

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Constitutional Petition No.D- 286 of 2024.
(Shah Jahan Bhatti v. P.O Sindh and others)

DATE OF HEARING ORDER WITH SIGNATURE OF HON'BLE JUDGE

BEFORE:

Mr. Justice Muhammad Saleem Jessar.
Mr. Justice Adnan-ul-Karim Memon.

Date of hearing & Order : 19.03.2025.

Mr. Sharjeel Sattar Bhatti, advocate a/w petitioner.

Mr. Liaquat Ali Shar, A.A.g a/w Altaf Hussain, Deputy Director Primary, Larkana, and Qalander Bux Mugheri, AEO (Primary) Kamber.

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ORDER

Adnan-ul-Karim Memon, J:- Petitioner requests direction to the respondents to promote him to the post of Junior Clerk, BPS-11 based on seniority and experience, setting aside the illegal promotions of junior employees.

2. The case of the petitioner is that he was employed as a Naib Qasid since 2007, and was unjustly denied promotion to Junior Clerk BPS-11, despite the promotion of less senior and less qualified colleagues. (Annexures A & B). Respondents 2 & 3 obstructed the petitioner's ability to challenge these promotions by withholding copies of the relevant orders. The petitioner applied for promotion, mirroring his colleagues, but was ignored. (Annexure C). The petitioner then obtained a promotion order for a junior colleague (Respondent 4, dated 25.03.2024), demonstrating favoritism. (Annexure D). Despite his seniority and clean record, the petitioner's requests for promotion were disregarded, with junior promotions appearing to be based on political influence. (Annexure E). These actions caused distress and violated natural justice.

3. The learned counsel for the petitioner contends these actions are illegal, necessitating legal intervention. Having exhausted other remedies, the petitioner seeks the court's extraordinary jurisdiction to rescue him from such tyranny.

4. Respondent No. 3 confirms the petitioner's 2007 recruitment. He added that Promotion required passing a mandatory typing test. The petitioner ranked

104th, while only the top 50 candidates were held eligible. Therefore, he was not promoted. (Typing test results enclosed). Respondent No. 3 asserts that the petitioner's statement acknowledges promotions were based on qualification, seniority, and fitness. Respondent No. 3 denies the petitioner's claim of requesting promotion orders, stating he never visited their office. The application for promotion was addressed to Respondent No. 2, the Director of School Education Primary Larkano, and the competent authority. Respondent No. 3 submitted that the petition is not maintainable as the petitioner failed the typing test.

5. Respondent No. 4 claimed that he joined the service in 2009 and possesses educational qualifications including SSC, HSC, BA, and MA. Promotions to Junior Clerk (BPS-11) were conducted according to Sindh government promotion rules (Notification dated 17th February 2022) and in compliance with Sindh Service Tribunal (SST) appeal decisions regarding seniority (Notification dated 14/02/2023). Promotions were made based on the Departmental Promotion Committee's recommendations (Order dated 25/03/2024, Annexure "A"). Respondent No. 4 points out that the petitioner, Naib Qasid, joined in 2007 on a contract basis with primary education, and later obtained SSC and HSC qualifications.

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

7. Eligibility for promotion is determined by service terms, while fitness is a subjective assessment based on objective criteria. Although civil servants have a right to be considered for promotion, promotion itself is not a guaranteed right. There is no inherent right to promotion or specific promotion rules. The Supreme Court has consistently held that: A civil servant can only claim the right to be considered for promotion, not to be promoted on a specific date or to a specific post. The government has the authority to determine academic qualifications for promotion. The government can create and amend service rules for efficient service. Promotion eligibility is an administrative matter for the government, and courts should not interfere. Promotion policies can be changed by the government, and promotion is not a vested right. Recruitment policies are within the competent authority's domain and are not subject to judicial review unless they violate vested rights or laws.

8. At this stage, the petitioner's counsel countered, presenting evidence that a co-worker, Tariq Hussain Jalbani (ranked 37th with 36 marks), and other

colleagues were promoted despite the petitioner achieving 47 marks, as such he pleaded discrimination. If this is the position of the case, let this aspect of the case be taken care of by the Secretary, of Education to the effect of whether the colleagues of the petitioner were rightly promoted and he was ignored based on merit or otherwise. Such a decision shall be made within two months.

9. As a result of the above discussion, this petition is disposed of in the above terms.

~~JUDGE~~ JUDGE
19/3/2005