

**IN THE HIGH COURT OF SINDH, KARACHI**

**Constitutional Petition No.D-2698 of 2023**

*[Arif Kamal and 02 others versus Federation of Pakistan & another]*

Before:

**Justice Muhammad Karim Khan Agha**  
**Justice Adnan-ul-Karim Memon**

Mr. Munsif Jan, advocate for the petitioners.

Mr. Agha Shahid Majeed Khan, advocate for the respondent No.2 / FBR.

Ms. Wajiha Mehdi, Assistant Attorney General.

**Dates of hearing & Order: 03.10.2025**

**ORDER**

**Muhammad Karim Khan Agha J.** Through this petition, the petitioners seek the following relief(s):-

- A. *To hold and declare that the petitioners having successfully passed the qualifying typify test conducted by the directorate of training and research (Customs, Federal Excise & Sales Tax) in the year 1996 and having been appointment/promoted to the post of LDCs over decade ago, were appointed/promoted on regular and permanent basis and cannot be treated as temporary or acting charge basis, nor can be reverted to any post below in class IV service.*
- B. *To direct the respondents to regularize/promote the services of the petitioners as permanent L.D.C based on the rule of consistency, perse orders by the Honorable Court in CP No.D.2603/2010 on 21/05/2013, upheld by the Hon'ble Apex court on 20/04/2017.*
- C. *To direct the respondents to issue an order of regular promotion of the petitioners against the post of LDCs from the date, since the petitioners are working against the post permanently.*
- D. *Alternatively, to declare that the appointments, promotion, and transfer rules for ministerial staff restricting promotion to the post of LDC to the extent of 10% is ultra vires, the provisions of law, including section 9 of the Civil Servant Act 1973.*
- E. *To direct the respondents to promote the petitioners from Class-iv (BS-04) to L.D.C (BS-09) permanently.*

2. Three petitioners, working in Pakistan Customs/FBR Karachi, are seeking promotion to Lower Division Clerk (LDC) (BPS-09) and the corresponding pay scale, as they are currently performing the duties of LDC but are paid at a lower scale. However, in the intervening period, the petitioner No.3 has been promoted to LDC BS-11 on a regular basis vide office order dated 9.8.2023.

3. Petitioner No. 1 was appointed as a temporary Sepoy (BPS-01) in 1985 and is now a permanent Sepoy (BPS-05) but has been working as an "Officiating Clerk" / LDC since April 12, 2000. Petitioner No. 2 was appointed as a temporary Sepoy (BPS-01) in 1994 and is now a permanent Sepoy (BPS-05), but has been working as "L.D.C Officiating" since April 12, 2000. Petitioner No. 3 was

appointed as a temporary Laboratory Attendant (Grade-2/BS-04) in 1982, is posted as a Lab Assistant, but is also working as an LDC. He passed a departmental promotion exam in 1996. All three petitioners passed a Typing Test in July 2007. Petitioner No. 3 applied for promotion from Lab Attendant (BS-04) to LDC (BS-09) in April 2023. The respondents promoted 27 individuals to LDC (BS-09) on April 17, 2023, based on High Court orders. This list included two people junior to Petitioner No. 3, who claims he is more entitled to the promotion. The petitioner No.1 and 2, despite long-standing, continuous, and "blotless" service, performing the duties of LDC for years, and being qualified (passing typing tests/exams), are being denied regular promotion and the associated pay/benefits, while their juniors have been promoted and regularized, often under court orders. They demand promotion from their current lower-grade posts to LDC (BPS-09).

4. The learned counsel for the petitioners presents several arguments challenging the respondents' refusal to grant them regular LDC status. He submitted that the long duration (over a decade) of the petitioners performing Officiating LDC duties has given their promotions a permanent character, and the respondents cannot retroactively treat them as temporary to deprive them of their vested rights, including promotion prospects. He argued that having lawfully appointed and promoted the petitioners as officiating LDCs for many years, the respondents are now estopped from questioning the validity of these appointments. He next argued that the promotions are not illegal merely because the posts might have been meant for direct recruitment. Once filled, especially after a significant lapse of time (over a decade), the appointments cannot be reversed or nullified. He submitted that the respondents are adopting a different standard for the petitioners compared to junior Class-IV officers who have been promoted regularly. This arbitrary, capricious, and discriminatory treatment violates Articles 4 and 25 (Equality of Citizens) of the Constitution of Pakistan. The counsel contends that either the promotion rules for ministerial staff are not applicable to the petitioners (due to their long officiating tenure) or, if applicable, they are inconsistent with/ultra vires to the fundamental provisions of the law, such as Section 9 of the Civil Servants Act, 1973. The counsel concludes by arguing that the respondents cannot benefit from their own inaction/omission to regularize the petitioners, especially when they have an ordinance to regularize temporary employees. The petitioners, having qualified subsequent tests and being listed among those considered for regularization, should be treated as regular promotees.

5. Learned counsel for respondents opposed the petition, arguing that this petition may be dismissed because the claims relate to the terms and conditions of service (promotion, regularization) and fall exclusively under the jurisdiction of

the Federal Service Tribunal (citing Article 212(1)(a) of the Constitution). He next submitted that the petitioners' LDC assignment was purely an officiating charge and an administrative measure, given in their own pay and scale, and did not confer any seniority, regular promotion, or vested rights to regularization. He added that no discriminatory treatment occurred and any promotions granted to others were done strictly in accordance with the law upon fulfillment of all codal formalities (e.g., complete service record, educational certificates, and mandatory course completion). He further argued that the petitioners were repeatedly given opportunities to submit the necessary documentation and fulfill the formalities for regularization, but failed to do so, and thus cannot claim equal treatment with those who completed the required process. He prayed to dismiss this petition.

6. Learned Assistant Attorney General has adopted the submissions as advanced by learned counsel for respondents No.2.

7. We have heard learned counsel for the parties and considered the record.

8. We are inclined to entertain the request of the petitioners No.1 and 2 in the matter in terms of the decision of the Supreme Court in the case of Director General Intelligence and Investigation, F.B.R. Islamabad and others Vs. Muhammad Aslam Khan 2020 SCMR 1846.

9. This petition is disposed of along with pending application(s), in terms of the decision of the Supreme Court in the case of Director General of Intelligence, supra. The competent authority of the respondents is directed to grant Petitioners No. 1 and No. 2 the same benefit awarded to Petitioner No. 3 and their colleagues under the office order dated August 9, 2023, and treat Petitioners No. 1 and No. 2 equally in accordance with that benefit.

**HEAD OF CONST. BENCHES**

**JUDGE**