

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-6085 of 2024
(Zubair Ahmed Abro v Government of Pakistan & others)

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| Date | Order with signature of Judge(s) |
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Before:-

Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order: 14.1.2025

Mr. Israr Ahmed Abro advocate for the petitioner along with petitioner
Ms. Zehra Sehar Vayani, Assistant Attorney General
Mr. Shakeel Qadeer, Director Ministry of Planning

Adnan-ul-Karim Memon J:- Petitioner prays that this court order for the up-gradation of the petitioner's scale from LDC to Ministerial Assistant, considering his qualifications and 7 years of service, and order for grant of his pay protection in the aforesaid post.

2. The petitioner claims that he was appointed as a Ministerial Assistant in 1999 on a contract basis under the deceased quota. The quota's extension was granted multiple times. In 2005, the petitioner was informed that extensions were not permissible. However, the petitioner applied for various positions (Ministerial/Special Assistant, KPO, UDC) multiple times, and participated in tests/interviews, but was never selected. It is averred that on February 16, 2006, the petitioner, who had served seven years as a Ministerial Assistant (BPS-11) on a contract basis, was offered an appointment as an LDC (BPS-05) in the Bureau of Statistics department. The petitioner alleges that this appointment is unfair and discriminatory, as his colleague, Saima Rashid, was appointed to a higher position (UDC BPS-07) on the same date, however, he was ignored which is illegal. He submitted that the respondent department engages in unfair practices, such as adjusting surplus employees from other departments and seeking No Objection Certificates (NOCs) from employees, including the petitioner. The petitioner also alleges that the respondent department has not provided clear information regarding his pay protection as discussed supra, despite requests to the Finance Department. Petitioner, with a Master's degree and 25 years of service, seeks regularization of his service as Ministerial Assistant BPS-11. Despite qualifications and service, the respondent department consistently denies the request of the petitioner, offering false hopes. Petitioner also requests pay protection, which colleagues receive, but is denied to him without any cogent reason. Perhaps this is despite an Office Memorandum from the Finance Division in 2013 regarding pay protection.

3. The learned counsel for the petitioner argues that the petitioner has a Master's degree and has served for 7 years on the subject post. He claims the

department has repeatedly denied him a promotion despite his qualifications. As per the learned counsel, the petitioner was advised to apply for promotions when the post was/is advertised, leading to the filing of this petition. Learned counsel for the petitioner has contended that the petitioner, with a Master's degree and 7 years of service as an LDC, applied for up-gradation to the post of Ministerial Assistant; that the respondent department repeatedly denied upgradation and advised the petitioner to apply for advertised positions; that the department offered the petitioner a contract as an LDC while appointing a colleague, Saima Rashid, as a Ministerial Assistant, which the petitioner's counsel argues is unfair and illegal and demands similar treatment to be meted out with the petitioner. In Support of his contention he relied upon the cases of Aurangzeb and another v Federation of Pakistan 2019 PLC (C.S) Note 30, Javed Khan and others v Federation of Pakistan and others 2023 PLC (C.S) 1280 Federal Public Service Commission and another v Anwar-ul-Haq and others 2017 SCMR 890, Muhammad Hassan Kakar and others v Vice Chancellor University of Balochistan Quetta and others 2023 PLC (C.S) 938, Secretary Ministry of Finance Islamabad and others v Tayyaba Halim Subhani and others, Divisional Superintendent Postan Services Faisalabad and others v Khalid Mahmood and others 2023 SCMR 354 and an unreported judgment passed by this Court on 15.12.2021. He lastly prayed for allowing the instant petition.

4. Learned Assistant Attorney has failed to file comments to rebut the allegations, however, she prayed for the dismissal of the petition.

5. We have heard the parties and perused the material available on record.

6. The case of the petitioner is that his service needs to be regularized from March 24, 1999, as a Ministerial Assistant, citing similar benefits granted to his colleagues on the premise that his service started as a Ministerial Assistant on contract in 1999. The Contract extended till March 24, 2006. However, in the intervening period, he was offered the position of a Clerk (regular) on March 24, 2006, and claims that the department recommended pay protection for the petitioner in the lower grade (LDC) considering his previous contract service, now requesting seniority and pay protection, as a Ministerial Assistant, and other benefits granted to similar to other employees. However, the respondent department rejected the petitioner's request for pay protection for the contract period (24.03.1999 to 24.03.2006) vide letter dated 28.11.2024. Furthermore, his appointment to a lower position (LDC) was denied by the competent authority as it did not meet the conditions set by the Finance Division.

7. This circular dated 13.5.2013 outlines guidelines for protecting the pay of contract employees upon regularization or regular appointment. The key conditions of the circular are that contract appointments must adhere to the

Establishment Division's standard terms and conditions. Proper application and relief procedures must be followed (except for regularization on the same post). Regularization/appointment must have competent authority approval. No breaks should exist between contract and regular service. Contract service does not qualify for pension/gratuity. Pay protection does not apply to lower-grade regular appointments. However it appears from the record that the service of the petitioner was hired in the year 1999 as a Ministerial Assistant in BPS-11 and Government Rules were made applicable in his case and his appointment on the subject post continued till the post was filled regularly vide office order dated 28.11.2005, however on departmental appeal the respondent department opined that the contractual employees had been occupying the regular post and Rules did not allow for the extension of period again and again and due to this reason the petitioner was offered another lower post of LDC BPS-05 in the year 2006 along with his colleague Ms.Saima Rashid in the year 2005 as UDC BPS-07, Syed Safdar Abbas (Book Binder BPS-02) and proposed for regular appointment of the petitioner and his colleagues on the aforesaid post vide letter dated 04.09.2004. The respondent department vide letter dated 24.09.2024 examined the case of the petitioner in the light of OM dated 13.05.2013 and clarification letter dated 06.03.2014 which reveals that there was/is no provision of consideration after the issue of OM and will take effect from the date of its issue i.e. 31.05.2013, however, the case of the petitioner was distinguished with the recommendation that his pay may be protected in lower grade with the addition of the period in the higher grade.

8. Primarily pay protection aims to safeguard the petitioner's income during certain organizational changes which involve maintaining his current pay level for a specific period if his role or responsibilities change in a way that might otherwise result in a lower salary. However, in the present case, there is no dispute that the petitioner was appointed as Ministerial Assistant on 24.03.1999 and his contract period was extended till 24.03.2006 when he was appointed LDC regularly with effect from 20.02.2006 whereas the competent authority under the policy decided that the service of contract employees were regularized under office letter dated 02.05.2011 regarding pay protection and the similar benefits were given to the colleague of the petitioner one Sattar driver and one Aurangzeb Statistical Assistant, Syed Safdar Abbas Zaidi Book Binder and Ms. Saima Rashid UDC. If this is the position of the case the service of the petitioner as Ministerial Assistant remained without break and thereafter through proper channels, he was appointed as UDC in 2006 therefore his pay protection and gradation issue needs to be looked into under the policy decision of the Finance Department Government of Pakistan without discrimination.

9. Primarily, this disparity in pay protection is discriminatory, amounting to a violation of fundamental rights guaranteed under the Constitution of 1973. The Prima facie, the respondent-Finance Department vide policy decision dated 13.5.2013 has already granted the relief to the colleagues of the petitioner and the petitioner cannot be left in the lurch and it is, therefore, the respondent department as a whole is a class in itself and must be treated alike, in terms of Articles 3, 37 (d), and 38(e) read with Article 25 of the Constitution 1973. On the aforesaid proposition, we are guided by the decision of the Supreme Court rendered in the cases of *Government of Balochistan v. Azizuallah Memon* **PLD 1993 SC 341** and *Attiyya Bibi v. Federation of Pakistan* **2001 SCMR 1161**.

10. To elaborate further on the subject point of law, Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, guarantees equal treatment to all persons similarly placed. In terms of Article 27 of the Constitution, no citizen in the service of Pakistan or other persons shall be discriminated against in any manner. Article 27 of the Constitution does not only safeguard against discrimination at the time of appointment of service but after the appointment as well. The disparity in the pay scale allowances of Stenographers in the District Judiciary is in the clear negation of the law laid down by the Supreme Court in its various pronouncements.

11. In the light of the above facts and circumstances of the case, and in addition to the jurisdiction conferred upon this Court under Article 199 (1)(c) of the Constitution 1973, we deem it appropriate to direct the competent authority of respondents, to take a fresh decision after providing meaningful hearing to the petitioner, within three months, without discrimination.

JUDGE

JUDGE