

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P. No.D-428 of 2025

[Muhammad Nadeem vs. Federation of Pakistan and Others]

BEFORE:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE RIAZAT ALI SAHAR

Mr. Ghulam Mohiuddin Panhwar, advocate for the petitioner

Nemo for private respondent

Ms. Shamim Mughal, Assistant Attorney General, a/w Assistant Director ECP
Sarmad Sarwar

Date of hearing & decision: 27.11.2025

ORDER

ADNAN-UL-KARIM MEMON J .-

The petitioner has prayed as under:

- a) *To direct the respondents to appoint the petitioner to the post of Director of Law.*
- b) *To direct the respondents to announce the consolidated result of the test and interview of the petitioner conducted under all four advertisements.*
- c) *To declare the notification dated 11-10-2022 without lawful authority and ab initio void and against the Constitution of Pakistan.*
- d) *To declare the appointments of the respondent Nos 4, 5 & 6 are null and void and without lawful authority in connection with the illegal notification dated 11-10-2022.*

2. The case of the petitioner is that in July 2022, the respondents published advertisement for two posts of Director (Law), for which the petitioner applied, passed the written test, and appeared for interview. However, the respondents did not announce the interview result and without cancelling this recruitment process, published second advertisement on 28.02.2023 for one post only, abolishing one post and shifting it to promotion. The petitioner again passed written test, appeared in another interview, but again the result was withheld; that the respondents again published third advertisement on 28.07.2023 and later a fourth advertisement in September 2024, each time conducting new tests and interviews. The petitioner successfully passed all four written tests and received interview calls every time, yet the respondents never disclosed any consolidated result. Due to repeated non-announcement of results, the petitioner filed C.P. No. D-553 of 2023, before this Court, requesting publication of results and declaring the recruitment process unlawful. The respondents filed comments relying on notification dated 11.10.2022 issued after the first advertisement, which the petitioner submits is being applied retrospectively in violation of the constitutional principles. Despite respondents submitting results before this Court, the petition was dismissed on 30.01.2025 without considering those results, and the respondents still failed to announce them. The petitioner maintains that no lawful notification was issued after the tests and interviews;

that the appointment of Respondent No.4 is illegal, that the relied-upon notification violates Article 221 of the Constitution, and that any appointment made under it is void. The petitioner, therefore, asserts his entitlement to be appointed to the post of Director (Law) under the first advertisement based on contract for a period of two years. However, later on, the respondent ECP vide notification dated 11.10.2022 notified the subject posts to be recruited through 75% by promotion and 25% by direct recruitment. For convenience sake, the Notification dated 11.10.2022 is reproduced as under:

NOTIFICATION

No. F.3(16)/2022-Estt-I.- In exercise of powers vested under Rule 5 of the Election Commission (Officers & Servants) Rules, 1989, the Hon'ble Chief Election Commissioner in pleased to specify the following Revised Methods of Appointment of the under-mentioned posts in the Election Commission of Pakistan with immediately effect and until further orders:

S. No.	Name of Post	Method of Appointment	Amendment
1	Director (Law) (BS-19)	75% by promotion and 25% by direct recruitment	Amends Serial No. 1 of Notification No. F.3(9)/2010-Estt-I dated 18-11-2020 under the heading "Method of Appointment."
2	Senior Law Officer (BS-18)	50% by promotion and 50% by direct recruitment	Amends Serial No. 3 of Notification No. F.3(9)/2010-Estt-I dated 18-11-2020 under the heading "Revised Methods of Appointment."

3. The officers of ECP approached the learned Baluchistan High Court by filling CP No. 1400 of 2022, which petition was disposed of with the following direction.

“Learned counsel for the petitioner stated that petitioner will be satisfied if directions were issued to the Chief Election Commissioner of Pakistan to consider the serving officers for promotion as Director (Law) BPS-19 against 75% of promotion quota on merits in accordance with law and the rules before finalizing the direct recruitment of the candidates against 25% quota for the said post.

The Additional Director General Law ECP assisted by Legal Advisor ECP did not opposed the above.

In view of the above, the petition is disposed of with directions to the Chief Election Commissioner of Pakistan to consider the serving officers for promotion to the post of Director (Law) BPS-19 against 75% quota on merits in accordance with law and the relevant rules in the first instance in pursuance of Notification dated 11.10.2022 and thereafter to finalize the direct recruitment of candidates for the post of Director (Law) BPS-19 against 25% quota.

The earlier interim order dated 26.09.2022 stands recalled.”

4. Learned counsel submits that the petitioner is an advocate by profession; that revising the method of appointment by the respondents for the subject post through Notification dated 11.10.2022, after issuance of first advertisement, is illegal, *mala fide*, and in clear violation of Article 221 of the Constitution of Pakistan, and the same was issued solely to deprive the petitioner of his right to fair consideration. He prayed to allow this Petition.

5. The respondent No.6 filed comments relying upon notification dated 11.10.2022, despite the fact that it had been issued after the first advertisement of July 2022. The said petition was dismissed vide order dated 30.01.2025, on the ground that the Court could not interfere in an ongoing recruitment process.

6. Learned Assistant Attorney General assisted by Assistant Director ECP contended that, petitioner's earlier petition filed on the same grounds, was dismissed by this Court vide order dated 30.01.2025, which has since attained finality; therefore, the present petition being substantially based on similar grounds, is not maintainable and is liable to be dismissed; that the impugned Notification dated 11.10.2022 was issued by the competent authority in exercise of the powers conferred under Rule 5 of the Election Commission (Officers & Servants) Rules, 1989, and thus suffers from no illegality; that in the first advertisement, the subject post was announced for direct recruitment; however, certain serving officers challenged it before the Baluchistan High Court in C.P. No. D-1400 of 2022, seeking appointments to the post through promotion rather direct recruitment; that during pendency of that petition, the impugned notification was issued, prescribing the revised method of appointment, i.e. 75% by promotion and 25% by direct recruitment. This notification was placed before the learned Baluchistan High Court, which disposed of the petition vide order dated 26.10.2022 with directions first to consider eligible serving officers for promotion and thereafter proceed with the process of direct recruitment. In compliance, certain serving officers were promoted to the subject post under 75% promotion quota. He maintains that there is no *mala fide* on the part of respondents, and the present petition, being devoid of merit, is liable to be dismissed.

7. We have heard learned counsel for the parties and perused the material available on record.

8. The ECP Officers & Servants Rules, 1989, empowers the administrative department to determine methods and qualifications for recruitment in public service. The appointment process includes advertisement, submission of applications, tests, interviews, recommendations, physical fitness verification and issuance of appointment order. A challenge by way of mandamus is not maintainable unless the recruitment process is shown to be tainted with malice. However, selection based on nepotism, favoritism, or external pressures undermines merit, causes unrest in the civil service, and is detrimental to good governance. Merit must be the sole criterion; lack of transparency or preferential treatment is a "brutal murder of excellence." A transparent recruitment process ensures public confidence, fairness, integrity, and equal opportunity for all candidates. Public appointments must follow the rules in force at the time of advertisement. Mid-process changes that prejudiced candidates violate fairness and transparency. The petitioner cleared written tests and interviews under the 1st, 2nd, 3rd, and 4th advertisements vide letters dated 11.01.2023, 21.06.2023, 21.05.2024, 25.09.2024, yet no result was communicated. Subsequent notifications and re-advertisements occurred after the first advertisement, were not prospective for future vacancies, and prejudiced the

petitioner. The vacancy remains the same post of Director (Law), giving original candidates a strong *prima facie* claim.

9. Since the private respondent No.4 is not in attendance rather he has chosen to remain absent; however, the law officer of ECP and learned Assistant Attorney General briefed this court and covered his case as well on the premise that he has validly been appointed against the subject post and requested for dismissal of the Petition.

10. It is settled law that Rules and Procedures operate prospectively, not retrospectively. Any amendment in the recruitment method or quota after advertisement that adversely affects existing petitioner is vulnerable. Once a post is advertised, candidates have a right to be considered according to the qualifications and criteria in the advertisement. Here, the petitioner cleared written tests and interviews as per his version under multiple advertisements. Denial of results and repeated re-advertisements breach the legitimate expectation of candidates and appointment subsequently on contract basis from another Province was / is an erroneous decision in terms of the advertisement which shows the domicile on merit. Mid-process changes to recruitment method, quotas or advertisement without valid justification and transparency constitute a *mala fide* exercise of power, violating constitutional guarantees of equality and public trust. The petitioner has shown that the tests and interviews were concluded and that the post-advertisement changes prejudiced his chance, amounting to abuse of power. The impugned Notification dated 11.10.2022, revising the method of appointment 75% by promotion and 25% direct recruitment seems to be arbitrary and contrary to principles of transparency, merit and equal opportunity to all the candidates and subsequently appointing a candidate on contract basis without looking into the criteria set-forth in the advertisement which says that the subject post needs to be filled on merit rather than from another Province. Repeated re-advertisements without declaring earlier results communicating to the petitioner further deprive him from his valuable rights. Therefore, the actions of the respondents are liable to be annulled.

11. In view of the above facts and circumstances of the case, the instant Constitutional Petition stands disposed of with direction to the competent authority of the respondents to make appointment on the subject post based on merit as per Recruitment Rules and conduct fresh interviews of original candidates with due result declaration. The aforementioned exercise shall be completed within three months. Let a copy of this order be communicated to the Chief Election Commissioner of Pakistan for compliance.

JUDGE

JUDGE