

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-1344 of 2024

(Altaf Hussain Awan v Province of Sindh & others)

Constitutional Petition No. D-1345 of 2024

(Muhammad Juman v Province of Sindh & others)

Constitutional Petition No. D-1346 of 2024

(Mumtaz Ahmed v Province of Sindh & others)

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:- 24.03.2025

Mr. Akhtar Hakeem advocate for the petitioners.

Mr. K.A Vaswani, Assistant Advocate General along with Naveed Ahmed Focal Person.

ORDER

Adnan-ul Karim Memon, J: Through these constitutional petitions, Petitioners have prayed for a direction to Respondent No.1 to promote the petitioners as a proforma promotion and to give them emoluments and pensionary benefits.

2. This case presents a situation where three petitioners, Altaf Hussain Awan, Muhammad Juman Baladi, and Mumtaz Ahmed, all former educators, contest their retirement without being promoted to BPS-19, despite alleged preparations and completed training for the same.

3. Petitioner Altaf Hussain Awan started as PST, progressed to HST, Subject Specialist (BPS-17), and finally Assistant Professor (BPS-18). Retired on 31.10.2021. Petitioner Muhammad Juman Baladi started as HST and progressed to Subject Specialist (BPS-17), and Assistant Professor (BPS-18). Retired on 9.8.2021. Petitioner Mumtaz Ahmed started as PST and progressed to Subject Specialist (BPS-17), and Assistant Professor (BPS-18) and retired on 17.06.2021. All three petitioners were promoted to Assistant Professor (BPS-18) on the same date, 29.05.2018.

4. The petitioners' lawyer argues that the education department's 'working papers' are key evidence, proving the promotion process to BPS-19 was underway and the petitioners were deemed qualified. These papers, created upon board members' recommendations, indicate the promotion was not speculative but officially endorsed. Furthermore, the petitioners fulfilled all prerequisites by completing mandatory training in April 2021.

5. The central issue is the department's unexplained delay, which led to the petitioners' retirement before their rightful promotion. This delay, the petitioners submit, constitutes administrative negligence, denying them

deserved career advancement and impacting their retirement benefits. The petitioners assert that the department's actions violated their legitimate expectation' of promotion, a principle safeguarding against arbitrary administrative decisions. They submit that the department abused its discretionary power, demanding compensation for the losses incurred due to their negligence.

6. The Additional Advocate General, argued that awarding 'proforma promotions' to the petitioners is now impractical and without real effect, given their retirement. He explained that 'proforma promotion' is a retrospective action for record-keeping, primarily for benefit calculations, not actual service. However, he emphasized that during the petitioners' active service, no vacancies existed for them to be promoted. Therefore, he asserted that they were/are not entitled to such retroactive promotions and requested that the court reject their petitions.

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

8. The Provincial Selection Board No. II, chaired by the Chief Secretary, met on December 10th and 24th, 2021, to review BS-18 to BS-19 promotions across various departments. The School Education & Literacy Department Secretary informed the board that 575 Associate Professor/Principal (BS-19) positions were authorized (386 male, 189 female), with 67 initially available for promotion (56 male, 11 female). He further pointed out that three additional vacancies would occur due to the retirements of N. Nasreen Munazzah (December 24, 2021), Abdul Rehman Channa (January 4, 2022), and Ghulam Sakina (February 24, 2022). Promotion to BS-19 required Senior Subject Specialist (BS-18) status, 12+ years of service in BS-17 or higher, and completion of mandatory training. The board then reviewed eligible candidates' service records and made promotion decisions based on seniority and fitness. The petitioners submitted that all retired from the position of Assistant Professors (BPS-18), on 31.10.2021, 9.8.2021, and 17.06.2021 and were eligible for promotion at the time of the selection board meeting but were overlooked, resulting in a delayed process that ultimately prevented their promotion due to their subsequent retirement. They also cited the case of Sughfta Mushtque, who was promoted despite not meeting the eligibility criteria.

9. Upon retirement, a civil servant loses the right to be considered for regular promotion but retains the right to claim pension benefits as per established policies. However, a 'proforma promotion' could be granted to compensate a civil servant who was unfairly denied a promotion in his/her tenure of service. However, the Supreme Court has held in the recent

judgment 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 before the promotion, then obviously the avenue or pathway of proforma promotion comes into the field for his rescue. If he lost his promotion on account of any administrative oversight or delay in the meeting of the DPC or Selection Board despite having fitness, eligibility, and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits. The petitioners' case appears to fall within the exceptions, as they were eligible for promotion, but the delayed meeting (December 10th & 24th, 2021) occurred after their retirements (31.10.2021, 9.8.2021, and 17.06.2021).

10. We often noted that unjustified delays in proforma promotion cases trigger severe hardship and difficulty for civil servants and also create a multiplicity of litigation. It would be in the fitness of things that the competent authority should fix a timeline with strict observance for the designated committees of proforma promotions to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention.

11. It seems that the case of regular promotion of the petitioners was not placed before the competent authority for determination of their merit to the post in BPS-19. The record does not reflect that the petitioners were not eligible to be considered for promotion in BPS-19 when their junior colleagues were granted promotion in BPS-19. Even learned AAG has not disputed the eligibility of the petitioners for promotion in BPS-19; however, he simply stated that since the petitioners have retired from services; therefore, they cannot be granted antedated promotion i.e. proforma promotion.

12. We do not agree with the aforesaid submission of learned A.A.G., for the reason that the right to promotion is neither an illusory nor a perfunctory right that could be ignored casually. Non-considering of an officer being equally eligible for promotion is a matter that not only undermines the discipline but creates serious bad blood and heart burning amongst colleagues. Petitioners had required length of service in their

credit besides there was/is no issue of eligibility of the petitioners to be considered for promotion in BS-19.

13. We find that it has not been disputed that working papers were prepared by the respondent- Department about the promotion of the petitioners in BPS-19 much before their retirement, but the matter was delayed without any justifiable reason, and in the meanwhile, Petitioner attained the age of superannuation. Prima facie they cannot be made to suffer on account of departmental lapse. Additionally, in the matter of civil service, there should not be at all any instance where the competent authority is found to be accommodating any one civil servant for grant of promotion and leaving all other equals and even seniors abandoned.

14. Coming to the main case, the concept of Proforma Promotion is to remedy the loss sustained by an employee / civil servant on account of denial of promotion upon his/her legitimate turn due to any reason but not a fault of his own.

15. 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 or 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.]”

16. 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.”

17. 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.

18. 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 grant of proforma promotion, which was declined by the Service Tribunal and the matter was remanded to the Service Tribunal for decision afresh.

19. In the present case, the competent authority has not bothered to ask the parent department of the petitioner to place the case of the petitioner before PSB for determination of their case for promotion in time, before their retirement.

20. 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, the right of promotion accrued during his service but could not be considered for no fault of their own and meanwhile, they retired on attaining the age of superannuation without any shortcoming on their part about deficiency in the length of service or in the form of inquiry and departmental action was so taken against their right of promotion. Thus we are inclined to entertain the request of the petitioners in these matters for proforma promotion. 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**.

21. We for the aforesaid reasons allow these constitutional petitions and direct the competent authority/respondents to consider the case of the petitioners for proforma promotion in BS-19 by way of circulation. As the petitioners have already retired, therefore, their proforma promotion will not affect the seniority of any person already in service and they would be entitled to their emoluments and pensionary benefits.

JUDGE

JUDGE