

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.D-460 of 2018

[Ali Muhammad Jat vs. Province of Sindh & Ors]

Before:

Justice Muhammad Saleem Jessar

Justice Nisar Ahmed Bhanbhro

Petitioner	Ali Muhammad Jat: Through Mr. Zulfiqar Ali Shah advocate
Respondents	Province of Sindh & Ors: Through Mr. Rafique Ahmed Dahri Assistant A.G Sindh
Date of hearing	16.10.2025
Date of Judgment	16.10.2025

J U D G M E N T

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NISAR AHMED BHANBHRO, J: Through this petition, the petitioner has challenged the Notification dated 04.03.2016, (*impugned notification*) whereby his promotion order dated 15.03.2012 from the post of Assistant Executive Engineer to the post of Executive Engineer (BS-18) was withdrawn by the Secretary to the Government of Sindh Auqaf, Religious Affairs, Zakat & Ushr Department by placing reliance upon the judgment dated 12.03.2013 passed by the Learned Apex Court in Criminal Original Petition No.89 of 2011 and Civil Review Petition No.193 of 2013 'Re- In matter of: Contempt proceedings against Chief Secretary Sindh and others'.

2. Learned counsel for the petitioner contended that the Promotion of the Petitioner was withdrawn in compliance to the judgment dated 12.03.2013 passed by the learned Apex Court in criminal original petition No 89 of 2011 "Re - in the matter of contempt proceedings against Chief Secretary Sindh and others." He argued that the judgment of learned Apex Court did not apply to the case of petitioner, as learned Apex Court through the referred judgment set at naught the absorption and out of turn promotions granted to the officers of Government of Sindh. He argued that Petitioner was accorded regular promotion followed by the recommendation

of Departmental Promotion Committee; that petitioner was not granted out of turn promotion; that Petitioner was condemned unheard when adverse action was taken against him and promotion order was withdrawn unilaterally; he, therefore, prayed for setting aside the impugned notification dated 04.03.2016 and restoration of promotion awarded to the petitioner vide notification dated 15.03.2012.

3. Learned Assistant A.G opposed the petition on the ground that petitioner is a civil servant and he was given out of turn promotion, therefore, in pursuance of the judgment of Learned Apex Court he was reverted back to his original position. He prayed for dismissal of Petition.

4. **Heard arguments.** Scanning of the material made available before us evidenced that petitioner was appointed as Sub-Engineer in the Office of Chief Administrator Auqaf Sindh in BPS-11 vide appointment Order dated 15.06.1985. Petitioner was promoted to the post of Assistant Executive Engineer vide Notification dated 28.07.1999 and lastly promoted to the post of Executive Engineer (BS -18) vide Notification dated 15.03.2012 on regular basis on the recommendation of Departmental Promotion Committee (DPC). It further appears from the record that petitioner's promotion Notification dated 15.03.2012 was withdrawn unilaterally without giving him any notice of hearing on the pretext of the compliance of judgment passed by learned Apex Court in criminal original petition No 89 of 2011. For the sake of convenience, the impugned notification dated 04.03.2016 is reproduced below:

**GOVERNMENT OF SINDH
AUQAF, RELIGIOUS AFFAIRS,
ZAKAT & USHR DAPERTMENT**

NOTIFICATION

No. SO(AUQAF)1(216)Promotion/2014/PT-IV In pursuance of judgment passed by Hon'ble Supreme Court of Pakistan in criminal Original Petition No 89/2011 dated 12.03.2013 and Civil Review Petition no. 193/2013 and other cases and with the approval of competent authority, the promotion of Mr. Ali Muhammad Jatt AEN (BS-17) to the post of XEN Auqaf (BS-18) notified by this department vide Notification No SO(AUQAF)4-51/97/127 dated 15th March 2012 is hereby withdrawn ab-initio.

Sd/.

SECRETARY TO GOVERNMENT OF SINDH

5. It transpired from the perusal of the impugned notification that the Competent Authority withdrawn the promotion of Petitioner pursuant to the judgment dated 12.03.2013 passed by learned Apex Court in criminal

original petition 89/2011 and others. To set the record straight, it will be appropriate to appreciate whether the referred judgment of the learned Apex Court attracted to the case of petitioner or not? For the very reason it would be in the fitness of things to go through the operative part of the judgment, in Criminal Original Petition No.89 of 2011 & others, *In the matter of CONTEMPT PROCEEDINGS AGAINST CHIEF SECRETARY, SINDH AND OTHERS*: reported as 2013 S C M R 1752, which reads as under:

162. *The absorption and out of turn promotion under the impugned legislative instruments will impinge on the self-respect and dignity of the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bona fide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the Constitution. The laws are made to achieve lawful object. The impugned legislative instruments do not advance this concept while conferring powers on the Chief Minister to grant of turn promotions, on the contrary the unstructured discretion vested in him has infringed the valuable rights of the meritorious civil servants of legitimate expectancy of attaining climax of careers.*

163. *In order to discover the intent and wisdom behind the impugned legislation, we required the Additional Advocate General to place before us the debates of Assembly during the passage of the Bills. Such record was placed before us. After perusal of the record, we found that the Bills/proposed laws were not sent to the Standing Committee. No debate had taken place on the proposed laws which had far reaching effect on the rights of the civil servants. One of the impugned Acts contained statement of objects and reasons for promulgating the impugned legislation, which is reproduced hereunder:--*

"The law enforcement personnel of Sindh Police in the past have risked their lives and exhibited exceptional acts of gallantry in the line of duty. Therefore, in order to retain the morale of the Force, it is

expedient to make certain amendments in the Sindh Civil Servants Act, 1973. The Bill seeks to achieve the above object."

164. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sindh Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under section 9A, the Sindh Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word 'Gallantry' in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.

6. It becomes explicitly clear from the perusal of the judgment relied upon by the Respondents penalizing him for reversion, that Honorable Supreme Court struck down all the out of turn promotions and absorptions done by the government of Sindh and the amendments made in the service laws and rules including Rule 9 - A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 (APT Rules) were declared to be ultra vires and set at nullity. The judgment referred supra had no bearing on regular promotions done in accordance with law.

7. It further transpired from record that the Petitioner was accorded promotion to BS - 18 on the recommendation of DPC on regular basis, thus his case did not fall under the category of OUT-OF-TURN promotions granted under Rule 9 - A of APT Rules (which now stands omitted). It would be conducive to reproduce the Notification dated 15.03.2012 through which the Petitioner was granted promotion, which reads as under:

GOVERNMENT OF SINDH
AUQAF, RELIGIOUS AFFAIRS,
ZAKAT & USHR DAPERTMENT

NOTIFICATION

No. SO(AUQAF)4-51/97. On the recommendation of the Departmental Promotion Committee Mr. Ali Muhammad Jatt Assistant Executive Engineer (BS-17) is promoted as Executive Engineer (BS-18) on regular basis with immediate effect.

SYED ABID ALI SHAH
SECRETARY TO GOVERNMENT OF SINDH

8. The language contained in the promotion order made it crystal clear that Petitioner was not extended benefit of Out of Turn Promotion but he was promoted on regular basis. The stance of the petitioner gets support from the reply to Para 4 of the petition filed by Auqaf, Religious Officer, Zakat & Usher Department through its Chief Administrator /Respondent No.3, which states as under:

4. Contents of para 4 are denied. It is categorically denied that the promotion to BPS-19 was right of the petitioner; whereas the law in this regard is very clear which says that Promotion is not a vested right. With regard to his out of turn promotion, it is submitted that the said para is to be answered by the Respondent No.2. However, being custodian of record particularly with regard to promotions upto BPS-17 of the petitioner and DPC to BPS-18 it is clarified that the petitioner was considered for promotions on his own turn being senior most and fit person, as per law.

It is further submitted that the judgment passed by the apex court in Crl. Org.89 of 2011 is to be implemented in all cases of out of turn promotions/deputations and illegal absorption across the board. However, this case neither falls within the ambit of out of turn promotion/deputation or illegal absorption as far regard is concerned."

9. Reply of the Auqaf Department evidenced that Petitioner was promoted to the post of Executive Engineer BPS-18 on regular basis. It further transpires from the record that prior to issuance of the impugned notification, in utter disregard and violation of the principles of natural justice petitioner was not given any notice of hearing. Case of the petitioner falls under the well-recognized doctrine of justice "Audi Alteram Partem" that holds that no one can be condemned unheard. Petitioner's right of fair trial was encroached upon which violated the right of fair trial enshrined under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

10. It is an admitted position that the impugned action lacked due process of law. To enjoy the protection of law and to be treated in accordance with the law is an inalienable right of every citizen within the bounds of Article 4 of the Constitution which, in fact, enshrines the doctrine of equal protection of law and puts restrictions that no action detrimental to life and liberty can be taken without due process. In our view, public functionaries are supposed to execute and perform their duties within the bounds of their legitimately recognized powers, ensuring that individuals are treated in accordance with the law. The principles of natural justice required that the Petitioner should have been afforded a fair opportunity to explain his claim and entitlement to the post he was holding. The principles of natural justice and fair play required that a right of audience was a guaranteed right before any detrimental action was taken and denial of such a right, will set at naught all the solemn proceedings adjudicated under the dominion of quasi-judicial authority, statutory body, or any departmental authority. Such errors, omissions and slip - ups cannot be expected by the governmental departments which result in severe injustice specially by misinterpreting the judgment of the Court of Law as happened in the case of Petitioner.

11. Adverting to the contention of the learned AAG regarding status of the petitioner as civil servant, record shows that prior to filing of instant petition, the petitioner had challenged impugned notification before Sindh Service Tribunal (SST) through Appeal No.917 of 2016 [*Re: Ali Muhammad Jat vs. The Chief Minister Sindh*]. Learned SST dismissed the appeal of the petitioner vide judgment dated 05.12.2016 on the ground that he was not a civil servant. Since the status of the petitioner as Civil Servant had already

been determined in negative by a fact-finding forum, therefore, he was left with no remedy except to invoke the extra - ordinary jurisdiction of this Court. For the ease of reference concluding para of the judgment passed by SST is reproduced below:

“12. This being the position, it is clear beyond any shadow of doubt, the appellant is not a civil servant, therefore, we do not touch the case on its merits and dismiss the appeal being not maintainable in law with no order as to costs.”

12. The Respondent is a government department having statutory rules of service as conceded to by learned AAG, therefore, while issuing the impugned notification the Respondent No 1 discharged its functions in connection with the affairs of province, thus, amenable to the writ jurisdiction of this Court for judicial review. Petitioner was deprived of right to promotion by incorrectly applying the judgment of the learned Supreme Court, which even per admission of the respondents was not attracted to the case of the Petitioner. The petitioner was not dealt in accordance with law and his reversion resulted in miscarriage of justice. The petitioner has made out a case for indulgence of this Court to exercise powers of judicial review. The impugned notification from the face of it is perverse and issued without any lawful authority, thus liable to be set aside.

13. For the reasons aforesaid, the instant petition is accepted, in consequence, whereof the impugned notification dated 04.03.2016 is set aside and notification dated 15.03.2012 stands restored. Petitioner is held entitled to the benefits for the post of Executive Engineer BS - 18 from the date of his promotion.

Petition stands disposed of accordingly.

J U D G E

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Sajjad Ali Jessar
Approved for reporting
Hyderabad
16.10.2025