fact that Ex-PCS officers are getting the training to compete in the promotion process for BPS-18 and 19 whereas there is no such criteria for PSS cadre officers to be selected for training to compete for their promotion to BPS-18 and 19 and in absence of such notified rules/statutory rules the selection of such officers to currently based on the personal desire and whims of the concerned executives of SGA&CD who are responsible for closing such officers from PSS Cadre and hence there is no transparent or statutory method which could streamline the promotion process of PSS cadre. We have also perused the comments filed on behalf of respondents and no justification was given by the learned AAG for withholding such rules to be notified. Such rules if notified would certainly cater for the good governance as it has already been established in other provinces and all required formalities have been completed. The subject draft rules are prepared in terms of Section 26 of Sindh Civil Servants Act, 1973 and even otherwise, it is well within the domain of the

authority concerned to meant and streamline the subject rules, if at all required. There seems to be no justification for withholding the notification of the subject rules and on the contrary the absence of such notified rules would create a sense of insecurity amongst the PSS cadre who at present do not have a policy or mechanism whereby they could be selected for the training which could enable them to compete for their promotions.

On 26-10-2013, a joint application was filed under Section 12(2) CPC read with Section 151 CPC in which it was pleaded that the judgment in the above petition was procured through misrepresentation of facts therefore, it is liable to be set aside. On 25-04-2016 after hearing the parties a Divisional Bench of this court (the judgment authored by one of us Muhammad Ali Mazhar-J) had disposed of the applications in the following terms:-

“10. As a result of above discussion, the listed applications are dismissed and interim orders are vacated. However, it is significant and noteworthy to have a fleeting look to paragraph No.8 of the counter affidavit filed to the main petition by the respondents No. 1 to 4 wherein they have admitted the draft rules for creation of PMS by merging two Provincial Services Groups but the same could not be notified due to disagreement over sharing formula relating to the post of various grade by the Ex-PCS and PSS. Though the judgment contained the directions to issue a Notification of the subject Rules but at the same time the court remarked that “The subject draft rules are prepared in terms of section 26 of the Civil Servant Act, 1973, and even otherwise it is well within the domain of the authorities concern to amend and streamline the subject rules, if at all required”. This finding leads us to the conclusion that in order to deal with the disagreement over sharing formula and for other related issues, a venue was left upon for the Government in the main judgment to amend and streamline the subject Rules, therefore, the applicants may file representation to the concerned authority or in alternate they may wait till such time the Rules are Notified so that they may challenge the vires of Rules if any through proper legal proceedings”

12. Things did not end here. Abdul Wajid Shaikh and others had impugned the judgment of this Court passed in C.P

No.D-1898 of 2012 before the Hon'ble Supreme Court of Pakistan being Civil Petition No.522-K of 2016. By order dated 07.03.2017, the Hon'ble Supreme Court had disposed of the case, the operative part of the judgment reads as follows;-

“Learned counsel for the parties would be satisfied if the relevant rules are approved and notified by the Government of Sindh by independent application of mind and without being influenced by the impugned order dated 22.06.2016 passed by the learned High Court of Sindh.

2. Learned Advocate General Sindh states that a summary for the rules has been sent to the Chief Secretary, which shall ultimately be approved by the Chief Minister. Suffice it to say that such rules shall be framed and notified by the concerned authority with independent application of mind without being influenced by any order passed by the High court of Sindh. And the parties may seek appropriate remedy if they are aggrieved of the said rules”

13. In compliance with the order passed by Hon'ble Supreme Court, a summary was floated to the Chief Minister Sindh, with the proposal at para No.8, **“that the proposal for formation of Provincial Management Service and its rules by amalgamating the PSS & Ex-PCS Groups may not be considered and be discouraged as both cadre/groups are separate”**. The Chief Minister Sindh passed the order **“Proposal at para 8 as approved”**.

14. Since the directions of the Hon'ble Supreme Court were not complied with, notices were issued to the official respondents under the Contempt of Court Ordinance, 2003 to explain the position. In compliance with the Court direction, another summary was floated to the Chief Minister, Province of Sindh, in Paragraph-22 of the said summary he had passed the following order:-

“22. Discussed. In the instant rules, a new Service namely Provincial Management Service (PMS) has been proposed which will

be created whenever new induction through competitive examination is made. The present services of Ex-PCS and PSS will continue as per existing rules and policy governing their services till the last incumbent of their respective service retires.

23. With above clarification, draft rules of Provincial Management Service Rules, 2018 are approved.

However, the draft Rules were approved on 19.03.2018 and a report was submitted vide order dated 21.03.2018 before the Hon'ble Supreme Court of Pakistan and the Petition was disposed of in the following terms:-

“States that the order dated 07.03.2017 whereby we had directed the framing of the rules has been complied with. Therefore, we do not intend to proceed further with this matter. The petition is accordingly disposed of”

15. This Court while deciding the application under Section 12(2) CPC read with Section 151 CPC had observed in its orders that the applicants may either file the representation to the concerned authority or in the alternative they may wait till such time the Rules are notified so that they may challenge the vires of the Rules, if any, through legal proceedings. It is important to note here that a C.P No.D-172 of 2019 was also filed before the High Court of Sindh, Sukkur Bench which was dismissed. Being aggrieved against the order dated 09.05.2019 a Civil Petition No.1951 of 2019 was filed before the Hon'ble Supreme Court of Pakistan. (Waseem Province of Sindh through Chief Secretary, Karachi.), The Hon'ble Supreme Court of Pakistan has observed that Constitution Petition No.D-3409 of 2019 challenging the vires of Sindh Civil Servant (Provincial Management Services) Rules, 2018 is pending before this Court, hence it was ordered that Petition No.D-172 of 2020 be heard and decided along with the aforesaid Petition and case was remanded to this Court by the Hon'ble Supreme Court for deciding afresh.

Several Petitions were filed challenging the vires of Sindh Civil Servant (Provincial Management Services) Rules, 2018. It is appropriate to reproduce the order passed in Civil Appeal No.1951 of 2019 by the Hon'ble Supreme Court of Pakistan as under:-

“We have heard the learned counsel at substantial length and find that Constitution Petition No. D-3409/2019 pertaining to challenging the vires of Sindh Civil Services (Provincial Management Services) Rules, 2018 is pending in the Learned High Court of Sindh, thus it will be just and appropriate that present Constitution Petition No.D-172/2019 be also heard and decided along with the noted petition.

2. consequently, the appeal is allowed, the impugned order dated 09.05.2019 is set aside and the matter is remanded to the High Court for deciding the same afresh. The remanded matter shall be taken up by the High Court along with the pending petition noted above for hearing and deciding together. As the matter is quite old, it is expected that the Learned Bench hearing the matter will decide the same expeditiously, preferably, within a period of three months. All the pending CMAs are disposed of.

16. The petitioners have *inter alia* challenged the vires of the Sindh Civil Servants (Provincial Management Services) (PMC) Rules (**Rules 2018**) in the light of the judgment of the Hon'ble Supreme Court of Pakistan in the case of Mustafa Impex v. Federation of Pakistan (PLD 2016 SC 808), and the Rules 2018 violate Articles 240(b) and 242(1B) of the Constitution, 1973; and in conflict of Sindh Civil Servants Act, 1973 and the Rules Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. The Rules 2018 were notified on 20.03.2018 and published in the gazette on 3rd January 2019 by Respondent No.1. Before dilating upon the subject, it is expedient to reproduce the PMS Rules, 2018, which read as under:

2. Definitions.-In these rules, unless the subject or context otherwise requires:-

- (a) 'Appointing Authority' means the authority specified in column 4 of Schedule-II;
- (b) 'Chief Minister' means the Chief Minister of Sindh;
- (c) 'Department' means the Services, General Administration and Coordination Department;
- (d) 'Government' means the Government of Sindh;
- (e) 'Graduate' means holder of a Bachelor or equivalent degree from a recognized university or Institute;
- (f) 'Provincial Management Service' means the Provincial Management Service (PMS) consisting of the posts as provided in Schedule-1;
- (g) 'prescribed departmental examination/training' means the examination/training prescribed by Government to be conducted by the Department or any other agency appointed by Government for the purpose of confirmation or promotion;
- (h) 'Schedule' means a Schedule appended to these rules;
- (i) 'Secretariat' means the Sindh Secretariat; and
- (j) 'Service Group' means Group of ex-PCS and PSS separately

3. **Nomenclature of the posts.**—The Provincial Management Service (PMS) shall consist of the posts specified in Schedule-1.

4. **Method of Appointment.**—The method of appointment, minimum qualification, age limit and other conditions for Provincial Management Service (PMS) shall be given in Schedule II.

5. **Repeal and Savings.**— The West Pakistan Civil Service (Executive Branch) Rules, 1964, issued under the Services and General Administration Department Notification No.SOI(S&GAD)1-5/92 dated 25th September 1993, prescribing the method of appointment to the post of Deputy Secretary in the

Secretariat and the S&GAD Notification No.SOX(SGA&CD)3-58/84 dated the 10th October 1993 prescribing the method of appointment to the post of Section Officer in the Secretariat are hereby repealed:

Provided that –

- (i) for the purpose of promotion in inter-se-seniority in respective service Group of ex-PCS and PSS shall continue to be maintained separately;
- (ii) for the purpose of promotion in BPS-18 and above the share between ex-PCS and PSS shall be as determined by the Government;
- (iii) their service shall be governed by the laws and rules in force immediately before the commencement of these rules;
- (iv) the incumbents of ex-PCS and PSS shall form as a part of dying cadre till the retirement of the last such incumbent;
- (v) the last incumbent of either Group shall rank senior to the first incumbent of the Provincial Management Service.

6. **Transitional.**-The condition of graduate in column 7para (2)(b) of Schedule-II shall not apply for a period of three years from the commencement of these rules for the incumbents holding the posts immediately before such commencement for promotion to BPS-17 posts.

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[See rule3)

The following posts in different grades shall form cadre strength of the PMS in each grade:-

1) PMS: BS-17	Section Officer/Assistant Commissioner and other officers holding equivalent posts as per details at Annexure Part-I.
2) PMS: BS-18	Deputy Secretary/Deputy Commissioner/Additional Deputy Commissioner and other officers holding equivalent posts as details at Annexure Part-II.
3) PMS: 19	Additional Secretary/Deputy Secretary and other officers holding equivalent posts as per details at Annexure Part-III
4) PMS:20	Secretary to Government of Sindh/Commissioner and other officer holding equivalent posts as

		per details at Annexure Part-IV.
5) 21	PMS:	Additional Chief Secretary to Government of Sindh and other officers holding equivalent posts as per details at Annexure Part-V
6) 22	PMS:	Chairman, Planning and Development Board and other officers holding equivalent posts as per details at Annexure Part-V.

6) PMS: 22		Chairman, Planning and Development Board and other officers holding equivalent posts as per details at Annexure Part-V.
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17. By way of the PMS Rules 2018, the Executive Branch of the Provincial Civil Service (Ex-PCS) and Provincial Secretariat Services (PSS) being two separate cadres have been amalgamated/merged and notified as one service/group/cadre known as the Provincial Management Service (PMC).

18. To elaborate on the Provincial Cadre Service [PCS], this had two tiers namely Ex-PCS Cadre and Provincial Secretariat Service [PSS] Cadre. Ex-PCS Officers are appointed through the combined competitive examination by the Sindh Public Service Commission. Those who secure higher marks are allocated Ex-PCS Cadre and the other securing less marks are allocated PSS Cadre. In the year 2018, these two groups (PCS-Executive and PSS) were merged through impugned Rules and notified as Provincial Management Service (PMS) which includes all posts previously held by Ex-PCS and PSS Officers.

19. Provincial Management Service consists of government officers appointed directly in BPS-17 through Combined Competitive examination. PMS Officers appointed in BPS-17 get promotion in Scale-18, Scale-19, and Scale-20 as per notified impugned Rules called PMS Rules, 2018. Commonly, PMS Officers are posted as Section Officer, Assistant/Deputy

Commissioner, Deputy Secretary, and Additional Secretary, Director General, Commissioner, Secretary, or any other equivalent post of their grade.

20. We have noticed that there are four Articles of the Constitution that have direct nexus with the subject Article 139(3) of the Constitution stipulates that "**the Provincial Government shall also make rules of the allocation and transaction of its business**". Article 240(b) of the Constitution provides that "**in the case of the service of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly**". Article 241 stipulated that "**until the appropriate legislature makes a law under Article 240, "all rules and orders in force immediately before the commencing day shall, so far as consistent with the provisions of the Constitution, continue in force and may be amended from time to time by the Federal government or, as the case may be, the Provincial government.** The Sindh Civil Servants Act, 1973, has been enacted under the provisions of Article 240(b) of the Constitution of Pakistan, 1973 and deals with the appointments and conditions of service of persons, to and the terms and conditions of service of persons in connection with the affairs of the Province to provide for matters connected therewith and ancillary thereto Article 242 which mandates provincial assembly to legislate law for creating Public Service Commission for induction of Civil Servant in terms of Article 240(b) of the Constitution.

21. The Sindh Public Services Commission is a provincial examining body of the Government of Sindh created under Article 242(1B) induction of Civil Servant and is responsible for recruiting civil servant and bureaucrats in the Government of Sindh. After 1947 Civil Services Classification and Recruitments Rules 1952 was issued for regulating the recruitment of services, cadres and posts in Sindh. Ex-PCS officers were governed under the West Pakistan Civil Services

(Executive Branch) Rules 1964. Whereas PSS were governed under the west Pakistan Secretariat (Section Officer) Services Rules 1962 and west Pakistan Deputy Secretaries Recruitment Rules 1963. The Governor on 10th December 1964 under Article 178 & 179 of the Constitution made the Rules, 1964 and appointed the Ex-PCS group in terms with these Rules. PSS Rules were made in pursuance of Presidential Proclamation 1962. Through PMS Rule 5 the West Pakistan Civil Services (Executive Branch) Rules, 1964, issued under the Services and General Administration Department Notification dated 25th September 1993 and Notification dated 10th October 1993 prescribes the method of appointment to the post of Section Officer were repealed.

Now the issue is whether, in law, one Rule can repeal the other Rule. The answer is negative. The Rules can only be repealed or amended by legislation Parent instrument and not otherwise. Moreover, after the promulgation of the Constitution of 1973, all Rules framed under the previous Constitutions and or Acts unless saved stood repealed once the Sindh Assembly has enacted Civil Servant Act 1973 in terms of Article 240(b) of the Constitution. The Sindh Civil Servant Act 1973 framed (Appointment and Promotion) Rules 1974 and the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975. However, PMS Rules 2018 framed under Section 26 cannot hold the field as they have overruled Section 8 and 9 of the Sindh Civil Servant Act 1973 besides further travel parallel to the Rule 1974 and Rule 1975 refereed hereinabove.

22. The service pattern of the Sindh Government is based on the structure of the service of the Federal Government whereas the equivalent service of Ex-PCS is the Pakistan Administrative Service **(PAS)**. The Combined Superior Services Examination is conducted by Federal Public Service Commission whereas the Sindh Public Services Commission

(SPSC) conducts the Exam in terms of Rule 10 of Sindh Servant (Appointment, Promotion and Transfer) Rules, 1974 reads with Rule 3 of the Sindh Public Service Commission (Function) Rules 1990. SPSC approves the requisition form and issues advertisement in consultation with S&GAD. By orders of merits, the person obtaining higher marks are allocated Ex-PCS and those who are lower in merit are allocated PSS Cadre. Whereas the best model for selection of the officers for public service in the country and even in the sub-continent is based upon different cadres at the federal level. The cadres are made to ensure that the best should choose a service of his/her choice and pursue the career in that cadre and develop expertise. Presently following specialized cadres are working in the federal government with their examination procedure given as below:

Competitive examination.- (1) The competitive examination shall be conducted by the Commission in respect of the Occupational Groups and Services consisting of-

- (a) Commerce and Trade Group;
- (b) Foreign Service of Pakistan;
- (c) Information Group;
- (d) Inland Revenue Service;
- (e) Military Lands and Cantonments Group;
- (f) Office Management Group;
- (g) Pakistan Administrative Service;
- (h) Pakistan Audit and Accounts Service;
- (i) Pakistan Customs Service;
- (j) Police Service of Pakistan;
- (k) Postal Group; and
- (l) Railways (Commercial and Transportation) Group.

23. There are total 12 groups of Civil Services in the Federal Government. Every cadre is promoted within their cadre; all the promotions are done within their departments up to 22 grades. It is clear that if a person is appointed in the postal group he will be promoted in his group up to 22-grade, his growth will be vertical.

24. The Ex-PCS cadre, are assigned with a post related to revenue, quasi-judicial, field posts and secretariat as

envisaged under Recruitment Rules and their job description approved by SPSC in Constitution with the S&GAD. Further deals with the basic administration and public service to the people at grassroots level like assessment and collection of land revenue and agricultural income tax (AIT), registration of property documents, price checking, ensuring the supply of food items in the market, checking, monitoring and execution of development schemes as an Assistant Commissioner, Deputy Commissioner, Commissioner of the division, supporting and strengthening the health, education, agriculture, livestock, forest, wildlife, social welfare, women development and their issues etc. Whereas the PSS officers on the other hand are assigned with Secretariat posts as envisaged in their recruitment rules and job description approved by SPSC in consultation with S&GAD.

25. The PSS officers after the initial exam, do not undergo further intensive mode of training, exams and viva voce and are appointed to a non-field posting according to recruitment rules. It is but worth mentioning that the officers of EX-PCS undergo comprehensive training in academy and field training so that they should understand the constitution, laws, rules, policies, instructions and the procedures of government. The Ex-PCS officers of all the provinces would get training at Academy and after its satisfactory completion; they get the field training of judiciary, land administration, working with police, treasury, banking sector and all other relevant departments of government. After completion of the field training, the officers are required to pass the examination of AC-I and AC-II for promotion to the next grade. The whole process of training polishes the officers and enables them to perform their duties properly and in the best possible manner. This process of training is on the same lines as that for the officers of the PAS at the federal level. The provision of PSS Rules, 1962 and recruitment Rules of 1963 as referred to

in the proceeding para provides the nature of job, recruitments and training.

26. Simultaneously a quick look has been focused upon Government of Sindh, Manual of Secretariat Instructions, 2010; wherein it has been provided in parameter 2 of sub-para vi) **“Section Officer”** means an officer who is in direct charge of a Section. The function of Section Officer has been derived in parameter 9, it provides as follows:-

The Section Officer will ordinarily be assisted by an Assistant and Steno typist.

Parameter 10 thereof also provides as follows:-

10. By virtue of being incharge of his Section/Branch, a Section Officer is primarily responsible for its proper working and maintenance of record. A Section Officer shall dispose of all cases where there are clear precedents, and no question of deviation from such precedents is involved or which under the rules or standing orders he is competent to dispose of. In case of doubt he may seek verbal instructions from his senior officer. He shall:-

- i. dispose of all cases pertaining to his Section/branch;***
- ii. super vise the work of ministerial establishment;***
- iii. train, help and advise them in performance of their functions and duties; and***
- iv. see that discipline and tidiness is maintained.***

27. There is much distinction in the discharge of professional obligation between the Ex-PCS Officer and the PSS Officers. That is to say, that powers conferred on Ex-PCS Officer are distinct PSS Officer as provided in the rules. The impugned Rules have been framed by the Executive against the sanction of law, with the sole object to defeat the judgments of the Hon'ble Supreme Court which had held that two cadres cannot merge together. The mechanism provided under Section 6, 7, 8 and 9 of the Sindh Civil Servant Act establishes how a civil servant will progress in his cadre. The

impugned Rules have allowed horizontal movement of PSS Officer by merging two cadres.

28. In the instant case the officers of PSS are claiming that since they were appointed through PSS hence they are entitled to the same benefits which are given to the EX-PCS. Initially, the PSS officers were appointed as Section Officers and their progression has to be vertical within the cadre under Section 8 and 9 of the Sindh Civil Servant Act as per their recruitment Rules. From above it is clear that the job description of Section Officer is primarily confined to Secretariat work and maintenance of record. A Section Officer shall dispose of all cases where there are clear precedents. He shall dispose of all cases pertaining to his Section/branch, supervise the work of ministerial establishment; train, help and advise them in performance of their functions and duties; and see that discipline and tidiness is maintained. Neither Job description nor recruitment Rules of PSS cadre are interchangeable with Ex-PCS Cadre.

29. As we discussed above job description of Ex-PCS and PSS officers which are distinct being independent cadres. They are not interchangeable. The requisite trainings in the two cadres are completely different. The Rules framed under Sindh Civil Servant Act 1973 do not permit horizontal movement/growth of PSS Officers. Section 8 and 9 speak of the progression within his cadre that too vertical. The Sindh Civil Servant Act 1973 cannot be overruled by the impugned PMS Rules 2018 framed under Section 26 of the Act.

30. The crucial issue whether Ex-PCS and PSS are two separate cadres within the meaning of Section 8 of SCSA has not been answered by the counsel for the respondents as well as learned AAG. The term "**Cadre**" has not been defined in the Civil Servant Act. In fact, this term has firstly been defined in Rule 9(4) of Fundamental Rules, 1922. The said

Rule defines "cadre" to mean "the strength of the service or a part of the service sanctioned as a separate unit. The term cadre then was incorporated in the Sindh Civil Services classification and requirement Rules 1952 hereinafter referred to (Rules 1952). This classification and principle of distinguishing **“service” “cadre” and “Post”** of Civil Servant have been given defined and remained in service structure to date protecting these terms under Section 8 of SCSA 1973. It has a compartmentalized service structure into “Service” “Cadre” and “Post” which are not interchangeable nor they can be merged. Rule 1952 brings distinction in both these cadres of Ex-PCS and PSS. (1) Recruitment Rules of both these cadres are different. (2) Training of both the Cadres are different (3) Departmental Examination are different. (4) Job descriptions are different (5) Distinction is also maintained in Sindh Gazette Civil service National Scales of pay after 1973 Constitution.

31. Besides aforesaid reasons the Hon’ble Supreme Court in its Judgment reported **2014 SCMR 1539** at Pages 1549-1550(Para 17) Bachal Memon case has held that without amending the Section 8 of SCSA the cadre cannot be merged. The observation in the case has been made at page 1553 paragraph-25, wherein it was held as under:-

25.....“Even if an attempt is made by the Provincial Government to provide for a change or merger of cadres this would have to be done in accordance with the provisions of section 8 of the Sindh Civil Servant Act, 1973, which relates to seniority or through legislation”

The Hon’ble Supreme Court in the case of Ali Azhar Balouch Reported in 2015 SCMR 456 at page 503, 504 and 505 (Para 111-114) has further held that a person who is appointed in one cadre and would be promoted/progress in his own cadre and could not horizontally move to another cadre. The Hon’ble Supreme Court has observed as under:-

“111.....This distinction of class has been specifically introduced by the legislature with the sole object that if a person is initially appointed in one service or cadre or post, his progression would remain in the same cadre, service of post. His vertical growth or progression shall remain within his class by compartmentalizing the Act which regulates his term of service. What is more interesting is that Section 5 of the Act does not vest any discretion in the Government to relax the Rules for change of cadre.....”

32. Section 8 of SCS Act 1973 even if amended by the Sindh Assembly could not confer power in the Act to merge two cadres in view of the judgment of Hon’ble Supreme Court reported in 2013 SCMR 1752 and 2015 SCMR 456 where their Lordship has held that Sindh Civil Servant Act 1973 has been legislated according to the mandate given by Article 240(b) and 242(1B) of the Constitution

33. Primarily PCS Executive Branch and PCS Secretariat Branch are two separate and distinguished cadres having separate seniority as provided under rule 9 of the Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975. Section 8 of the Civil Servants Act, 1973 is clear in its terms that; for the proper administration of service, cadre or post the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared. The concept of the term cadre has already discussed hereinabove. The Hon’ble Supreme Court in the case of Ali Azhar Baloch (supra) has held that provision of Article 242 of the Constitution which mandates the provincial Assembly to constitute a Public Service Commission for recruitment of the Civil servant by legislative instruments is the safety valve for induction of meritorious candidates.

34. The PMS Rules 2018 had amended Section 8 and 9 of the SCSA 1973 which was promulgated under Article 240(b)

of the Constitution, therefore these Rule ex-facie not only violative of the Act but also Article 240(b) and 242(1B) of the Constitution. In addition to this, the PMS Rules of 2018 have introduced a parallel mechanism for the appointment of PMS Officer negating the Appointment, Promotion and Transfer Rules, 1974 framed under the Sindh Civil Servant Act. Rules and Regulations are the progeny or offspring of a Statute and are to be strictly in conformity with the provisions of the Statute where under they are framed. It is a settled proposition of law that the Rules framed under a Statute are to remain within the precinct of the Statute itself and cannot transgress the limits and parameters of the parent Statute itself. All efforts are to be made to interpret the Rules to bring it in conformity and without injuring the intent and spirit of the Statute, where it is not possible then the Rules in as much as it is injuring the very intent and spirit which must yield to the Statute. This view finds support from a case reported as Ziauddin v. Punjab Local Government (**1985 SCMR 365 @ 368**), wherein it was held as under:-

“Rules framed under the statute could not go beyond and overreach the statute itself. To make implementation of statutory provision consistent harmonious directory effect must be given to requirement of Rule”.

In another case reported as Pakistan v. Aryan Petro Chemical Industries (Pvt.) Ltd. (**2003 SCMR 370**) in paragraph 11 of the judgment, it was held that **“This is a settled principle that a statutory Rules cannot enlarge the scope of the Section under which it is framed and if a Rules goes beyond what the Section completes, the Rule must yield to the Statute. The authority of the executive to make Rules and regulations to effectuate the intention and policy of the Legislature must be exercised within the limits of the mandate given to the rulemaking authority and the rules framed under an enactment must be consistent with the provisions of said enactment. The**

Rules framed under a statute if are inconsistent with the provisions of the statute and defeat the intentions of Legislature expressed in the main statute, same shall be invalid". Reliance is placed in the case of National Electric Power Regulatory Authority V. Faisalabad Electric Supply Company Limited **(2016 SCMR 550)**.

35. In the case of Khawaja Ahmed Hassaan V. Government of Punjab and others **(2005 SCMR 186)**. The Hon'ble Supreme Court of Pakistan has held that:- **"It is a well-recognized principle of interpretation of statutes that if the rules framed under the statute are more than the provision of the statute or are in contravention of or inconsistent with such provisions then those provisions must be regarded as ultra vires of the statute and cannot be given effect to"**. (Barisal Cooperative Central Bank v. Benoy Bhusan AIR 1934 Cal. 537; Municipal Corporation v. Saw Willie, AIR 1942 Rang 70, 74)". In the case of statutory Rules the Court can always examine the question as to whether the same are inconsistent with the Statue under which they are made. In this regard we are fortified by the dictum laid down in Hazrat Syed Shah Mustarshid Ali Al-Quadari v. Commissioner of Wakfs AIR 1954 Cal. 436. A rule-making body cannot frame rules in conflict with or derogating from the substantive provisions of the law or statute, under which they rules are framed. No doubt that the rules-making authority has been conferred upon the Government but "a rule, which the rule-making authority has power to make, will normally be declared invalid only on the following, grounds:-

- (1) Bad faith, that is to say that powers entrusted for one purpose are deliberately used which the design of achieving another, itself unauthorized or actually forbidden;
- (2) that it shows on its face a misconstruction of the enabling Act or a failure to comply with the conditions prescribed under the Act for the exercise of the power, and
- (3) that it is not capable of being related to any of the purposes mentioned in the Act, (Shankar Lal Laxmi Narayan Rathi v. Authority under Minimum Wages Act, 1979 MPLJ 15 (D.B).

Rules cannot go beyond the scope of the act M.P.Kumaraswami Raja AIR 1955 Mad. 326 nor can they, by themselves, enlarge the scope of statutory provisions. K. Mathuvadivetu v. RT Officer, AIR 1956 Mad. 143. They cannot also militate against the provisions under which they were made. (Kashi Parasad Saksena ro. State of U.P.AIR 1967 All. 173. There is no cavil with the proposition that “the power of rulemaking is an incidental power that must followed and not run parallel to the Act.

36. We are in agreement with the contention of the Learned Counsel for the petitioners that the original (CPD No.1898 of 2012) was confined to the framing of the Rules for the training of the PSS officers. It appears that this court was not properly assisted on this issue as there were Rules providing training to the PSS officers which were titled the West Pakistan Secretariat (Section Officers) Service Rules 1962. Instead, an issue which was already answered by the Hon’ble Supreme Court in the referred judgment was agitated with the ulterior motive to merge the two cadres which were distinct by framing the impugned Rules having no nexus with the merit. The Hon’ble Supreme Court without commenting upon the PMS Rules 2018 disposed of the Petition allowing the parties to approach the appropriate forum in case if they are aggrieved by the PMS Rules 2018.

37. In view of aforesaid discussion we are of the considered view that the PMS Rules 2018 are inconsistency with the judgment of Hon’ble Supreme Court in the case of Contempt Proceedings against Chief Secretary Sindh and others **(2013 SCMR 1752)** Muhammad Bachal Memon V. Tanveer Hussain Shah, **(2014 SCMR 1539)** and Ali Azhar Baloch **(2015 SCMR2 456)** and cannot hold the field. We further hold that PMS Rules 2018 are violative of Article 9, 139 (3) and 240(b) of the Constitution besides they are violative of Section 8 and 9 of Sindh Civil Servant Act 1973 and impugned Notification

dated 20.03.18 notifying the Sindh Civil Servants (Provincial Management Service) Rules, 2018 are declared ultra vires of the Constitution of Pakistan and Sindh Civil Servant Act 1973.

38. Consequently, both the Constitution Petitions are allowed in the above terms. Before parting with the judgment we direct the Sindh Government to frame separate training Rules for PSS Officers.

Judge

Judge