

IN THE HIGH COURT OF SINDH AT KARACHI  
CP. No. D-1406 of 2024  
(*Manzoor Ahmed v province of Sindh & others*)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul-Karim Memon

**Date of hearing and Order: 09.05.2025**

Malik Altaf Jawed advocate for the petitioner.  
Mr. Faizan Hussain Memon, advocate for the respondent No.6  
Nemo for respondent No.3/Secretary Worker Welfare Board.  
Mr. Ali Safdar Depar, Assistant Advocate General

**ORDER**

**Adnan-ul-Karim Memon, J:** Petitioner seeks the following relief(s)

- (a) *Declare the re-appointment of Respondent No. 6 illegal, unlawful, unconstitutional, malafide, violative of Apex Court orders, and non-est, and consequently set it aside.*
- (b) *Declare all subsequent promotions of Respondent No. 6 illegal, unlawful, unconstitutional, malafide, and non-est, and consequently set them aside.*
- (c) *Order the repatriation of Respondent No. 6 and initiate contempt proceedings against the Respondents for violating the Honorable Apex Court's orders.*
- (d) *Initiate appropriate proceedings against the Respondents for violating the orders of the Honorable Apex Court and this Honorable Court.*
- (e) *Pending adjudication, restrain Respondent No. 6 from holding the post of Deputy Director (BPS-18) and restrain the Respondents from taking any coercive action against the Petitioner.*

2. The Petitioner seeks this court's intervention against the unlawful re-appointment and rapid promotions of Respondent No. 6, who currently holds the position of Deputy Director (Admn) BS-18 in Respondent No. 3's office. The Petitioner submitted that the Respondent No. 6's initial absorption as an Office Assistant in 2000 was fundamentally flawed due to his premature nature and reliance on inapplicable regulations. Despite a clear 2013 Supreme Court decision reported in **2013 SCMR 1752**, for his repatriation, which was subsequently upheld in review petition reported as **2015 SCMR 456**, Respondent No. 6 was re-appointed as Superintendent and swiftly ascended to Assistant Secretary BS-17 and then Deputy Director BS-18. The Petitioner contends these actions constitute a defiance of the Apex Court's directives and are therefore illegal, requesting the court to nullify the re-appointment and promotions order of respondent No. 6 and his immediate repatriation to his parent department i.e. Directorate of man power and Training, Government of Sindh and initiate contempt proceedings against the Respondents including the beneficiary for their disregard of the Apex Court's orders.

3. Learned counsel for the petitioner has submitted that once the constitution petition No. 3088 of 2013 of the petitioner and others was dismissed by this Court

as abated in terms of paragraph 154 of the judgment dated 05.01.2015 in Review Petition No. 193 of 2013 etc. ( Ali Azhar Baloch case 2015 SCMR 456) and his subsequent petition in Supreme Court was dismissed vide order dated 05.01.2015 as well as Review Petition No. 55 of 2015 vide order dated 10.12.2015, as such the official respondents were/are bound to implement the Supreme Court decision in terms of Article 189 of the Constitution, but rather they defied the decisions and allowed the respondent No.6 to continue with the previous job and promoted him in BS-18 which action on their part is illegal, unconstitutional and void, thus his immediate repatriation to his parent department be ordered and drastic action be taken against the official respondents as well as private respondents in terms of Article 204 of the Constitution. He prayed for allowing the instant petition.

4. The counsel for respondent No. 6 questioned the petition's maintainability given the 26th Constitutional amendment, suggesting it requires a regular bench hearing. He alleged the petitioner has a history of frivolous litigation. He argued his client has been a regular employee of the Directorate of Manpower & Training Sindh (an attached office of the Labour Department since 1996). In 1999, he was deputed to the Sindh Workers Children Education Cess (SWCEC) Board of Management and absorbed there in 2000, following the Board's rules. After SWCEC merged with the Sindh Workers Welfare Board (SWWB) in 2006, his services were transferred. He served SWWB for 14 years until his 2013 repatriation order by the Chief Secretary Sindh, which he claims was based on a misinterpretation of a Supreme Court judgment. He emphasized that with a NOC from his original department, he and over 300 others were absorbed into SWWB and continue to work there. He argued his repatriation to the Sindh Technical Education Vocational Training Authority (STEVTA) was incorrect, as his parent department was Labour and Human Resources, and SWWB, where he still serves, also falls under this department. He cited an Islamabad High Court order from 03.06.2019, which deemed similar repatriations a violation of due process (Article 10-A) and mandated individual assessments. He asserted his client's repatriation ignored these directives and his right to be heard. He further submitted that respondent No. 6 was subsequently appointed as Superintendent (Benefit), then Assistant Secretary BS-17 in SWWB, and promoted to Deputy Director BS-18 in July 2023, citing paragraph 165 of the Supreme Court's Ali Azhar Khan Baloch case, which allows placing officers in other attached departments under the same administrative control when their original department is abolished or opposed, ensuring service continuity. He added that this promotion to Deputy Director BS-18 was based on seniority-cum-fitness, consistent with promotions of his juniors. He cited the Supreme Court's order in the Salman Memon case (dated 13.02.2019), urging expedited decisions in such employee cases by the concerned Bench of the High Court. Therefore, he requested that the current petition be dismissed.

5. Regarding the counsel's suggestion to refer the matter to a regular bench, it is important to recall that Constitutional Benches were specifically created to have sole authority over cases involving the interpretation of the Constitution and the enforcement of fundamental rights, as clearly stated in Article 202A for the High Court. Regular benches continue to handle routine legal matters such as civil, criminal, and standard service or tax cases that do not primarily raise constitutional questions or issues of fundamental rights. Given that the present case involves interpreting the Constitution and potentially addressing the violation of fundamental rights, including the enforcement of the decision of the Supreme Court under Article 187 (2) of the Constitution, it logically falls under the exclusive jurisdiction of a Constitutional Bench as per the 26th Constitutional Amendment. Therefore, this case needs to be heard and decided by a Constitutional Bench.

6. While the decision was pending, the respondent No. 3 submitted comments with the narration that the petition is not maintainable. They stated that the issue of absorption is irrelevant because respondent No. 6 was appointed to the Directorate of Manpower and Training Sindh, an attached office of the Labour Department. The comments further indicated that the competent authority approved the appointment, transfer, promotion, and posting of respondent No. 6, thus protecting these orders under the Service Rules 2001. Supporting respondent No. 6's position, they requested the dismissal of the petition. The plea raised by the respondent No.3 has already been settled by the Supreme Court in an earlier round of litigation; thus, no further discussion is required by this court.

7. The AAG stated that the Advocate General advised on 13.08.2020 for respondent No. 6 to rejoin the Labor Department with protected seniority, citing a Supreme Court judgment. This advice was sent for administrative action. However, this court noted that it had already declined respondent No. 6's request to set aside his repatriation on 28.01.2015, a decision upheld by the Supreme Court on 10.12.2015. This court questioned how the Advocate General could offer an opinion on a concluded judicial matter. The AAG argued that the Advocate General is bound to advise the Sindh government under Article 140 of the Constitution. This court disagreed, reasoning that its judicial decisions can only be challenged in the Supreme Court under Article 185 of the Constitution, and no Sindh government department can interfere unless the Supreme Court overturns its orders. Since the Supreme Court has already ruled on this matter, reposting the respondent No. 6 to the same position with promotion not mandated by the judgment, appears to be a clear act of contempt on the part of delinquents, the Chief Secretary Sindh, look into the matter and ensure compliance with the Supreme Court decision in its letter and spirit.

8. We have heard to the arguments presented by the lawyers for all parties present in court and have carefully reviewed the case documents, including the comments submitted by respondent No. 3, with their help.

9. Respondent No. 6's case relies heavily on the Islamabad High Court's order, which addressed petitions against repatriation orders. In those petitions, individuals absorbed by the Capital Development Authority (CDA) argued that their repatriation violated due process and Supreme Court directives from a February 13, 2019, order (Criminal Original Petitions No. 18/2015 & 89/2011). The Supreme Court had mandated individual assessments considering Sindh's policies and employment laws, suggesting remedies under Article 187(2). Petitioners there argued that their repatriation defied Article 10-A (due process) as no action was taken under relevant service rules. They cited Supreme Court judgments in "Contempt proceedings against the Chief Secretary, Sindh and others" [2013 SCMR 1752] and "Ali Azhar Khan Baloch Vs. Province of Sindh" [2015 SCMR 456], stressing individual review and due process. Petitioners' counsel requested lawful proceedings. The Authority's counsel could not prove due process and proposed remanding the cases. Consequently, the Islamabad High Court allowed the petitions, nullifying the repatriation orders and directing the competent authority to follow service rules and due process, with reasons to be recorded if absorptions were deemed illegal based on the Supreme Court rulings.

10. However, a critical question arises, given that the petitioner's Constitution Petition No. 3088 of 2013 was dismissed by this court on January 28, 2015, as abated according to paragraph 154 of the Supreme Court's judgment in the Ali Azhar Khan Baloch case (a decision upheld by the Supreme Court on January 5, 2015, and his Review Application No. 55 of 2015 was dismissed on December 10, 2015), can this matter be reopened by the High Court or any other forum besides the Supreme Court recalling or reviewing its own order?

11. It appears the Islamabad High Court might not have been fully informed on this issue, especially since respondent No. 6 not only returned to his original position but also received a promotion to BS-18. In this regard, the Supreme Court, in its order dated September 27, 2016, concerning Cr. Org Petition Nos. 106 to 111 of 2016, clearly stated that once employees have been de-notified in accordance with the Court's judgments, any aggrieved employee must seek a review from the Supreme Court itself, rather than obtaining interim orders from the Sindh High Court. A similar stance was adopted by the Supreme Court in its order dated February 2, 2016, regarding CMA No. 243/2016, where it was stated, referencing the Ali Azhar Khan Bloch case, that once the Sindh Government de-notifies an officer following the Supreme Court's judgment or orders, no court, including the High Court, can issue an order suspending that notification. If a de-notified officer has any grievance, their recourse is to file a review petition before

the Supreme Court. Consequently, any order from the High Court, whether interim or otherwise, will not impede the government's action repatriating the officers.

12. Considering the rulings of the Supreme Court in the aforementioned cases, we are of the considered opinion that the sole legal avenue available to Respondent No. 6 is to file a Review Petition before the Apex Court itself. Resorting to the Islamabad High Court or any other departmental forum is not permissible under the law as in the present case respondent No.6 attempted to circumvent the orders of this Court as well as Supreme Court based on opinion of the learned Advocate General Sindh and department concerned and they ought to have laid off their hands rather they could have advised the respondent No.6 to approach the Supreme Court for which his earlier Review Petition was dismissed, as such the stance of the respondent No.3 and 6 is discarded subject to final review of the Supreme Court if approach by the respondent No.6. Consequently, his attempts to seek favor from the department are not only unlawful but also contradict the principles established by the Supreme Court. Prima facie, all actions taken by the respondent department to accommodate Respondent No. 6 appear to be inconsistent with the law and the Supreme Court's decisions and, therefore, are not endorsed by this court. He shall be repatriated to his parent department forthwith, however, his seniority issue shall be decided in accordance with the Supreme Court decision on the subject issue. As such this petition is disposed of in the above terms.

JUDGE

Head of the Cost. Benches