

IN THE HIGH COURT OF SINDH, AT KARACHI

CPD 4649 of year 2023

(Muneer Ahmed Tunio Versus Province of Sindh & others)

PRESENT:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA

MR. JUSTICE NISAR AHMED BHANBHRO

Petitioner: Mr Ali Asadullah Bullo, Advocate

Respondents: Mr Ali Safdar Debar, Learned Additional Advocate
General Sindh

Date of Hearing: 07.03.2025

Date of Order: 14. 03.2025

NISAR AHMED BHANBHRO J. Through instant petition, the Petitioner seeks following relief(s):

- a). To hold and declare that impugned order dated 21.07.2023 is illegal, unlawful, void ab-initio, having been passed in violation of the principles of natural justice, ultra vires of all applicable service rules and specifically in violation of the provisions of Rule 12(a) of the Sindh Civil Servants (Probation, Confirmation and Seniority) Rules 1975 consequently to set-aside the same forthwith.
- b). To direct the respondents to maintain the seniority position of the petitioner as per his regular service since June, 1990.
- c). Pending adjudication of instant petition, the respondents be restrained from convening the meeting of DPC and/or to direct the respondents to reserve one seat for the petitioner.
- d). Grant of this petition and any other relief(s) which this Hon'ble Court may deem fit for the disposal of instant case."

2. The brief facts of the petitioner's case are that he was appointed as an Assistant (BPS-11) in the Sindh Arid Zone Development Authority in year 1990. He was promoted to the position of Superintendent (BPS-16) in year 1995. On 12.11.2002, the Respondent No. 1 (Government of Sindh) issued a letter for winding up of the Sindh Arid Zone Development Authority, rendering the Petitioners' services surplus. Consequently, his services were placed at the disposal of Respondent No. 3 (Services, General Administration & Coordination Department, Government of Sindh). On 24.04.2004, the the services of petitioner were absorbed in the office of Provincial Ombudsman against a vacant post of Assistant Registrar (BPS-16) at the Regional Office, Hyderabad. He subsequently joined the office of Provincial Ombudsman in Karachi on 11.05.2004. The Petitioner was transferred vide orders dated 28.02.2006 and posted in the office of Executive District Officer Finance and Planning in the District Government, Matiari. The Petitioner remained posted there until 2015, in the intervening period petitioner filed Constitution Petition No. D-2886 of 2012 before this Court seeking a declaration that he was a permanent employee of Respondent No. 2 by virtue of transfer to the District Government, Matiari. Learned Division Bench of this Court disposed of the Petition, vide Order dated 22.05.2015, with direction to the Respondents to release his salary and allow him to join in the Office of the Provincial Ombudsman. The petitioner rejoined the office of Provincial Ombudsman on 28.05.2015. The Respondent No. 2 issued a tentative Seniority List of Assistant Registrar (BPS-16) on 07.03.2019 placing the name of Petitioner at Serial No 03 and showing his date of appointment as 28.05.2015. The Petitioner filed objections against the tentative Seniority List, Respondent No. 2 rejected the representation of Petitioner vide order dated 21.07.2023, followed by issuance of Final Seniority List maintaining the name of petitioner at serial No. 3 on bottom by recording his date of appointment as 28.05.2015. The petitioner then filed an appeal before the Governor of Sindh, which was also declined. Hence this petition.

3. The Respondents No. 2, 4 and 5 on notices filed their joint written statement, primarily raising the ground that the office of the Provincial Ombudsman, Sindh, is

governed by the Provincial Ombudsman (Employees) Service Rules, 1997. Rule 20 of the said Rules specifies that the Sindh Government Servants (Conduct) Rules, 1966, and the Sindh Civil Servants (Efficiency & Discipline) Rules, 1980, shall, subject to Schedule-II, apply mutatis mutandis to the employees of the office of the Provincial Ombudsman. The applicability of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1980 brings employees of office of Provincial Ombudsman within the definition of Civil Servant, therefore the writ jurisdiction of this Court is barred under Article 212 of the Constitution. The Petitioner filed appeal against the tentative list with delay, he did not file any objections against the final seniority list issued in 2023, therefore he cannot seek relief under writ jurisdiction of this Court. The petitioner was transferred in Finance and Planning Department, Government of Sindh, in year 2006, where he remained posted for about more than Nine years. He preferred a petition before this Court seeking regularization of his service in the said department. Petitioner was not an employee of office of Provincial Ombudsman, his date of appointment was rightly recorded in the Seniority List as 28.05.2015 as he joined the office on the said date. The petitioner served in the Provincial Ombudsman Department only for a period of about 16 months, he is not entitled for any relief, the petition merits dismissal.

4. The Respondents No. 1 and 3, in their reply, stated that the petitioner was an absorbee and employee of the Provincial Ombudsman, his services are governed by the Provincial Ombudsman (Employees) Service Rules, 1997, the Respondents No 1 and 3 are proforma Respondents as the matter pertains to the office of Provincial Ombudsman.

5. The Respondent No. 12, in his reply, stated that the petitioner voluntarily discontinued services in the office of Provincial Ombudsman by submitting an application dated 03.10.2005 for repatriation to the Services, General Administration & Coordination Department, Government of Sindh, which was allowed on 16.11.2005. The Petitioner was subsequently posted as Deputy District Officer (Finance & Planning Department), District Government, Matiari, for a period of more than nine years. Since

Petitioner did not serve in the office of the Provincial Ombudsman, he was not entitled to Seniority as claimed.

6. The Respondents No. 06, 07, 09, 10, 11, 13, 16, 17, 18, and 20 have submitted their replies separately, wherein they have made the same submissions to that of Respondent No 12. The remaining private respondents, in their statements, have asserted that they have no concern with the issue agitated by the petitioner.

7. Mr. Ali Asadullah Bullo, Learned Counsel for the Petitioners contended that the Petitioner was an employee of Defunct Sindh Arid Zone Authority (SAZDA), his services were rendered surplus by the Government of Sindh in year 2002 on winding up of the SAZDA. He was later absorbed in the Provincial Ombudsman Department where he worked for short period of time, then transferred on deputation to District Government Matiari. He joined back parent department in year 2015, but his Seniority was not counted in accordance with law, his appeal was summarily rejected without attending his objections. The Petitioner was Public Servant being governed by Provincial Ombudsman (Employees) Service Rules 1997, which are statutory in nature and any action taken by the authority is amenable to the writ jurisdiction of this Court, he prayed for allowing of this Petition. He placed reliance upon the case of **Ali Azhar Baloch versus Province of Sindh and others** reported in **2015 SCMR 456**.

8. Mr Ali Safdar Depar Learned Additional Advocate General Sindh opposed this Petition being not maintainable in terms of Article 212 of the Constitution, per his contention the Petitioner was a Civil Servant and Seniority falls within the definition of terms and conditions of the Service, the remedy by way of filing service appeal before competent forum was available under the law. He contended that the Department has dealt with Petitioner in accordance with law, there is no illegality or irregularity in the impugned order warranting interference by this Court. He prayed for dismissal of this Petition.

9. Heard Learned Counsels for the Parties, examined material on record.

10. Before adjudicating on merits, the question of maintainability of the instant petition, in terms of Article 212 of the Constitution would be addressed. Though Learned Counsel for the Petitioner has resisted objection of maintainability raised by Learned AAG contending that the Petitioner was a public servant, but no proper assistance has been rendered in that regard. The Petitioner was an employee of Defunct SAZDA, which was established by the Government of Sindh by Act No II of 1985 (Sindh Arid Zone Authority Act 1985) for the development of Arid Zones in Sindh. The appointments of Officers and Staff were made in terms of Section 10 of the said Act, and the services of the employees were being governed under the rules framed by the Authority. SAZDA which was an independent entity owned by the Government was dissolved and its employees were placed in surplus pool. Since the services of Petitioner were being governed under statutory rules of the then SAZDA and after his absorption in office of the Provincial Ombudsman his services were being governed by Provincial Ombudsman (Employees) Rule 1997, thus did not fall within the category of a Civil Servant defined in section 2 of the Sindh Services Tribunal Act 1973. He was appointed in an Authority as a public Servant and performing his job in an organization viz. Provincial Ombudsman Secretariat having statutory rules to regulate the services of employees, thus any actions on the part of authority were amenable to the writ jurisdiction of this Court under article 199 of the Constitution.

11. Adverting to the moot issue involved in the petition regarding counting of service of the Petitioner in the new Cadre of Provincial Ombudsman Secretariat. Admittedly Petitioner was working in SAZDA, when his services were rendered surplus, vide orders dated 17.09.2003 and absorbed in the office of Provincial Ombudsman vide orders dated 24.04.2004 which he joined. The absorption of the Petitioner in the Secretariat of Provincial Ombudsman came because of the winding up of SAZDA. The effects of absorption of a surplus civil servant are explained in Rule 9 – A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974 for the ease of reference the said Rule is reproduced herein below:

9-A. *Notwithstanding anything contained in these rules a person who has been rendered surplus, on account of abolition of a post he was holding in any office or department of the Government or any autonomous body or, on account of permanently taking over the administration of such autonomous body wholly or partially by the Government may be appointed to any post in any department or office of the Government, provided that:-*

- (i) Such persons possess such qualification as are laid down under rule 3(2), for appointment to such post;*
- (ii) Such person shall be appointed to a post of equivalent or comparable Basic Scale and if such post is not available, then to a post of lower Basic Scale;*
- (iii) Seniority of such person in the new cadre shall be reckoned from the date of appointment in that cadre; and*
- (iv) Previous service, if not pensionable, shall not count for pension and gratuity unless government directs otherwise.*

Reading of sub rule (iii) reflects that Seniority of the surplus employee in the new cadre shall be reckoned from the date of appointment in that cadre.

The Petitioner was rendered surplus on 24.04.2004 and appointed in the cadre of Assistant Registrar BS -16 in the office of Provincial Ombudsman on 20.05.2004, which will be the date counted for the purposes of his Seniority in the present cadre as Assistant Registrar. The issue of repatriation, absorption has been dealt by the Honorable Supreme Court in Landmark Judgments of **Ali Zahra Baloch** case Supra and **Criminal Suo Moto Review Petition versus the Chief Secretary Government of Sindh** reported in **2013 SCMR 1752**.

12. It appears that the office of the Provincial Ombudsman is misguided by the transfer order dated 28.06.2005 issued by the Chief Secretary to Government of Sindh, whereby Petitioner was sent to serve on Own Pay Scale basis to Finance & Planning Department District Government Matiari. This order per contention of the Learned AAG was a repatriation order which discontinued the services of Petitioner in his parent

department. The contention of Learned AAG, cannot sustain because the services of Petitioner were transferred on deputation basis under own pay scale to District Government Matiari, the same by no means absorbed his services in Finance & Planning Department. The Petitioner though performed his duties in the office of District Government Matiari but by operation of earlier order of absorption he was a permanent employee of Secretariat of Provincial Ombudsman.

13. The issue of the Posting, Transfer, Seniority and Promotion was in essence an internal dealing of the concerned Department, and it must be settled within the department strictly in accordance with the Rules. The Courts of Law sparingly interfere with the internal affairs of the Government Departments, only when it appears that the Authority at the helm of affairs has failed to retain the good governance and acted beyond the bounds of law. The impugned action of fixing Seniority has resulted into infringement of rights envisaged under the law. The administration should resolve the issues of inter se seniority of the employees at their own and only matters requiring legal interpretation may come to the Courts of Law. The Office of the Provincial Ombudsman has been established to redress the grievances of public, must ensure that its employees are dealt strictly in accordance with law, within the statutory timeline, which we feel is lacking in the case of Petitioner, calling for interference by this Court.

14. We have examined the Final Seniority List (available at page number 75 of the memo of Petition) issued by the office of the Respondent No 2 wherein the name of the Petitioner has been placed at Serial Number No 16 on bottom showing his date of appointment as 28.05.2015 and the impugned order dated 23.09.2021 (available at page number 93 of the memo of the petition) turning down his representation, We find that the Final Seniority List has been framed on a wrong premise and the appeal of the Petitioner has been declined through a non-speaking order by mere words that the Competent Authority did not agree with the grounds presented with the claim and without attending to the objections raised by the Petitioner, thus are not sustainable under the law and need to be revised. It is necessary to mention here that the revising of

the Seniority List may bring the name of the Petitioner at top or otherwise but it will by no means confer a vested right of promotion to the Petitioner to the next higher grade, which shall be considered by the Department in accordance with the applicable Service Rules. We are fortified in our view by the dicta laid down by Honorable Apex Court in the case of **Kashif Aftab Ahmed Abassi Versus Federation of Pakistan through Secretary Establishment Division Islamabad** reported in **2022 SCMR 1618**.

15. Sequel to the above discussion We are of the irresistible conclusion that the Seniority List dated 21.07.2023 and the order dated 23.09.2021 are passed without any legal justification and are consequently set aside, the Petition is allowed, the Respondent No 2 is directed to revise the Seniority List of the Assistant Registrar BS -16 and fix the Seniority of Petitioner as per his actual date of appointment in the Provincial Ombudsman Secretariat which is 20.05.2004.

The Petition stands disposed of with pending applications if any.

Judge

Head of the Constitutional Bench