

IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D – 3946 of 2015

[Muhammad Abid *versus* Province of Sindh and 2 others]

Present:

Mr. Muhammad Faisal Kamal Alam, J.

Ms. Sana Akram Minhas, J.

Date of hearings : 29.10.2025, 05.11.2025 and 13.11.2025.

Petitioner : Muhammad Abid, through M/s. Barrister Faizan Hussain Memon, Muhammad Nasir and Muhammad Saleem Khaskheli, Advocates.

Respondents No.1 & 3 : Province of Sindh and another, through Mr. Sandeep Malani, Assistant Advocate General Sindh.

Respondents No.2 : Sindh Small Industries Corporation, through Mr. Sadaruddin Buriro, Advocate, along with Mr. Amir Hussain, Focal Person.

DECISION

Muhammad Faisal Kamal Alam, J: Through this Petition, the Petitioner has called in question the impugned Notification dated 09.03.2015 and impugned Order dated 13th April 2015, whereby, up-gradation of the Petitioner was withdrawn from BS-19 and 20, and he was relieved from the Post of Deputy Managing Director [**DMD**] of the Respondent No.2 [Sindh Small Industries Corporation] and directed to assume the charge of the Post of the Project Director [BPS-18] at Ceramic Training-cum-Production Centre, Nasarpur, immediately.

2. Barrister Faizan Hussain Memon, representing the Petitioner, assisted by M/s. Muhammad Nasir and Muhammad Saleem Khaskheli, Advocates, referred to the official record available in the Petition to fortify his arguments, that up-gradation of Petitioner was not due to some favoritism

but purely on merits along with the other Officers. In particular, he has referred to the Working Paper dated 6-01-1998 [Annexure P/5], paragraph 2 whereof states that the Three Project Directors, M/s Tariq Usman, Petitioner and S. M. Kaleem Makki, who were heading different important projects of Respondent No. 2, were highly qualified and possessed business expertise and to motivate and retain such persons, it would be necessary that the post of three project directors be upgraded from BPS 18 to 19, to keep the salary package competitive with the private sector; since the above Projects were run on self-finance, there would be no financial implications on the exchequer. Referred to the Office Order of 22nd June 1998 [*page-45 of the Petition*], whereby Petitioner and one of the above named Directors was promoted from BPS-18 to 19 on acting charge basis. Referred to subsequent Working Paper of Respondent No.2 [of December 2010, *Annexure P/10*], wherein, case of Petitioner based on his exceptional performance and seniority, was approved for up-gradation and promotion to BS-20; after approval of Summary [*Annexures P /11 and 12*], it was decided in the 61st Board of Directors Meeting that the Post of Director [Marketing] be up-graded from BPS-19 to BPS-20 and Petitioner was promoted against the upgraded Post. That the Board of Directors of Respondent No.2, headed by the then Minister for Labour, Transport, Industries and Commerce / Chairman, had unanimously approved creation of a new Post of Deputy Managing Director in Respondent No.2 [non-cadre] in its 43rd Meeting held on 18th November 2003, and the Petitioner was exclusively nominated for the newly created Post. In support of his arguments, he has cited the following case law_

- i. **2017 S C M R 890**
[*Federal Public Service Commission through Secretary versus Anwar-ul-Haq (Private Secretary) Islamabad and others*] – **Anwar-ul-Haq Case;**
- ii. **2021 S C M R 1895**
[*Fida Muhammad versus Government of Khyber Pakhtunkhwa through Secretary Education, Peshawar and others*]; and
- iii. **Judgment dated 12.09.2017, passed by the Hon’ble Supreme Court in Criminal Original Petition No.97 of 2017**
[*Kaneez Zehra Kazmi versus Syed Hussain Naqvi*] – **Kaneez Zehra Case.**

3. Mr. Sandeep Malani, learned Assistant Advocate General Sindh, has opposed this Petition and also referred the record of the *Lis*. Referred to Appointment Letter of Petitioner that he was appointed on temporary basis in Respondent – Corporation and was initially promoted from BPS-18 to BPS-19, vide Officer Order dated 22.06.1998 [*Annexure P/6, Page-45 of the Petition*]. Referred to Service Rules of 1978 [of 19.08.1978, *Page-47 of the Petition*] and points out that no initial appointment could have been made in Grade-18 and above, while referring to Service Rules of 01.02.1990, framed under Section 34 of the Sindh Small Industries Corporation Act, — – the “**Governing Law**” [*Annexure P/8, Page-61 of the Petition*], and states that Grade-19 is for Director [General Cadre] and condition is that an individual would be promoted on seniority-cum-fitness basis from Joint Directors of General Cadre with prescribed years in service; states that under these new Rules, Position of Principal / Project Director is in Grade-18. He has referred to his Parawise Comments and in particular the response to Paragraph-7 of the Petition, that since there is no criteria for promotion of any category to the next higher grade of BPS-20, in which the Petitioner was upgraded, therefore, both the Impugned Notifications have been correctly issued to rectify the illegality, and above all, to implement the Judgment of the Hon’ble Supreme Court handed down in the famous case of *Ali Azhar Khan Baloch versus Province of Sindh and others* reported in **2015 S C M R 456 – Azhar Baloch Case**.

Referred to the Comments of Secretary Industries and Commerce Department dated 18.02.2025 filed in pursuance of Court’s Order dated 31.01.2025, and stated that in the case of S. M. Kaleem Makki [Project Director, Quality Control and Marketing Centre, Hyderabad] and Project Director Tariq Usman along with other Officers were declared surplus and directed to report to Surplus Pool in view of the Rightsizing of Respondent-Corporation, *whereas*, present Petitioner was retained in the Respondent-Corporation; thus, no discrimination is done with the Petitioner; *whereas*, Mr. Mehmood Ahmed, Ex-Managing Director was also allowed BPS-20 in recognition of his Service, but was compulsorily retired vide Order dated 29.05.2013, much before the Decision of Azhar Baloch Case [*ibid*]; similarly, the other case of BPS-20, which is of Mr. Muhammad Siddique Panhwar, is merely a compliance of the Decision of the Provincial Ombudsman dated 06.06.2017 [which is appended with the above Comments].

4. Mr. Sadaruddin Buriro, Advocate representing Respondent No.2 – Corporation, has argued on the basis of Parawise Comments and has stated that this Court has dismissed the Petition C. P. No. D – 1422 of 2022 filed by the Employees of Respondent-Corporation for their up-gradation. Order of the above Petition was submitted by him during hearing.

5. Arguments heard and record perused.

6. Respondent No.3 – Secretary Industries, in his Parawise Comments has not disputed the historical and factual background about up-gradation of the Post of Project Director-BPS-18, in which Petitioner was working, to BPS-19 and then to BPS-20. It is also undisputed so also reflected from the official record that present Petitioner was at Serial No.1 in Seniority List. In Paragraph-14 of their Parawise Comments, Respondent-Corporation has admitted the fact that the up-gradation of the Petitioner in BPS-19 was not made on individual basis but along with two other Officers, namely, S. M. Kaleem Makki and Tariq Usman, who were upgraded as Project Directors, Quality Control, Marketing Centre and Leather Footwear Centre.

Both these Officers were declared surplus due to rightsizing in the Organization [as stated in the foregoing paragraphs] and after they reported to Surplus Pool, they retired in the same upgraded grade in BPS-19, so also mentioned in the Parawise Comments of Respondent No.3 [Secretary Industries and Commerce Department]. Similarly, Mehmood Ahmed, Ex-Managing Director, was allowed BPS-20 in recognition of his service for the Organization vide Order dated 23.05.2005, but was compulsorily retired subsequently, vide Order dated 29.05.2013 [*at page-321*]; *whereas*, Muhammad Siddique Panhwar, Ex-Regional Director of Respondent No.2 was also given BPS-20 as ‘Promotion’ vide Order dated 06.06.2017.

The Legal Team of the Respondents have attempted to justify these up-gradation till their severance from service on the ground, that in the first case of Mehmood Ahmed, since at the relevant time the Judgment of Azhar Baloch Case [*supra*] was not pronounced, therefore, he was compulsorily retired from service after completion of disciplinary proceeding; *whereas*, the second person [Muhammad Siddique Panhwar] was given BPS-20 in order to implement the Decision of Provincial Ombudsman.

7. Undisputedly, Petitioner joined Respondent No.2 on 03.10.1993, whereafter, he was confirmed in service and finally retired on 01.12.2023,

that is, after filing of the present Petition. If arguments of the Legal Team of Respondents are accepted then it results in absurdity that a person serving the Organization for thirty years with an unblemished record and maintaining seniority at Serial No.1, has retired in same grade / position in which he was appointed.

8. Fact of the matter is that those Officers, whose Posts were upgraded, were never reverted to their original grades / positions. Surprisingly, in the case of Mehmood Ahmed, despite he being absent from duty without approval and was living in the United States of America, yet he was compulsorily retired from service in BPS-20, *whereas*, Petitioner has been downgraded twice, purportedly on the basis of Azhar Baloch Case.

9. We have examined the case law cited by the Petitioner's Counsel and the crux of which is that, *firstly*, up-gradation is usually done for isolated posts where the service structure does not provide avenue for promotion to a higher grade, *secondly*, it is not a promotion but extends some monetary benefits by granting a higher pay scale to ventilate stagnation.

In Kaneez Zehra Case [*ibid*], the Hon'ble Supreme Court has considered the Judgment of Azhar Baloch Case with regard to the up-gradation, and maintained the up-gradation of the appellant, after considering the rule laid down in Anwar-ul-Haq Case [*supra*]. The Judgment of this Court relied upon by Respondent-Corporation is distinguishable, because, the Staff Members of Corporation were seeking up-gradation / re-designation retrospectively; thus, learned Bench of this Court is of the view that it is up to the Government to take decision in this regard as per the parameters laid down in the Judgment mentioned in the said Order, which are also considered by us in this Decision of ours.

10. In view of the above discussion, we are of the view that no illegality exists in given up-gradation to the Petitioner. The rule laid down in the Azhar Baloch Case [*supra*] does not apply to the facts of the case of Petitioner. Since Petitioner has been retired from service, therefore, other Prayers cannot be considered. This Petition is accepted only to the extent that both impugned Notifications of 09.03.2015 and 13.04.2015, reverting the Petitioner to BPS-18, are **set aside**. It means that Petitioner has been

retired from service in BPS-20 and is entitled for such post-retirement benefits.

11. Consequently, this Petition stands disposed of in view of the above along with all pending applications, if any, but with no order as to costs.

12. These are the reasons for our short Order announced in Court.

Judge

Judge

Riaz / P.S.

Karachi.

Dated: 13.11.2025.

Riaz / P.S.