

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D- 1820 of 2023

[Dr. Zakir Hussain v. Province of Sindh & Others]

BEFORE:

MR. JUSTICE MUHAMMAD SALEEM JESSAR

MR. JUSTICE NISAR AHMED BHANBHRO

Petitioner: Dr Zakir Hussain
Through Mr. Manzoor Ali Jessar, Advocate

Respondents: Province of Sindh and others
Mr. Rafiq Ahmed Dahri, Asstt: A.G. Sindh
along with Muhammad Ibrahim Shaikh
Senior Veterinary officer, Directorate of Animal
Breeding for respondent No.3

Date of hearing:
& Decision: 21.10.2025

ORDER

NISAR AHMED BHANBHRO, J - Through instant Constitutional Petition, the Petitioner has prayed for following relief:

- a) *That this Honourable Court may be pleased to direct the respondents to promote the petitioner on urgent basis as the petitioner is fully capable and legally entitled to be promoted on seniority basis to BPS-20.*
 - b) *That this Honourable Court may be pleased to call in person the respondents to clarify that why they have given illegal promotions to juniors viz. respondent No.5 Dr. Abdul Karim Memon, Dr. Mumtaz Ahmed of the department and why they have deprived the petitioner from promotion, while he was legally entitled for the same. Further this Honourable court may be pleased to take strict action against the respondents.*
 - c) *That this Honourable Court may be pleased to direct the official Respondents to cancel the promotional orders of respondent No.5 Dr. Abdul Karim Memon & Dr. Mumtaz Ahmed who were wrongly promoted to BPS-20.*
2. Mr. Manzoor Ali Jessar, learned counsel for petitioner argued that the Petitioner was appointed as Veterinary Officer in livestock and fisheries

department vide order dated 30.9.2019; that Petitioner served the department till his superannuation dated 17.3.2024 which was conveyed to him through letter dated 22.3.2024; that the petitioner was promoted to the post of Deputy Director BS-18 and Additional Director BS-19 in the year 2017 such notification dated 18.10.2017 was issued by the department; that the department issued seniority list dated 31.7.2022 wherein the name of the Petitioner stood at S.No.7; that the Meeting of Selection Board was convened to consider the promotion of Petitioner and others on 23.6.2023 for the post of Director BS - 20 wherein the case of the Petitioner was deferred on unjustified grounds whereas Dr. Abdul Karim Memon and Dr. Mumtaz Ahmed who were junior to Petitioner were granted promotion; that the Petitioner has retired during pendency of the Petition; therefore, he prayed for grant of proforma promotion in BS - 20 which right has accrued to him since the date of issuance of the impugned notification dated 23.06.2023 the date when respondent No.5 and others were granted promotion.

3. Learned Assistant Advocate General, Sindh, controverting the submission of learned counsel for the Petitioner contended that the Petitioner was not entitled for promotion; that promotion is not the vested right of an employee; that under the service rules the promotion is granted to an employee on the basis of seniority-cum-fitness; that no doubt the petitioner was senior to the Respondent No 5 who was recommended by the selection board for promotion to Grade-20 as he was found fit; that the Petitioner was not found fit to hold the position in grade 20, therefore, he was declined promotion; he lastly prayed for the dismissal of the petition.

4. Heard arguments and perused the material made available before us on record.

5. It is borne out from record that during the pendency of Petition, Petitioner retired from service on attaining the age of superannuation. The concept of Promotion with a retrospective effect to a retired Civil Servant is alien to the scheme of law. The Sindh Civil Servants Act 1973 and Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 being governing laws in matters of appointment and promotions do not contain any provision entitling a Civil Servant for Promotion after retirement. In absence of any laws conferring rights of promotion to the retired Civil

Servants, this Court cannot issue writ, and direct the authority to promote a retired civil servant retrospectively.

6. After superannuation the civil servant may, however, claim a right to be considered for pensionary benefits in accordance with the policy or a scheme adopted by the competent authority. The proviso to FR 17(1) of the Fundamental Rules empowered the appointing authority to direct that a civil servant shall be paid the arrears of pay and allowances of a higher post through proforma promotion if satisfied that the civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented. Through Fundamental Rule 17 government obviously intended to compensate a civil servant for being deprived of a right to be considered for no fault on his part. The finance Division vide notification No SRO No.965(I)/2022 dated 20.05.2022 omitted the above provision; however, left the room open for consideration of case of Proforma Promotion of civil servants, by orders of judicial forum.

7. The Petitioner claims Promotion to next higher grade. Though the appointment, promotion and transfer are the internal affair of the department and this court was not acting as an Appellate Authority to examine the matters pertaining to the terms and conditions of the service of a Civil Servant. It is always expected that the department undertakes promotion cases of civil servants strictly on merits, promotion of a deserved civil servant underscores the concept of good governance and any favoritism or nepotism in the promotion matters erodes the confidence of the officers in the department. To determine whether the Petitioner was entitled for the arrears of pay and allowances of a higher post through proforma promotion the Petitioner has to establish that he was entitled to be promoted from a particular date and wrongfully prevented for no fault of his own.

8. The meticulous perusal of record reveals that the case of the Petitioner along with others colleagues was placed before the Selection Board meeting dated 23.6.2023 for consideration wherein Dr. Muneer Ahmed Channa, Dr. Ghulam Rasool Khoso, Dr. Rafiq Ahmed Memon, Dr. Toufiq-ur-Rehman, Dr. Mumtaz Ahmed and Dr. Abdul Karim Memon were considered and recommended for the promotion to Grade-20 for the post of Director General Live Stock and Fisheries Department. The case of the petitioner was deferred as the Minister informed the Selection Board that the petitioner did not

possess the required capabilities and efficiency to hold the higher independent post of BS-20; therefore, his case was deferred by the Selection Board; as per Promotion Rules Petitioner failed short of securing requisite qualifying score of 70. For the ease of reference findings of Selection Board (available at page 45 of petition) are reproduced below:

“The Minister for Livestock & Fisheries informed the Board that he did not possess the required capabilities and efficiency to hold a higher independent post of BS-20. Keeping in view the above scenario, the Board, awarded him 05 marks bringing the total marks to 59.74, which is below the requisite qualifying score of 70, as per promotion rules. In light of above scenario, the Board, unanimously, decided to defer him.”

9. Minutiae of the record of Meeting of the Selection Board reveals that at Point No.54 the Board deliberated that the promotion criteria for promotion of selection post through Selection Board was different to that of promotion post through Departmental Promotion Committee. For promotion to a selection post through Selection Board, the employee would be entitled for promotion when he possesses essential qualities like output, quality of work, leadership, professional competence, good reputation and good conduct. For the ease of reference Point No. 54 is reproduced as follows :-

“ While deliberating upon the cases of the Livestock Department, it came to the notice of the Board that a few panelists have remained under suspension due to failure to perform on independent assignments whenever tasked. Chief Minister Sindh / Chair of the Board opined that the rationale behind selection posts is to promote the best possible human resource to the higher positions that are of utmost importance and play a pivotal role in ensuring good governance. Unlike seniority cum fitness posts up to BS-18, for promotion on selection posts, one ought to have essential qualities like output and quality of work, leadership, professional competency, and good reputation and conduct. If not so, the Board should recommend cases for promotion of the right person for the right job rather than simply following the seniority list.

10. Perusal of Minutes of Meeting transpired that the officers who were granted promotion were awarded more than 70 marks and in remarks column it was only mentioned that he has cleared for promotion to BS-20 on regular basis as he fulfilled all requirements but while declining the case of the Petitioner it has not been opined that he lacked any of the qualification debarring for promotion. This fact in itself establishes that Petitioner was not

considered for promotion under extraneous consideration which marred his right to get the better position. There is no adverse finding on the record to say that the Petitioner was devoid of any qualification essential for promotion to Grade-20 mentioned in Para-54 of the Minutes of Meeting of the Selection Board.

11. The promotion is not a vested right of the employee but an employee cannot be denied such right when he was placed equally with the other employees and no distinction was made out for deferring his promotion; as such the action on the part of the authority was not falling within the dominion of law and violated the rights of Petitioner guaranteed under Article 4, 9, 14, 25, and 27 of the Constitution of Islamic Republic of Pakistan of 1973, which lay emphasis that a person was subject to the due process of law, his right as to the life, liberty and development and prosperity shall be respected, he shall not be discriminated and given equal treatment of law in all matters including service. It appeared from the record that the Petitioner was deferred for promotion to next higher grade under extraneous consideration. No material was placed on record to dub petitioner as an inefficient officer or he lacked administrative and leadership qualities, even no material was found available that at any point of time, the petitioner was proceeded against in terms of efficiency and disciplinary rules 1973 for lack of abilities to administer the affairs of office.

12. It can be safely held, in view of the above admitted factual position, that the Petitioner was eligible for promotion to grade 20 but declined under flawed and extraneous considerations. It has on record that Petitioner was prevented to next higher grade with no fault on his part, making petitioner entitled for grant of proforma promotion from the date when his colleagues were promoted.

13. So far as the grievance of the Petitioner for cancellation of Promotion of respondent No 5 is concerned, it cannot be granted by this Court, as it involved the terms and conditions of the service and required evidence, which exercise cannot be undertaken by this Court under its writ jurisdiction in terms of the bar contained under article 212 of the Constitution of Islamic Republic of Pakistan, of 1973.

14. For the aforementioned reasons this Petition is allowed to the extent of prayer clause (a). The respondents are directed to consider the case of the Petitioner for proforma promotion from the date when his other colleagues were granted regular promotion and decide the same within a period of two months' time from receipt of this order.

Office is directed to send a copy of this order to Respondents for compliance

JUDGE

JUDGE

Karar_Hussain/PS*

Approved for reporting

Hyderabad

Dated: 21.10.2025