

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No. D-1550 of 2021

[Niaz Hussain v. The Federation of Pakistan & others]

Before:

***JUSTICE ADNAN-UL-KARIM MEMOM
JUSTICE RIAZAT ALI SAHAR***

Petitioner: Niaz Hussain through Mr. Imran Ali Borano, Advocate

Respondents: The Federation of Pakistan & others through Mr. Muhammad Jamil Ahmed, Advocate

Date of hearing: 20-11-2025

Date of Judgement: 20-11-2025

JUDGMENT

RIAZAT ALI SAHAR, J.- Through this Constitutional Petition, the Petitioner seeks the intervention of this Court under Article 199 of the Constitution, as he has been unlawfully deprived of his due pro-forma promotion and consequential retirement benefits despite being senior and fully entitled under the statutory seniority-cum-fitness criteria. Thus, seeking following reliefs:

1. *To direct the Respondents to treat the Petitioner at par with other promotees according to the seniority list prepared in compliance with the judgment of the Honourable Supreme Court of Pakistan in Civil Petitions No. 797 and 834–836 of 2018.*
2. *To direct the Respondents to allow pro-forma promotion to the Petitioner with effect from 01.04.2015 to 01.09.2018 for the purpose of fixation of salary, privileges, and calculation of retirement benefits.*
3. *To declare that the act of the Respondents in not extending the consequential benefits of the Supreme Court judgment to the Petitioner is*

illegal, discriminatory and without lawful authority.

4. *To direct the Respondents not to take any coercive or retaliatory action against the Petitioner.*
5. *To grant any other efficacious and equitable relief as this Honourable Court may deem fit and proper in the circumstances of this Constitutional Petition.*

2. Upon issuance of notice, the Respondent Zarai Taraqiati Bank Limited submitted its parawise objections wherein, while admitting the Petitioner's joining in ADBP and his promotion as AVP on 16.08.2007, the Bank primarily contended that the Petitioner had voluntarily opted for SR-2005 on 09.06.2006 and was thereafter considered under the merit-based promotion policy, in which seniority carries no weight. It was asserted that although the Petitioner was interviewed for promotion as Vice President in 2015, he could not qualify as his merit number fell below the cut-off within the budgeted vacancies; hence, mere eligibility did not entitle him to promotion. The Bank further stated that after the landmark judgment of the Honourable Supreme Court dated 02.07.2018 in Civil Petitions No. 797 and 834–836 of 2018 (ZTBL v. Syed Shad Muhammad Shah & others), the operation of the judgment had initially been suspended on 29.03.2019 during review proceedings, and that after dismissal of the review petitions on 05.12.2019, the Bank implemented the judgment only for employees who were in service as of 05.12.2019. According to the Respondent, the Petitioner, having retired on 01.09.2018, over a year before implementation, fell within the category of 'past and closed transactions,' relying on the Supreme Court's observation in Akhter Umar Hayat Lalyoka (2018 SCMR 1218). The Bank also placed reliance on Civil Petition No. 2748 of 2017 (Muhammad Tariq v. Federation of Pakistan), asserting that pro-forma promotion cannot be granted after retirement. It was further stated that all promotions under SSR-1961 and SR-2005 were processed separately in accordance with merit-based and seniority-cum-fitness criteria, respectively, and that no

discrimination was exercised in favour of any employee. The Respondent concluded that since the Petitioner had retired prior to 05.12.2019 and his performance record (particularly as a field functionary) was allegedly negative, he was neither entitled to reconsideration nor fit for promotion with effect from 01.04.2015. Accordingly, the Respondent maintained that the petition is devoid of merit and liable to be dismissed.

3. Learned counsel for the petitioner contended **that** the petitioner, despite an unblemished service record and being duly placed in the seniority list under the statutory regime of SSR 1961, was unjustly deprived of his due promotion strictly on account of nepotism, favouritism and the unlawful policy of “pick and choose” employed by the respondent-bank. It is argued that the petitioner was promoted as Assistant Vice President in 2007 at Seniority No. 276 under the *seniority-cum-fitness* criteria, whereas his junior, namely Ali Raza Khaskheli, who stood at Seniority No. 278, was subsequently granted promotion with effect from 01.04.2015 pursuant to the integrated seniority list prepared in compliance with the landmark judgment of the Honourable Supreme Court dated 02.07.2018 passed in Civil Petitions No. 797 & 834-836 of 2018. Learned counsel submitted that the said judgment, having attained finality after dismissal of the review petition on 05.12.2019, unequivocally declared that SSR 1961 and the promotion policy of 1999 possessed statutory force and could not be overridden by the later SR 2005, which carried an inferior legal status. Consequently, all promotions granted under SR 2005 stood rendered ineffective unless re-evaluated under SSR 1961 within the stipulated three-month period. It was further argued that although the Bank constituted the Special Departmental Promotion Committee (SDPC) to implement the Supreme Court’s directions in letter and spirit and to revise seniorities of both SSR 1961 and SR 2005 employees into a unified list, the respondents failed to consider the petitioner for promotion strictly in accordance with his seniority position for

the year 2015. Learned counsel forcefully contended that merely because the petitioner stood retired on 01.09.2018, after having been called for interview in 2012 and having remained entitled to promotion on seniority-cum-fitness basis, the respondents could not deprive him of pro-forma promotion, which is a vested right for the purposes of salary re-fixation, pensionary benefits and other consequential advantages. He submitted that the right to be treated in accordance with law under Article 4 of the Constitution, the right to equality before law under Article 25, and the safeguard against discrimination in service matters under Article 27 stand violated, as similarly placed employees and even juniors have been granted the benefits flowing from the Supreme Court's judgment, whereas the petitioner has been unjustly excluded without any lawful justification. Learned counsel argued that the petitioner repeatedly approached the competent forum and moved an application for grant of pro-forma promotion, but the respondents remained indifferent and failed to discharge their statutory obligation. Hence, being left with no other adequate or efficacious remedy, the petitioner has invoked the constitutional jurisdiction of this Court to seek enforcement of his accrued rights and to ensure that he is treated at par with other promotees in terms of the final and binding judgment of the Honourable Supreme Court.

4. Learned counsel for the respondents, on the other hand, contended that the petitioner is not entitled to the relief sought as he had consciously opted for SR-2005, thereby subjecting himself to a merit-based promotion regime under which seniority is not determinative. It was argued that the petitioner failed to qualify in the 2015 promotion cycle, as his merit score fell below the cut-off, and therefore no vested right ever accrued in his favour. Learned counsel submitted that after the Honourable Supreme Court's judgment dated 02.07.2018, the Bank undertook an exercise of implementing the decision, but only for those employees who remained in service on or after 05.12.2019, when the review petitions were dismissed. Since the

petitioner retired on 01.09.2018, it was argued that his matter constitutes a “past and closed transaction.” Reliance was placed upon *Akhter Umar Hayat Lalyoka v. Govt. of Punjab* (2018 SCMR 1218) to argue that pro-forma promotion after retirement is impermissible. It was further contended that even otherwise, the petitioner’s performance record did not support his consideration on the touchstone of fitness; therefore, the petition is liable to be dismissed.

5. We have heard learned counsel for the parties at considerable length and have minutely examined the record made available. The controversy involved revolves around the applicability of the Honourable Supreme Court’s judgment dated 02.07.2018; the legal status of SSR-1961 vis-à-vis SR-2005; the petitioner’s position in the revised integrated seniority list; and the effect of retirement on entitlement to pro-forma promotion. It also requires the Court to determine whether the respondents have exercised discrimination in extending the benefit of the Supreme Court’s judgment to certain employees while denying the same to the petitioner, whose junior stands promoted with retrospective effect.

6. Learned counsel for the respondents further contended and the record substantiates that the petitioner was duly considered for promotion during the 2015 selection cycle. His name was placed before the Departmental Promotion Committee and he was interviewed; however, he failed to secure the requisite merit score to cross the notified cut-off bench-mark prescribed for the limited number of vacancies available that year. This Court finds from the documents produced that the petitioner’s merit position fell significantly below the qualifying threshold. Therefore, even if the seniority list prepared pursuant to the Honourable Supreme Court’s judgment is accepted in its entirety, the petitioner cannot claim that he was unlawfully bypassed, for his case was duly examined on its merits and was declined strictly on the touchstone of fitness.

7. The plea of the petitioner that he was entitled to pro-forma promotion on the ground that his junior was promoted is misconceived. Pro-forma promotion is a settled service law concept and can only be claimed where three foundational conditions coexist: (i) a vacancy actually existed at the relevant time; (ii) the employee was otherwise eligible; and (iii) the employee was *not considered at all* due to administrative omission, mischief or discrimination. It does not confer a right of retrospective promotion upon an employee who was duly considered but simply failed to meet the merit or fitness criteria. In the present case, the record unmistakably demonstrates that the petitioner *was* considered by the competent forum, yet his performance and scoring did not entitle him to selection under the prevailing promotion policy.

8. The petitioner voluntarily opted for SR-2005 on 09.06.2006, thereby consciously adopting a promotion framework based exclusively on merit, where seniority was intentionally diluted and only awarded marginal weight. By electing this regime, the petitioner waived the protective umbrella of the seniority-cum-fitness principle under SSR-1961. Even otherwise, the law is settled that seniority-cum-fitness, though generally favourable to senior employees, does not guarantee automatic elevation. Fitness remains a substantive requirement, and where an employee fails to meet the recognized bench-marks, seniority alone does not salvage the candidature. Thus, even if the 2015 exercise were assessed under seniority-cum-fitness, nothing on record demonstrates that the petitioner possessed the requisite fitness or performance indicators to warrant promotion.

9. At this stage, it is also pertinent to underscore that the petitioner had already attained the age of superannuation on 01.09.2018, which was *prior* to the dismissal of the review petitions by the Honourable Supreme Court on 05.12.2019. Therefore, by the time the judgment acquired operational

finality, the petitioner stood retired. The principle of “past and closed transactions” as reaffirmed by the Honourable Supreme Court in *Akhter Umar Hayat Lalyoka v. Govt. of Punjab* (2018 SCMR 1218), squarely applies, as service rights which have not crystallised prior to retirement cannot be revived through retrospective claims unless a clear statutory or judicial mandate exists to that effect. No such mandate has been shown in the present case.

10. The argument that the petitioner’s junior stood promoted is equally insufficient to attract constitutional interference. The promotion of another employee cannot, by itself, elevate the petitioner’s claim when he did not meet the requisite merit parameters. Discrimination under Articles 4, 25 and 27 of the Constitution presupposes unequal treatment among equals. A candidate who fails to secure the bench-mark is *not* similarly placed with those who succeeded. The law does not compel the employer to promote an unqualified candidate merely to preserve parity with another candidate who met the prescribed standards.

11. From the record, it further surfaces that the petitioner’s service profile, particularly during his tenure as a field functionary, reflected adverse entries and performance concerns which were duly taken into account by the promotion authorities. The evaluation of fitness lies primarily within the domain of the competent promotion body, and unless mala fides, perversity or violation of law is clearly demonstrated, which is not the case here, this Court cannot substitute its own opinion for that of the statutory authority.

12. In view of the above discussion, it is evident that the petitioner’s claim neither satisfies the legal prerequisites for grant of pro-forma promotion nor establishes any infringement of his fundamental or statutory rights. He was duly considered; the vacancies were limited; he failed to meet the merit criteria;

and he had already retired before the judgment of the Honourable Supreme Court attained finality. Thus, the relief sought is legally untenable and factually unsupported. Resultantly, no case for interference under Article 199 of the Constitution is made out.

13. Accordingly, this petition stands *dismissed*.

JUDGE

JUDGE

Muhammad Danish