

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-1881 of 2024
(Abdul Rauf Kanhar v Province of Sindh & others)

C.P. No.D-1908 of 2025
(Naib Ali Bhanbhan versus Province of Sindh & others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 08.04.2026

Mr. Hussain Bux Sario advocate for the petitioner
in C.P. No.D-1908 of 2025.

Mr. Abdul Abdul Salam Memo advocate for the petitioner
in C.P. No.D-1881 of 2024

Dr. Shahnawaz Memo advocate for the respondent

Mr. Irfan Mir Halepota advocate for the respondent

Mr. Imtiaz Ali Malik advocate for the respondent

Mr. Salim Raza Soomro advocate for the respondent

Ms. Samina Mumtaz advocate for the respondent

Mr. Abdul Jalil Zubedi, AAG

ORDER

Adnan-ul-Karim Memon, J. – The petitioners in C.P. No.D-1881 of 2024 have filed the captioned Constitutional Petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking to declare the promotions of private respondents from BS-14 Ministerial positions to BS-16 Jail Police cadre illegal and without legal effect. They also seek direction that future promotions be made strictly in accordance with law, the Constitution, and the Supreme Court’s judgment (2015 SCMR 456, Para 114), ensuring harmonization of the rules with the established legal framework.

2. The learned counsel for the Petitioners submitted that the Petitioners, serving as Assistant Superintendents of Prisons in various districts of Sindh, including Karachi, are entitled to fundamental rights guaranteed under the Constitution of Pakistan. He submitted that the Petitioners were originally appointed in BS-14 and subsequently upgraded to BS-16 by notification dated 10-11-2021, retrospectively effective from 15-12-2010. This retrospective up-gradation was challenged before this Court in Constitutional Petition No. D-1406 of 2022, which was disposed of on 10-05-2022, and further confirmed by the Supreme Court in Civil Petition No. 1932 of 2022 on 08-08-2022. Counsel contended that the controversy arises because certain private respondents, originally appointed in the Ministerial Cadre, were promoted to the cadre of Jail Police in violation of the law. He emphasized that the Prisons Department has two distinct streams: the Jail Police Cadre and the Ministerial Cadre, with different criteria for recruitment, training, and duties. He submitted that the Petitioners were directly recruited into the Jail Police Cadre and underwent intensive training locally and internationally, whereas the private

respondents were promoted from Ministerial positions under notifications dated 13-01-1992 and 29-05-2015. It was submitted that the recruitment rules of 1992 and the subsequent rules of 2015 permitting such promotions are in direct conflict with the Supreme Court's judgment reported as 2015 SCMR 456 Para 114, which prohibits cross-cadre appointments without proper legal authority. Consequently, the promotions of private respondents from the Ministerial Cadre to Assistant Superintendent of Prisons (BS-16) and further promotions to Superintendent of Prisons (BS-18) are without jurisdiction, illegal, and malicious. Counsel emphasized that these actions violate Articles 4 and 5 of the Constitution and undermine the principles of merit, law, and the judgment of the Supreme Court. He added that despite the availability of vacant posts in BS-16, promotions were irregularly made in 2019, further perpetuating illegality. In view of the above, the learned counsel prayed that this Court may declare the promotions of private respondents from BS-14 Ministerial positions to BS-16 Jail Police cadre illegal and without legal effect and direct that future promotions be made strictly in accordance with law, the Constitution, and the Supreme Court's judgment (2015 SCMR 456, Para 114), ensuring harmonization of the rules with the established legal framework. He prayed to allow the petitions.

3. The learned counsel for the petitioner in C.P. No.D-1908 of 2025 adopted the arguments of the learned counsel for the petitioners in C.P. No.D-1881 of 2024 and prayed to allow both the petitions.

4. The learned counsel for the private respondents collectively raised preliminary objections to the maintainability of the constitutional petitions. It was contended that the petitioners had adequate and efficacious alternate remedies, including approaching the Inspector General of Sindh Prisons, the Home Department, and the Sindh Service Tribunal. As the dispute essentially relates to seniority and other terms and conditions of service, the jurisdiction of this Court is barred under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. On merits, it was submitted that the petitioners were appointed as Assistant Superintendents of Prisons between August and December 2010, whereas the posts had already been upgraded from BS-14 to BS-16 on 24.03.2010. Their subsequent upgradation to BS-16 through notification dated 10.11.2021 was challenged in Constitutional Petition No. D-1406 of 2022. The Honorable Supreme Court of Pakistan, while disposing of CPLA No. 1932 of 2022, maintained the upgradation prospectively from 10.11.2021, directed that the petitioners be placed below officers recruited through the Sindh Public Service Commission (SPSC) in 2020, and set aside their promotion to BS-17, thereby lending finality to the matter. The respondents' counsel consistently maintained that their appointments and promotions were lawful, having been made within the Sindh Prisons Department in accordance with the Recruitment Rules notified on 15.01.1992 and 29.05.2015. These

promotions were effected against the prescribed promotional quota on the recommendations of the Departmental Promotion Committee (DPC), after fulfillment of all codal formalities and mandatory professional training requirements. It was further emphasized that all parties are regular employees of the same department, and the petitioners' assertion regarding the existence of separate "Ministerial" and "Jail Police" cadres, or any alleged cross-cadre movement, is misconceived and unsupported by any statutory framework. They further contended that the petitioners had not approached the Court with clean hands, as their own appointments were allegedly irregular. Although only 15 posts of Assistant Superintendent (BS-14) were advertised in 2008, 39 individuals, including the petitioners, were appointed without re-advertisement and without undergoing the mandatory SPSC selection process required for BS-16 gazetted posts. These irregularities were acknowledged by this Court in CP No. D-1406/2022 and were substantially affirmed by the Honorable Supreme Court. This petition was also argued to be barred by the doctrine of laches, as the respondents' promotions made in 2011 and 2019, as well as the Recruitment Rules of 2015, were challenged only in 2024 without any plausible explanation for the delay. Additionally, it was contended that the petition, though framed as a writ of *quo warranto*, is in substance a collateral challenge to seniority and service matters, which is legally impermissible. The respondents' counsel further distinguished the Supreme Court judgment reported as **2015 SCMR 456**, asserting that it pertains to appointments by transfer or absorption under Rule 9(1) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. Since the private respondents were promoted within the same department against reserved quotas and were never transferred from another department, the said judgment was argued to be inapplicable. They also highlighted their individual service histories, demonstrating lawful career progression from lower posts such as O.G. Warder or Junior Clerk to Assistant Superintendent (BS-16) through the prescribed promotional channels, supported by requisite qualifications, seniority, and successful completion of mandatory training. Collectively, the respondents asserted that the Recruitment Rules of 2015 were validly framed in consultation with the Services, General Administration and Coordination Department under Rule 3(2) of the 1974 Rules. The post of Assistant Superintendent is not a cadre post, and promotions thereto constitute a vested right when made in accordance with the applicable rules. There has been no violation of Articles 4 and 5 of the Constitution. The petitioners are, in essence, aggrieved by the Final Seniority List dated 21.11.2023, which should have been challenged before the Sindh Service Tribunal rather than through the present constitutional petition. In view of the foregoing submissions, the learned AAG and counsel for the respondents jointly prayed that the constitutional petitions be dismissed with costs, as they are not maintainable, are barred by laches, and are devoid of merit, while the appointments and promotions of the private respondents were made strictly in accordance with the applicable law and service rules.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. The core grievance of the petitioners pertains to seniority, promotion, and terms and conditions of service within the Sindh Prisons Department. Such matters fall squarely within the exclusive jurisdiction of the Sindh Service Tribunal in terms of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. The petitioners, instead of availing the statutory remedy, have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, which is impermissible in law. It is a settled principle that where an adequate and efficacious alternate remedy is available, constitutional jurisdiction should not be exercised. It appears that the promotions of the private respondents were made in the years 2011 and 2019, and the Recruitment Rules of 2015 are also under challenge. The present petitions, filed in 2024, suffer from inordinate and unexplained delay. The doctrine of laches squarely applies, and it is well settled that stale claims cannot be entertained, particularly in service matters where third-party rights have long been settled.

7. Although the petitions are framed as seeking a writ of quo warranto, the substance of the controversy reveals that the petitioners are, in fact, aggrieved by the Final Seniority List dated 21.11.2023. A writ of quo warranto cannot be used as a collateral mechanism to challenge seniority or service-related disputes. Such issues are to be agitated before the competent service forum.

8. The record reflects that the private respondents were promoted to the post of Assistant Superintendent of Prisons (BS-16) strictly in accordance with the Recruitment Rules notified on 15.01.1992 and 29.05.2015, against the prescribed promotional quota and on the recommendations of the Departmental Promotion Committee (DPC), after fulfilling all codal formalities and mandatory training requirements. These rules were framed by the competent authority in consultation with the Services, General Administration and Coordination Department under Rule 3(2) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, and enjoy a presumption of legality unless declared otherwise by a court of competent jurisdiction.

9. The petitioners' contention regarding the existence of two distinct cadres, namely the "Ministerial Cadre" and the "Jail Police Cadre," is unsupported by any statutory framework. The consistent policy reflected in the service rules, including the West Pakistan Prisons Department (Assistant Superintendents of Jails) Service Rules, 1962, the 1992 Rules, and the Sindh Prisons and Corrections Services Rules, 2015, permits promotion of eligible ministerial staff to the post of Assistant Superintendent. Consequently, the allegation of impermissible cross-cadre movement is misconceived.

10. The petitioners' counsel raised the question that the Sindh Prisons Department Recruitment Rules, 1992, only allow appointments by transfer, implying that any elevation of the private respondents from Ministerial positions to Assistant Superintendent of Prisons (BS-16) in 2011 was ultra vires. This submission is factually and legally incorrect. The 1992 Rules provide for promotion to the post of Assistant Superintendent of Prisons (BS-16) through two recognized channels: Direct Recruitment (SPSC or Departmental Entry). Promotion from eligible departmental employees, including ministerial staff, against the prescribed promotional quota after fulfilling all codal formalities, seniority, and mandatory training. The phrase "appointment by transfer" in the Rules refers to intra-departmental mobility of employees who have already satisfied the eligibility criteria, including completion of training, experience, and service period, rather than cross-departmental absorption. It does not restrict promotions within the same department. A transfer involves the movement of an employee from one department or cadre to another, often necessitating compliance with Rule 9(1) of the 1974 Rules and relevant Supreme Court guidelines. A promotion, on the other hand, elevates an employee to a higher grade within the same department or cadre, based on merit, seniority, or prescribed quotas. In the present case, the private respondents were promoted within the Sindh Prisons Department from BS-14 Ministerial posts to BS-16 Assistant Superintendent posts against the prescribed promotional quota, and not transferred from any other department. Therefore, the petitioners' reliance on the transfer provisions of the 1992 Rules is misplaced. The Recruitment Rules of 2015 explicitly recognize promotion from existing departmental staff to the post of Assistant Superintendent. The private respondents' promotions in 2011 were fully in accordance with the spirit and objectives of the Recruitment Rules, which ensure merit-based progression within the department. The Rules were framed in consultation with the Services, General Administration and Coordination Department, giving them statutory legitimacy. The Sahito case and subsequent judgments on Sindh Prisons cadre matters have clarified that Posts such as Assistant Superintendent of Prisons are not separate cadre posts. Intra-departmental promotions of eligible employees, even from ministerial positions, are lawful when conducted against the prescribed promotional quota and after completion of all formalities. The legal principle in 2015 SCMR 456 regarding cross-departmental transfer is inapplicable to intra-departmental promotions. Therefore, the promotions of the private respondents in 2011 cannot be equated with appointments by transfer; they were legitimate promotions within the same department. In light of the above, the argument that the 1992 Rules prohibit the 2011 promotions of the private respondents is legally untenable. The private respondents were promoted in accordance with the Rules, completing all codal requirements, and there was no violation of statutory or constitutional provisions. The petitioners' reliance on "appointment by transfer" is based on a misinterpretation of the rules and is

contradicted by subsequent judicial pronouncements, including the Sahito case and the Supreme Court's affirmations.

11. The reliance placed by the petitioners on the judgment of the Supreme Court reported as 2015 SCMR 456 is misplaced. The said judgment pertains to appointments by transfer or absorption from one department to another under Rule 9(1) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. In the present case, the private respondents were promoted within the same department against a reserved quota, and therefore, the principles laid down in the aforesaid judgment are not attracted.

12. The legality of the petitioners' own appointments and upgradation has already been scrutinized by this Court in Constitutional Petition No. D-1406 of 2022, and the findings were substantially affirmed by the Supreme Court of Pakistan in CPLA No. 1932 of 2022. The Supreme Court maintained the upgradation prospectively from 10.11.2021, placed the petitioners below the officers recruited through the Sindh Public Service Commission (SPSC) in 2020, and set aside their promotion to BS-17. These findings have attained finality, and the petitioners cannot now seek to indirectly unsettle the settled position.

13. It appears from the record that despite the advertisement of only 15 posts in 2008, 39 individuals, including the petitioners, were appointed without re-advertisement and without undergoing the mandatory SPSC selection process required for BS-16 gazetted posts. These irregularities were acknowledged in earlier proceedings, thereby disentitling the petitioners to equitable relief. The latest view of this Court, as expressed in the earlier round of litigation in Sahito case, as well as in subsequent judgments concerning the Sindh Prisons cadre, affirms that Promotions made within the Sindh Prisons Department in accordance with the notified recruitment rules are lawful and protected. The post of Assistant Superintendent of Prisons is not a distinct cadre post, and eligible employees from the department may be promoted against the prescribed quota. It is well settled that the High Court should refrain from interfering in service matters involving seniority and promotions where statutory remedies exist. The principles laid down in 2015 SCMR 456 are inapplicable to intra-departmental promotions. These authoritative pronouncements lend further support to the legality of the respondents' appointments and promotions.

14. The petitioners have failed to demonstrate any infringement of Articles 4 and 5 of the Constitution. All actions taken by the respondents were in accordance with the applicable statutory framework and through competent forums, negating any allegation of arbitrariness or mala fide.

15. For the reasons recorded above, the instant constitutional petitions are not maintainable, being barred by Article 212 of the Constitution and the doctrine of

laches. The promotions of the private respondents were made strictly in accordance with the applicable recruitment rules and do not suffer from any legal infirmity. The reliance placed on 2015 SCMR 456 is misconceived, as the said judgment pertains to appointments by transfer and not to intra-departmental promotions. Guided by the principles laid down in the Sahito case and subsequent judgments relating to the Sindh Prisons cadre, the petitions are dismissed along with all pending application(s) with no order as to costs.

JUDGE

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