

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-4981 of 2023

(Aziz-ur-Rehman smair & others v Province of Sindh & others)

Date Order with signature of Judge

Before:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and Order: 31.12.2024

Syed Haider Imam Rizvi, advocate for the petitioners.

M/s Hakim Ali Shaikh and Sagheer Ahmed Abbasi, Additional Advocate General.

Ms. Aliya Manzoor advocate holds a brief for Mr. Sarfraz Ahmed Maitlo advocate for the applicants/Interveners.

Bhuromal, Additional Director (Law) SG&CD and Shaheen Bhaiyo, Section Officer, SGA&CD Karachi

ORDER

Mohammad Karim Khan Agha, J: Petitioners, Assistant Executive Engineers (AENs) in the Irrigation Department of Sindh, have challenged the non-implementation of a Departmental Promotion Committee (DPC) decision that recommended their promotion to Executive Engineer (XEN) in BS-18. The government's counsel argues that project posts are not reserved for promotions as per Recruitment Rules and are not included in the budget book, therefore, they should not be considered for DPC recommendations dated 27.10.2022 and it was the right decision of the Government of Sindh to the extent that minutes of the meeting of DPC were not approved by the competent authority vide letter dated 27.04.2023. Petitioners' counsel argues that this discrimination violates their rights and they are entitled to file a Constitutional Petition for implementation of DPC recommendations for promotion to the post of Executive Engineers BPS-18. He further submits that since the petitioners had retired from their services as such they are entitled to proforma promotion. Counsel for the petitioner however states that he does not press this Petition for all petitioners except Muhammad Sachal Naich, Ali Akbar, and Mahakamuddin Bijarani. He added that Petitioners 4, 6, and 8 were recommended for promotion to the next rank but denied the rest of the petitioners due to holding project posts, deemed ineligible for promotion, such stance of the respondents is erroneous and liable to be set aside.

3. As per learned AAG the aforesaid 03 petitioners were on project posts at the time when DPC dated 27 10 2022 was held and were low in seniority issued on 10.11.2023. He prayed for the dismissal of the instant petition. ➤

4. We have heard learned counsel for the parties and have perused the material available on record.

5. Since the petitioners stood retired from service as such this court can determine the issue of Proforma promotion which is a type of post-retirement promotion given to civil servants who were unfairly denied promotions during their service, i.e. Delays beyond their control, embargoes, or unjustified departmental proceedings, backdated monetary benefits (pay and allowances) of the higher rank, no reinstatement in the higher post or other active service benefits, and legitimate claim to the promotion based on meeting eligibility criteria and unjustified delay.

6. To appreciate the controversy from a proper perspective, we think it appropriate to have a glance at Rule 7-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 which is reproduced under:-

"7-A -(1) The appointing Authority may approve the promotion of an Officer or official from the date on which the recommendation of the Provincial Selection Board or, as the case may be, the Departmental Promotion Committee is made.

(2) Notwithstanding anything contained in rule 31 of the Sindh Civil Services Rules, the Officer of the official who expires or superannuates after the recommendations of the Provincial Selection Board of the Departmental Promotion Committee and before issuing the notification of promotion shall stand exempted from assumption of the charge of the higher post.

(3) The Accountant General in the case of an Officer and an officer authorized in this behalf in the case of an official will give a certificate to the effect that the officer or official has expired or superannuated.]"

7. From the above it is clear that a civil servant is entitled to proforma promotion. In this context, the Supreme Court of Pakistan in the case of Secretary Schools of Education and others v. Rana Arshad Khan and others (2012 SCMR 126) while granting Proforma promotion to retired public servants has held as under:-

"Much before the retirement of the respondents, a working paper was prepared by the department with regard to their promotion but the matter was delayed without any justifiable reason, and in the meanwhile, respondents attained the age of superannuation. They cannot be made to suffer on account of the departmental lapse."

8. The Supreme Court in the case of Federation of Pakistan through Secretary, Ministry of National Health Services Vs. Jahanzaib and others 2023 PLC (C.S.) 336 has held that if a person is not considered due to any administrative slip-up, error, or delay when the right to be considered for promotion is matured and without such consideration, he reaches the age of superannuation, then obviously the avenue or pathway of proforma promotion comes into the field for his rescue.

9. The Supreme Court in the case of Homeo Dr. Asma Noureen Syed Vs. The Government of Punjab and others 2022 SCMR 1546 has held that

a retired civil servant may be considered for a grant of proforma promotion, which was declined by the Service Tribunal and the matter was remanded to the Service Tribunal for decision afresh.

10. It is well settled that while considering the case of regular promotion of civil servants, the competent authority has to consider the merit of all the eligible candidates and after due deliberations, to grant promotion to such eligible candidates who are found to be most meritorious amongst them.

11. Since the petitioners were held to be juniors to their colleague who was promoted in BS-18, the petitioners were ignored by the respondent department on the analogy that the petitioners were recommended against project posts besides as per seniority list the petitioners were juniors in rank and the minutes of the meeting of DPC held on 27.10.2022 could not be approved by the competent authority as such the benefit of Rule 7-A supra does not favor the petitioners' case. On the aforesaid proposition, we are fortified by the decisions of the Supreme Court rendered in the cases of Dr. Syed Sabir Ali v. Government of Punjab through Secretary Health Punjab and others, 2008 SCMR 1535, Federation of Pakistan and others v. Amir Zaman Shinwari, Superintending Engineer, 2008 SCMR 1138 and Dr. Muhammad Amjad v. Dr. Israr Ahmed, 2010 SCMR 1466.

12. In the light of the position explained above, it is concluded that a civil servant has a fundamental right to be promoted even after his retirement by awarding proforma promotion; provided, his/her right of promotion accrued during his/her service but could not be considered for no fault of his/her own and meanwhile, he/she retired on attaining the age of superannuation without any shortcoming on his/her part about deficiency in the length of service or in the form of inquiry and departmental action was so taken against his/her right of promotion.

13. We for the aforesaid reasons disposed of this constitutional petition and direct the competent authority/respondents to take a fresh decision for proforma promotion of the petitioners within two months subject to the availability of vacancy in BPS-18 under Recruitment Rules without discrimination.

14. A copy of this order shall be sent to Chief Secretary Government of Sindh for compliance.

 31/12/24
HEAD OF CONSTITUTIONAL BENCHES

JUDGE


IN THE HIGH COURT OF SINDH AT KARACHI
(Constitutional Jurisdiction)

Constitutional Petition No. D-4981 of 2023

13-10-2023

[Signature]
Additional Registrar (Writ)

1. Aziz Ur Rehman Simair,
son of Muhammad Hassan Simair,
Muslim, adult, resident of Sultan Pur, Taulka Pano Akil,
Sukkur
2. Ghulam Asghar Almani,
son of Haji Doda Khan Almani,
Muslim, adult, resident of Village Shadi Khan Almani,
Taulka Kandiara,
Naushferoz
3. Saleem Ahmed,
son of Ahmed Jamaluddin Shaikh,
Muslim, adult, resident of House No. C-102, near
Farooqi Masjid, Gulistan-e-Sajad,
Qasimabad, Hyderabad

*Not Pressed
M/28/12/23*

4. Muhammad Sachal Naich,
son of Allah Wadhayo Naich,
Muslim, adult, resident of Village Dodo Naich,
Taulka Mirpur Mathelo,
District, Ghotki

5. Zirgham Ali,
son of Qurban Ali Rajpar,
Muslim, adult, resident of Rajpar House,
Lahori Muhalla,
Larkana

*Not Pressed
order dated
M/28/12/23*

6. Ali Akbar,
Muslim, adult, son of Sahib Dino,
resident of P.O Adil Pur,
Changlani, Ghotki

7. Mola Bux Leghari,
son of Misri Khan,
Muslim, adult, resident of House No.12,
Doctors Colony, Heerabad,
Hyderabad

*Not Pressed
order dated
M/28/12/23*

8. Mahakamuddin Bijarani,
son of Jhangal Khan,
Muslim, adult, resident of House No.451,
Gulshan-e-Shahbaz Colony,
Kotri, Jamshoro

9. Jawed Ahmed Memon,
Son of Abdul Hafeez Memon,
Muslim, adult, resident of Kaka Mohallah,
Halla New District,
Matiari
10. Ramesh Kumar Khatri,
son of Bhagwandas Khatri,
Hindu, adult, resident of Village Ghulam Nabi Shah,
P.O, Pithoro, Umerkot

*Not Pressed
order dated
M/28/12/23*

11. Syed Mutahir Ali Shah,
son of Syed Muzzafar Ali Shah,
Muslim, adult, resident of House No. B-64, Naseem Deluxe
Banglows, Qasimabad,
Hyderabad

NOT PRECISED
3
36/1-34
Petitioners

Versus

1. Province of Sindh,
through Chief Secretary,
Government of Sindh,
Karachi.
2. Irrigation Department
through its Secretary,
having office at _____,
Karachi.
3. Services, General Administration
& Coordination Department (SGA&CD)
through its Secretary (Services),
having office at _____,
Karachi.

Respondents

**CONSTITUTION PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF PAKISTAN, 1973**

1. That the Petitioners are law abiding and bonafide citizens of Pakistan who have always acted in accordance with law and are entitled for the protection and enforcement of their fundamental and constitutional rights guaranteed under the Constitution of Pakistan, 1973. The Petitioner are presently working as Graduate Assistant Executive Engineers Civil (BS-17) with the Irrigation Department, Government of Sindh. The Petitioners maintain an immaculate and unblemished service record. The instant Petition is being filed for the implementation and enforcement of the decision taken by the Departmental Promotion Committee ("DPC") of the Irrigation Department in its meeting held on 27-10-2022 ("the Subject Decision") through which Petitioners were promoted as Executive Engineers Civil (BS-18), however, the Subject Decision has not been implemented despite of a lapse of almost one year in blatant and flagrant violation of the fundamental rights of the Petitioners.

Copies of the Appointment Letters of the Petitioners are filed
herewith and marked as Annexures "P-1 to P-11"