

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. D-3350 of 2022

[Imran Khan Sahito. vs. Province of Sindh & Ors]

BEFORE:

JUSTICE MUHAMMAD SALEEM JESSAR

JUSTICE NISAR AHMED BHANBHRO

Petitioner

Imran Khan Sahito

Through Mr. Ahmed Ali Ghumro advocate

Respondent No 5

Maqbool Ali

Nemo

Respondent No 6

Murad Ali Jatoi

Barrister Jawad Ahmed Qureshi, advocate

Respondents No 7 & 9

Abdul Rasheed &

Nazar Hussain

Mr. Azain Nadeem Memon, advocate

Respondent No 8

Abdul Ghaoor Vigio

Mr. Masood Rasool Babar Memon, advocate

Respondents No 1 to 4

Province of Sindh & others

Mr. Rafique Ahmed Dahri,

Assistant A.G Sindh

Date of hearing :

28.10.2025

Date of decision :

31.10.2025

Date of Announcement:

17.11.2025

J U D G M E N T

NISAR AHMED BHANBHRO, J:- Through this petition, the petitioner seeks following reliefs:

- i. *Hold that act of the respondent No.4, issued the impugned office order, dated 10-6-2022 and 26-8-2022 whereby the respondent No. 5 to 9 B.Tech holders have been promoted against the professional engineering posts as Estate Engineer BPS-18 and Deputy Chief Engineer/Director BPS-19 in sheer violation of the Judgment dated 24-4-2018 rendered by Honourable Supreme court in case of (Maula Bux Shaikh v/s Chief Minister of Sindh and others) reported as 2018 SCMR 2098 as such the act of respondents is illegal, unlawful, in violation of the dictum laid down by the Honourable supreme court of Pakistan.*
- ii. *Hold that respondent NO. 5 to 9 are B.Tech holder are not entitled for the promotion as Estate Engineer BPS 18 and Deputy Chief Engineer BPS-19 in term of the Judgment of the Honourable supreme court which has binding effect upon the respondents under article 189 of the constitution, 1973, therefore the recommendation of the respondent NO. 5 to 9 against the professional engineering posts are illegal, unlawful having no legal effect.*
- iii. *Hold that petitioner is B.E civil qualified Estate Engineer BPS-18 entitled for the promotion to the post of Deputy Chief Engineer BPS-19 has been deprived by the official respondents with malafides intention and ulterior motives which is not permissible in law.*
- iv. *Direct the respondent NO.4 to consider the petitioner for promotion to the post of Deputy Chief Engineer BPS 19 which involve professional work in term of the judgment of the Honourable supreme court of Pakistan.*
- v. *Suspend the operation of the impugned office orders dated 10-6-2022 and 26-8-2022 issued by the respondent NO.4 in utter violation of the Judgment of Honourable Supreme Court.*
- vi. *Set aside the impugned office order dated 10-6-2022 and 26-8-2022 issued by the respondent NO.4 is illegal unlawful not sustainable in law.*

2. Learned counsel for petitioner maintains that by means of impugned orders dated 10.06.2022 and 26.08.2022 the respondents No.5 to 9, who are B-Tech Engineers, have been promoted to the post of Estate Engineer (BS -18) and Deputy Chief Engineer BPS-19 respectively in sheer violation of the dicta laid down by Honorable Supreme Court in the case of **Maula Bux Shaikh** reported as **2018 SCMR 2098**; that recommendations issued by the officials respondents for promotion of the private respondents No.5 to 9 are even without issuing final seniority list; that in the case, referred to supra, the Honorable Supreme Court settled that only professional Engineer having B.E degree registered with Pakistan Engineering Council can be promoted to the posts involving professional engineer work, however, the official respondents have acted against the principles settled in aforesaid reported judgment; that the decision of H.E.C, regarding consideration of B.Sc

Engineers and B-Tech (Honors) at par, has been set aside by the Islamabad High Court in Writ Petition No.260 of 2022. He lastly prayed for allowing this petition as prayed for.

3. Learned counsel for the respondents No 6 to 9 opposed the petition and jointly argued that the petitioner has misinterpreted the judgment rendered by Honorable Supreme Court in Maula Bux's case (supra); that the Learned Apex Court has not imposed any embargo on the Government Departments relating to promotion; that promotion orders of Respondents No 5 to 9 were not subject to the degrees duly accredited by Pakistan Engineering Council as professional degrees; they prayed for dismissal of the Petition.

4. Learned Assistant A.G adopted the arguments advanced by learned counsel for the private respondents and prayed for dismissal of the petition.

5. Respondent No 5 chose to remain absent, despite service, therefore, the petition is decided with the assistance of Learned Counsel for the parties.

6. Arguments heard and record perused.

7. The petitioner has challenged the promotion order(s) of respondents No.5 to 9 on the ground that they were holding the bachelor's degree in technology, the same was not recognized by Pakistan Engineering Council as Professional Degree. The job assigned to the post of Estate Engineer and Deputy Chief Engineer was to oversee professional work. The Respondents cannot perform professional work as held by the Honorable Supreme Court in the case of Maula Bux (supra), thus were not qualified to perpetuate in the offices held by them.

8. To address the issue agitated by Petitioner, it would be conducive to understand the judgment rendered in the Maula Bux's case. Para No 20 of judgment being relevant to this case, reads as below:

20. Further, the main principle that is deductible from the above judgments of this Court is that it is the domain of the Government to decide whether a

particular academic qualification of a civil servant/employee is sufficient for promotion from one grade to another higher grade and whereas it is in the domain of the Pakistan Engineering Council to decide whether a particular academic qualification can be equated with another academic qualification but it has no power to say that the civil servants/employees holding particular academic qualification cannot be promoted from a particular grade to a higher grade. Thus; on the basis of above pronouncements of this Court, it is clear that the notification dated 19.03.2014 cannot be validly or justifiably challenged on the ground that it impinges or infringes upon any of the provisions of PEC Act, 1976 and thus would be ultra vires. No such finding can justifiably be recorded in that as it has been laid down quite empathetically that the government exercises its own power under the domain of law with regard to promotion of civil servants/employees under Sindh Civil Servants Act, 1973 and Rules made thereunder while PEC Act does not overreach or put an embargo upon the government in the matter of prescribing of qualification and other conditions of service of civil servants/employees for their-promotion to higher grade. Yet again, we note that although the vires of notification dated 19.03.2014 has been challenged but we observe that this very notification has been issued under sub-rule (2) of Rule 3 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, which rules have been made under section 26 of Sindh Civil Servants Act, 1973. Neither rule 3(2) of said rules nor section 26 of the Act, 1973 have been challenged nor their vires called in question before us. Thus; from this also it is quite apparent that the petitioner does not challenge the government power for prescribing qualification and conditions of service of civil servants/employees for their promotion to higher grade. In any case, we note that the provisions of PEC Act nor the rules and regulations made under it will operate as bar on government to prescribe for qualification and other conditions of service of civil servants/employees for promotion to higher grade.

9. From perusal of para-20 *ibid* it is vivid and crystal clear that the Honorable Supreme Court has categorically held that the Pakistan Engineering Council Act, 1975 (PEC Act) will not operate as a bar on government to prescribe the qualification and other conditions of service of civil servants/employees for initial appointment and promotion to higher grade, meaning thereby the promotion of a civil servant/employee in an engineering related department was not fettered to the fulfillment of conditions envisaged under sections 17 and 27 of PEC Act.

10. The Sindh Industrial Trading Estate (SITE) an independent entity, was established pursuant to bill passed by Sindh Assembly through Resolution No.24-J.B/47-I, dated 2nd June, 1947. It was incorporated as public limited company in 1947 under the Indian Companies Act, 1913, on advent of Companies Ordinance 1984, the SITE was accordingly incorporated under the Ordinance as public limited Company. SITE functions under the Memorandum and Articles of Association adopted in the meeting of Board Directors (BoD). The company regulates its business through BoD consisting of 15 Members (8 Government representatives and 7 from private sector i.e. Tenants of SITE). The private members of the BoD are elected by General Body of the company. General Body consists of 60 Members out of which 35 are nominated by the Government and 25 are elected amongst the Tenants of SITE.

11. SITE performs functions as an independent entity, with powers to appoint employees. SITE regulates the services of employees under an internal mechanism through decisions in BoD meetings. SITE framed recruitment rules vide BoD Resolution No 6 dated 26.06.1972 (**SITE Recruitment Rules**), laid down method of recruitment in Rule 9 in the following manner:

9. Method of Recruitment

i)

By transfer and promotion.

ii)

On deputation.

i)

Initial recruitment will be under the light of the prevailing Govt. Policy i.e 60% quota from Rural areas and 40% quota from Urban Areas.

ii)

The promotions will be made on the outstanding merit supplemented by the seniority.

iii)

The vacancies created from time to time shall be filled up in the ratio of 50% by direct recruitment and 50% by promotion.
In case there is only one vacancy the decision regarding the mode of recruitment either by direct recruit or promotion shall be decided by the respective appointing authority.
These changes may be incorporated in the Delegation of powers.

12. From perusal of Rule 9 of SITE Recruitment Rules it is crystal clear that the promotion to a higher post shall be made on the basis of outstanding merit supplemented by the seniority. The SITE Recruitment Rules do not in any manner debar the B-tech holders from right of promotion to next higher

grade. From perusal of minutes of meeting of Human Resources Committee of SITE held on 24.05.2022, it transpired that there were two categories of Engineers working in the SITE; one category of Engineers possessing Engineering Degrees (professional engineers), whereas the second category possessed B-Tech degrees and for promotion to the post of Estate Engineer BS-18 the ratio of 80% for Professional Engineers and 20% for B-Tech holders was fixed, which is in consonance with Rule 9 of SITE recruitment Rules. The Professional Engineers were placed at higher pedestal in division pool for promotion.

13. It further transpired from record that there were seven (07) vacant positions of Estate Engineer, to be filled from amongst only four available Assistant Engineers holding B.E Civil degrees. So far as Assistant Engineers (B.Tech. Civil) are concerned, only two posts of Estate Engineer in said category were vacant while three persons were available for consideration and accordingly respondents No.5 and 6 were considered and accorded promotions as Estate Engineer BS - 18.

14. Record evidenced that in BoD meeting held on 02.07.2022 cases of promotion of officers from the post of Estate Engineer BS-18 to the post of Deputy Chief Engineer BS-19 under Agenda No.4 were considered. From the perusal of minutes of said meeting it revealed that total seven (07) posts of Deputy Chief Engineer BS-19 were vacant, against which four (04) Estate Engineers B.E Civil, while three (03) Estate Engineer B.Tech. Civil were considered and promoted and all posts were filled by promotions, which included the respondents No. 7 to 9 having been promoted as Deputy Chief/Director BS-19 against non-engineering posts.

15. During course of arguments learned counsel for the petitioner was confronted as to how the judgment of Honorable Supreme Court rendered in the case of Maula Bux (supra) is applicable in the present case, he failed to assign any cogent reason, however, contended that the job of Estate Engineer and Deputy Chief Engineer required doing of professional work, therefore, the respondents 5 to 9 were not entitled for promotion against said posts. This aspect of the case has already been considered by the Honorable Supreme Court in para-20 of the judgment referred above. Moreover;

Honorable Supreme Court vide Order dated 07.02.2024 passed in the case of Ghulam Abbas Soomro vs. Province of Sindh [Civil Appeal No.84-K of 2023] held that case of Maula Bux needed further consideration, therefore, recommended for constitution of a Larger Bench to settle this issue once for all. It will be conducive to reproduce below the para-9 and 10 of the above order being relevant:

9. *Accordingly, it would be safe to hold that, while both cases, Fida Hussain's case and Maula Bux Shaikh's case, affirm that it is the domain of the Government concerned to decide, whether a particular academic qualification of a civil servant employee is sufficient for promotion from one Grade to another higher Grade. However, the questions which still alludes a definite determination are: whether any governmental policy regarding promotion can be given effect if the same can lead to the violation of the PEC Act or any other statute or expose the person who benefited from such policy to a criminal liability, and whether denying an Executive Engineer (BS-18) to perform professional engineering works entailed for an Executive Engineer (BS-18) creates different classes of employees within the same cadre, thereby violating the principle of equality and non-discrimination provided under Article 25 of the Constitution.*

10. *In the circumstances, the present case warrants further consideration but before a larger bench of this Court. Office to place the present case before the Committee constituted under section 2 of the Supreme Court (Practice and Procedure) Act, 2023 for fixation of the case before an appropriate bench.*

16. It is also observed that petitioner has not challenged the vires of SITE Recruitment Rules, that created room for promotion of the Respondents 5 to 9. Further, SITE Recruitment rules conferred powers upon BoD to fix the criteria, method and qualification for appointment to a post by way of initial appointment, transfer or promotion. Respondent SITE decided the fate of promotions of Respondents No 5 to 9 in accordance with law and rules applicable. No illegality, infirmity or perversity has been pointed out to ostracize the Respondents No 5 to 9 from the group of employees entitled for promotion to next grade.

17. In the wake of above discussion, no case for indulgence of this Court to exercise powers of judicial review under article 199 of the Constitution of Islamic Republic of Pakistan is made out. Accordingly, this petition fails and the same stands dismissed along with pending application(s).

JUDGE

JUDGE

Sajjad Ali Jessar
Approved for reporting
Hyderabad