

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-5776 of 2023

(Shahbaz Mazhar Sahito versus Province of Sindh and others)

Before:

Justice Muhammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

Mr. Ali Asadullah Bullo advocate for the petitioner

Ms. Saima Imdad, Assistant AG

Ms. Wajiha Mehdi, Assistant Attorney General

Date of hearing & order: 01.10.2025

ORDER

Adnan-ul-Karim Memon, J. Petitioner has filed this Constitutional Petition with the following prayer(s): -

1. *Declare the impugned letter dated 13-11-2023 as illegally issued in violation of law and set aside the same.*
2. *Direct the Respondents to issue an order of appointment by transfer of the Petitioner from the date of devolution of the parent Ministry, as provided in the Civil Servants Act 1973.*
3. *Direct the Respondent No. 1 to convene the meeting and consider the case of the promotion of the Petitioner for the post of BS-19 in accordance with the law.*
4. *Direct the Respondents, agents, officials, or any other authority acting on behalf of not not take any coercive/adverse action against the Petitioner and conduct themselves in accordance with law till the finalization of the instant proceedings.*

2. The petitioner has filed the captioned petition seeking writs of certiorari, prohibition, and mandamus due to the continued non-inclusion in the seniority list, being junior to his juniors, and being non-considerable for promotion, all stemming from the delayed actualization of his permanent appointment by transfer.

3. The facts of the case, as narrated in the memo of petition, are that in 2006, the petitioner was recruited on a contract basis for the post of Deputy Director (BS-18) in the federal Ministry of Social Welfare & Special Education. He was appointed in March 2007. In 2009, his services were deputed to the Government of Sindh. While he was on deputation, his parent Ministry was devolved following the 18th Amendment (2010), and some subordinate offices were transferred to the Social Welfare Department of the Government of Sindh in April 2011. His services were regularized by the federal Establishment Division in January 2012. Later, in August 2012, his services were formally transferred to the Social Welfare Department, Sindh, under the Civil Servants Act, 1973. The petitioner alleges a malicious delay in his permanent absorption into the Sindh

government. His colleague, who was transferred alongside him, was confirmed as Deputy Director in November 2017. The petitioner was not included in the 2018 seniority list of Deputy Directors, prompting his objection. The department's attempts to resolve his status and seniority anomaly were delayed by continuous correspondence regarding his service records. In June 2020, he was issued a charge sheet for allegedly submitting a bogus M.A. (Sociology) degree, which was resolved in his favor when he was exonerated in March 2021. After being exonerated, the petitioner continued to seek promotion and resolution of his transfer/absorption issue. In March 2023, the matter was referred to the Services, General Administration & Coordination Department (SGA&CD) for his absorption to be made effective from the same date as his colleague, Mr. Saleem Qureshi. The SGA&CD allegedly continued to cause delay by seeking records from an irrelevant office in November 2023.

4. The learned counsel for the petitioner's arguments is that the respondents failed in their obligatory duty to grant the petitioner his right to absorption, seniority, and career elevation, which constitutes professional misconduct. The respondents acted discriminatorily by appointing and absorbing a colleague (from the same devolved Ministry) effective from the date of transfer, while deliberately neglecting the petitioner's case, which is a misuse of authority. As a regular, permanent, and validly transferred officer, the petitioner must be treated in accordance with the provisions of law, particularly regarding his transfer under the Civil Servants Act, 1973. He added that the respondent's action of sending a letter to an office (Respondent No. 3) known to have no record of the petitioner was malafide and calculated solely to delay his promotion/elevation to BS-19. The delay in absorbing him by transfer, despite his eligibility based on the requisite length of service and satisfactory performance reports, is a "colorable exercise of power" lacking legal sanctity. The actions of the respondents are unlawful, illegal, and tainted with malice, and are in gross violation of Article 25 of the Constitution (Right to Equality and protection from discrimination) and principles of justice, good conscience, and equity, rendering the acts *ab initio* void. He prayed to allow this petition.

5. The Assistant Advocate General's (AAG) counter-arguments are that the petition is primarily against the official letter dated November 13, 2023, which merely sought the complete recruitment report and credentials from the federal government (Capital Administration and Development Division/Ministry of Human Rights) to enable further action. The Social Welfare Department is actively examining the petitioner's regularization as Deputy Director (BS-18) under Section 23-C(1) of the Sindh Civil Servants (Amendment) Act, 2014. During the examination, a major discrepancy was found: The petitioner was initially appointed based on an M.A. (Sociology) Degree from the University of

Sindh, which the University later termed as "bogus." The petitioner subsequently produced a genuine M.A. Degree from Shah Abdul Latif University, Khairpur. This implies the petitioner obtained the required qualification *after* his appointment. The key impediment to resolving the matter is the lack of a reply from the relevant federal authorities (first requested in 2018 and again via the impugned letter in 2023) regarding the complete recruitment procedure, verification of credentials, and service regularization. The AAG requested this court to dismiss the petition, arguing that the government is following due process and the delay is due to the non-receipt of essential documentation from the Government of Pakistan.

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

7. The petitioner, a federal Deputy Director (BS-18) whose services were transferred to the Sindh government following the 18th Amendment, is seeking regularization and appointment by transfer under Section 23-C(1) of the Sindh Civil Servants Act. The petitioner's colleague, transferred at the same time, was appointed by transfer in November 2017, but the petitioner's case remains pending. The Social Welfare Department requested that the Chief Secretary approve the petitioner's transfer/regularization, with effect from March 14, 2017, to match his colleague's effective date. The process is stalled due to a historical credential issue on the premise that the petitioner was initially appointed in 2007 based on a University of Sindh M.A. degree that was later declared "bogus." Although he subsequently produced a genuine M.A. degree from a different university in 2008, the department asserts that the regularization can only proceed once the complete recruitment report and verification are received from the federal government, a record first requested in 2018.

8. In essence, the petitioner is stuck in a bureaucratic delay, compounded by a past credential issue, while his counterpart was cleared, leading the department to require further federal documentation before finalizing his absorption.

9. We, based on contentions of the parties with the material produced before us, have concluded that we cannot determine the veracity of these documents as these are disputed questions of fact between the parties, which cannot be adjudicated by this Court, while exercising the Constitutional Jurisdiction and leave it for the Competent Authority to determine the genuineness or otherwise of the educational documents of the petitioner in terms of the judgment of the supreme court in the case of Government of the Punjab through Chief Secretary and others vs. Aamir Junaid and others (2015 SCMR 74), which is providing guiding principle on the aforesaid issue.

10. Based on the Supreme Court's ruling in *Government of the Punjab*, this court issues the directions to the Chief Secretary of Sindh to immediately form a committee, which he will head, and which will include the Secretary Social Welfare Department and an additional co-opted member. This committee is directed to conduct a thorough inquiry into the issue involved in the matter concerning the petitioner's educational documents, ensuring the petitioner is given a full opportunity to be heard. Determine and fix responsibility for the undue delay in the petitioner's appointment by transfer, and take action against the delinquent officials responsible, strictly in accordance with the law and Supreme Court observations. If the petitioner's credentials are found to be genuine, his case for appointment by transfer must be processed without any further delay, subject to all just exceptions as provided under the law.

11. This petition stands disposed of in the aforesaid terms.

JUDGE

HEAD OF CONST. BENCHES

SHAFI