

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-4217 of 2023
[Muhammad Ali versus The Province of Sindh and another]

Before:

Justice Muhammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

Dates of hearing & Order: 24.09.2025

Mr. Malik Altaf Hussain, advocate for the petitioner.

Ms. Saima Imdad, Assistant Advocate General Sindh.

Mr. Ghulam Ali alias Tarique Ahmed, ADC-II Naushahro Feroze.

ORDER

Adnan-ul-Karim Memon, J. Through this petition, the petitioner sought the following relief(s):-

- i. *To hold and declare that the failure of the Respondents to consider the case of the Petitioner for promotion is illegal, unlawful, malafide, and unconstitutional; and direct the Respondents to convene the meeting of the Departmental Promotion Committee and to decide the application of the Petitioner forthwith.*
- ii. *Pending adjudication of the captioned petition, the Respondents may be restrained from convening the meeting of the Departmental Promotion Committee.*

2. Based on the memo of the petition, the petitioner, a Steno typist originally working for the Sindh Agriculture Supplies Organization (SASO), was made surplus when SASO was dissolved. In 2003, his services were absorbed by the Sindh Secretariat. The petitioner was then transferred to the office of the Deputy Commissioner, Naushero-feroze, and has been working there ever since. The core of the issue is that the petitioner's career has been stagnant for 25 years despite his length of service. He believes he is entitled to a promotion and that his seniority should be calculated from his original appointment date, not the date of his absorption into the Sindh Secretariat. He submits that the concept of "re-absorption" is a legal misconception that has unfairly impacted his career, as his transfer was not by his own request but a result of his department's abolition. Despite his repeated requests, the Departmental Promotion Committee has not considered his case.

3. The petitioner's counsel argued that his client is a victim of a legally nonexistent concept of "re-absorption," which is preventing his promotion. Because his transfer was not voluntary but a result of his original department being dissolved, the petitioner's seniority should be calculated from his initial appointment date, a principle affirmed by the Supreme Court under Rule 12 (a) of the Sindh Civil Servant (Probation, Confirmation and Seniority) Rules, 1975. Despite working in the same grade for 25 years, the petitioner's application for promotion has been ignored. His counsel claims this failure to act is illegal,

malicious, and violates his right to life under Article 9 of the Constitution of Pakistan. The counsel has requested the court to allow this petition.

4. The Learned Assistant Advocate General (AAG) opposed the petition, arguing that the petitioner had waited too long to raise his claim. The AAG pointed out that the petitioner was "re-absorbed" into the District Government in 2005 but remained silent for 17 years. The AAG contended that the petitioner had lost his right to claim repatriation to the Agriculture Department. Furthermore, the AAG argued that the matter, concerning terms of service like seniority and promotion, falls under the jurisdiction of Article 212 of the Constitution, which bars this type of petition before this Court under Article 199 of the Constitution. The AAG acknowledged the petitioner's 2022 application for promotion and seniority, which was addressed. The petitioner was granted a personal hearing in February 2024 and requested that the Deputy Commissioner be directed to handle his promotion. The AAG stated that such a directive was issued on March 5, 2024, rendering the current petition moot and therefore subject to dismissal.

5. We have heard learned counsel for the parties and considered the record.

6. The petitioner was made surplus when his parent Sindh Agriculture Supplies Organization, was dissolved, and he was absorbed by the Sindh Secretariat in 2003 and then transferred to the Deputy Commissioner's office. He has remained in the same position for 25 years and claims his career has been stagnant due to the transfers. In such a scenario, where a petitioner claims to have been unfairly affected by a legal ambiguity ("absorption and re-absorption") and a lack of promotion, while the opposing party argues the claims are moot and barred by legal principles. Rule 9-A of Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974 provides that a person who has been rendered surplus due to the abolition of their post in a government office, department, or an autonomous body can be absorbed in another post. The rules outline the methods for appointment (promotion, transfer, or initial appointment) and specify the roles of various committees, such as the Departmental Promotion Committee (DPC), in making recommendations for promotions and transfers. The rules also establish that appointments by transfer shall be made from amongst persons holding appointments on a regular basis in the same grade. Rule 12(a) of Sindh Civil Servant (Probation, Confirmation and Seniority) Rules, 1975, addresses the determination of seniority for individuals appointed by transfer. It specifically states that a person transferred "otherwise than on his own request" shall be given the benefit of their regular service in their previous post(s) for the purpose of determining seniority. This rule is what the petitioner's counsel cites to argue that his seniority should be from his original appointment date in SASO, as his transfer was not voluntary. These rules also cover how seniority is calculated for initial appointments, promotions, and transfers made at the person's own

request (which results in the person ranking junior to all others appointed before them).

7. In service jurisprudence, a civil/public servant has a right to be considered for promotion, but not an automatic right to the promotion itself. This right to consideration is a fundamental part of a fair civil service and is often guaranteed by service rules, such as the Civil Servants Act 1973. To be considered, a civil servant must meet all established criteria, like qualifications, experience, and performance. However, the final promotion decision is not an absolute right; it involves a subjective evaluation of the individual's competence and is subject to the discretion of the authorities and government, who act in the interest of service efficiency. Thus, we are inclined to entertain the request of the petitioner in this matter and remit the case to the competent authority for consideration for promotion in the next rank, subject to the exceptions provided hereinabove as well as principles laid down in the decisions of the Supreme Court rendered in the cases of Dr. Syed Sabir Ali v. Government of Punjab through Secretary Health Punjab and others, **2008 SCMR 1535**, Federation of Pakistan and others v. Amir Zaman Shinwari, Superintending Engineer, **2008 SCMR 1138**, and Dr. Muhammad Amjad v. Dr. Israr Ahmed, **2010 SCMR 1466**.

8. We, for the aforesaid reasons, allow this constitutional petition along with pending application(s) and direct the competent authority/respondents to consider the case of the petitioner along with all eligible candidates for promotion in the next rank in the next DPC meeting, subject to all just exceptions as provided under the law, meanwhile the issue of seniority of the petitioner shall also be decided in the light of Rule 9-A of APT Rules 1974 more particularly in terms of the ratio of judgment rendered by the Supreme Court in the case of Tika Khan v. Syed Muzaffar Hussain Shah **2018 SCMR** within three months.

JUDGE

HEAD OF CONST. BENCHES

SHAFT