

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Constitutional Petitioner No.D-1257 of 2024

(Old C.P No.D-1459/2023/Hyderabad)

(Muhammad Hakim Vs. Province of Sindh & others)

DATE ORDER WITH SIGNATURE OF JUDGE (S)

Before:

Adnan-ul-Karim Memon, J.

Amjad Ali Bohio, J.

Date of hearing and order 23.09.2024

Petitioner Muhammad Hakim in person

Intervener Shahabuddin in person

Mr. Muhammad Sharif Solangi Assistant Advocate-General Sindh
a/w Syed Imran Hyder Shah Chief Officer District Council, Local
Government, Mirpurkhas, respondent No.5.

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ORDER

Adnan-ul-Karim Memon, J. The petitioner Muhammad Hakim, through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan seeks directions to the respondents to consider his promotion as per his seniority in the Local Government Department, Government of Sindh.

2. The petitioner who is present in person has submitted that he was appointed as Junior Clerk, (BPS-05) and earned a promotion to the post of Accountant (BPS-11). However, the said post was upgraded from BPS-11 to BPS-14, but the petitioner was ignored. Petitioner claims that he raised his voice of concern for his seniority and promotion vide letter dated 25.06.2019; however, his application has not yet been decided. Petitioner further submitted that on 12.01.2023 a tentative list of seniority was prepared, but his name was not included in such seniority list. He further submitted that the Finance Department has already upgraded all posts from BPS-11 to BPS-14; however, he has been deprived of his legitimate rights. He prayed for directions to the respondents to streamline his service structure for the post of Accountant in District Council Mirpurkhas and resolve the issue of upgradation, seniority, promotion, and allowances.

3. The aforesaid stance has been objected to by intervener Shahab-ul-Din on the premise that the petitioner is not entitled to the relief by referring to the grounds agitated by him in the application under order 1 rule 10 CPC (M.A No.11287/2023) and prayed for dismissal of this petition. For that, the petitioner has referred the order dated 19.08.2024 passed by this Court in C.P No.D-773 of 2024, whereby his petition was dismissed.

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

5. Since the petitioner and intervener are at loggerhead on the subject issue of seniority/promotion and other ancillary relief(s); therefore, their matter needs to be taken care of by the competent authority, if their grievance still subsists.

6. We are of the considered view that if the dispute between the petitioner and intervener is under the realm of law related to service and there is no element of public law, the normal course for the aggrieved party is to invoke the remedies provided under ordinary civil law or before the civil administration of the respondents at the first instance, rather than approaching this Court under Article 199 of the Constitution and invoking its extra-ordinary jurisdiction. It is well settled now that if an order is passed by this Court which is against the basic spirit of the judgment of the Supreme Court, the same cannot be enforced under Article 199 of the Constitution; as such, no premium can be given to either party. This Court under Article 199 of the Constitution cannot direct the respondents to change the policy and streamline the service structure for the post of Accountant in District Council Mirpurkhas, which is a policy decision, and no interference at this stage is required. However, the ancillary issues as agitated by the parties need to be resolved by the competent authority of the respondent department at their end.

7. In view of the above facts and circumstances of the case and for the reasons discussed above, we are satisfied no case for indulgence of this Court is made out under Article 199 of the Constitution. Thus, we are not minded to proceed further on the subject issue.. Accordingly this petition is dismissed along with pending applications with no order as to costs,

leaving the parties to raise their grievances before the competent authority of the respondents within the parameters of law.

JUDGE

JUDGE

Ali Sher