

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

C.P.No.D-899 of 2025

(Riaz Hussain & others v/s. Federation of Pakistan & Ors)

Date	Order with signature of judge
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Before:

**Mr. Justice Muhammad Saleem Jessar.**

**Mr. Justice Nisar Ahmed Bhanbhro.**

Petitioners: Riaz Hussain and others

Through Mr. Habibullah G. Ghouri, Advocate,

On his behalf Mr. Abdul Qadir, advocate.

Respondent No.1: Federation of Pakistan

Through Mr. Riaz Hussain Khoso,

Deputy Attorney General for Pakistan.

Respondents No.2 & 3 Sukkur Electric Power Company

Through Mr. Asif Hussain Chandio, Advocate

a/w Muhammad Suleman Dahri,

Assistant Manager (Legal), SEPCO, Sukkur.

Date of Hearing: 17.09.2025

Date of Order: 17.09.2025

**ORDER**

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**Nisar Ahmed Bhanbhro J.**- Through this petition, the petitioners have prayed for following relief(s):

- a) *That this Honorable Court may be pleased to issue a writ declaring the action of Promotion Board/Respondents to deduct the marks in consideration of their respective promotion on account of Censure as null and void.*
- b) *To direct the respondents/Promotion Board to strictly act in accordance with the judgments of Honorable Superior Courts in cases of Abdul Majeed vs. Government of Pakistan & others reported in PLJ 2006 SC 1429 as well as order dated 03.10.2013, passed by Hon'ble Lahore High Court Multan Bench in Writ Petition No.9018 of 2013 Re-Nasrullah Khan Nasir vs. Secretary, Ministry of Water and Power and others and decide the matter of petitioners for their respective promotions with immediate effect.*
- c) *That this Honorable Court may be pleased to issue a writ of prohibition in favor of the petitioners against the respondents restraining respondents from depriving the petitioners and keeping them out of consideration from the promotions and from announcement and displaying the result/proceedings of the Promotion Board, till hearing/considering the case of the petitioners.*

2. The petitioners present in person submitted that their counsel was busy in another bench of this Court and they wanted to assist the Court in person. The Petitioners argued that they were the employees of WAPDA. On creation of Distribution Company (DisCo) their services were ultimately transferred to Sukkur Electric Power Company (SEPCO). They argued that services of Petitioners were governed under the provisions of Pakistan WAPDA employees' (Efficiency and Discipline) Rules, 1978 (WAPDA E & D Rules). Petitioners further argued that they were working in SEPCO since the date of its creation. Petitioners argued that they were eligible to be considered for promotion to the next higher grade but were deferred on account of Minor Penalty of "Censure". Petitioners further contended that Honorable Supreme Court of Pakistan in the case of **Abdul Majeed Versus Government of Pakistan reported as PLJ 2006 SC 1429**, has held that an employee cannot be denied right of promotion to next higher grade on account of imposition of minor penalty of "Censure". Petitioners further contended that the employees of MEPCO, LESCO, PEPCO and other sister companies of SEPCO (companies created on decentralization of WAPDA) were getting benefit of the judgment of Apex Court in the case of **Abdul Majeed (supra)** but petitioners and other employees of SEPCO were denied such right, which

militated the doctrine of equality enshrined under the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution). Petitioners argued that employees of the other DisCOs were also the employees of WAPDA as was the case of Petitioners. They prayed to allow this Petition.

3. Mr. Asif Hussain Chandio, advocate filed vakalatnama on behalf of SEPCO/ respondent No.2 & 3, taken on record. He argued that the petitioners are employees of SEPCO, surrendered by WAPDA. He argued that SEPCO is a public limited Company. He further argued that terms and conditions of services of employees and relationship between employees and the Company is as of the "**Master & Servant**", therefore, petition under Article 199 of the Constitution is not maintainable. He placed reliance on the case of **Pakistan International Airlines Corporation and others Versus Tanveer-ur-Rehman and others, reported as "PLD-2010 SC-676"** and **Pakistan Telecommunication Co. and others Vs. Iqbal Nasir and others "PLD 2011 SC 132"**. He prayed for dismissal of the Petition.

4. We have considered the contention of the Petitioners and learned counsel for Respondents and have minutely gone through the material available on record with their assistance and the case law cited at the bar.

5. As to the issue of maintainability raised by Respondents, admittedly Petitioners are employees of SEPCO which is a public limited company. In the light of the guidelines of Honorable Supreme Court provided in the case of **Pakistan Electric Power Company Limited Versus Syed Salahuddin and others reported as 2021 SCMR 991**, wherein, it is held that in case of an employee of a Corporation where protection cannot be sought under any statutory instrument or enactment, the relationship between the employer and the employee is governed by the principle of "master and servant" and in such case the constitutional jurisdiction of the High Court under Article 199 of the Constitution cannot be invoked. We therefore unhesitatingly hold that SEPCO does not have statutory rules governing the terms and conditions of service of its employees, the relationship between the Petitioners and Respondents Nos.1 and 2 (SEPCO) was governed by the principle of "master and servant" therefore, Petitioner cannot be granted any relief for issuance of directions to the SEPCO to consider them for

promotion to next higher grade. The Petition to the extent of prayer clause (c) thus being not maintainable is accordingly dismissed.

6. As far as, the case of the Petitioners to the extent of prayer clause (a) and (b) is concerned. In the captioned prayer clauses, Petitioners seek enforcement and applicability of judgment of Honorable Supreme Court passed in the case of **Abdul Majeed Versus Government of Pakistan reported as PLJ 2006 SC 1429**, wherein a point of law concerning minor penalty of “Censure” was decided. Petitioners urge that Honorable Supreme Court has held that minor penalty of “Censure” will not debar them from promotion to next higher grade. Petitioners have stressed that all the sister distribution companies of SEPCO carved out from WAPDA were extending the benefit of judgment of Honorable Supreme Court to its employees, except SEPCO. Since Petitioners were seeking interpretation of the judgment of Honorable Apex Court and applicability to the employees of SEPCO, which is a public limited company, therefore this petition to the said extent is held maintainable.

7. The question brought before us is that the imposition of minor penalty of “Censure” would not disentitle petitioners from right of promotion. Since the Petitioners seek benefit of judgment of Apex Court in the case of Abdul Majeed (Supra), therefore, it would be conducive to reproduce the relevant paragraph 4 of the judgment for the ease of reference:

4. *The censure is minor penalty of the sort of warning which may not have a serious stigma affecting the service career of a person and in any case the single penalty of censure cannot be considered sufficient for invoking the provisions of Section 13(1)(i) of the Civil Servants Act, 1973. The departmental representative present in Court has informed us that the order of withholding of one increment of the petitioner, passed in 1979 was not given effect and consequently, it would be deemed that the penalty of stoppage of one increment was waived. In the light of the instructions contained in the guidelines issued by the Establishment Division, two or more penalties imposed upon a civil servant under Government Servants (E&D) Rules, 1973 may provide a ground for his retirement under Section 13(1)(i) of the Civil Servants Act, 1973 whereas in the present case, the petitioner was imposed only one penalty of censure and the competent*

*authority, in departure to the instructions of Establishment Division, proceeded to retire him from service. The competent authority, may subject to the fulfillment of the criteria laid down by the Establishment Division invoke this special provision but the discretionary power provided therein must not be exercised without sufficient material and valid ground. The discretion of the competent authority under this provision of law being not absolute, must not be exercised beyond the wisdom of the legislature and deprive a person from the legitimate right of service. The purpose is that if further retention of a person in service is not useful or is not in the public interest, the competent authority may in the light of the criteria laid down by the Establishment Division, exercise this power but the retirement of a person under this provision just for the sake of exercise of discretion, is not in the spirit and wisdom of law. In the present case, except one penalty of censure, the petitioner had a clean service record and there was no adverse entry or remarks in his ACRs in respect of his responsibility, integrity, reliability output of work and behaviour with the public or his conduct as civil servant which may bring his case within the ambit of Section 13(1) (b) (i) of Civil Servants Act, 1973. The retirement in the normal circumstances may not call for interference but the retirement of a person on whimsical grounds amounts to deprive him from the legitimate right of earning which is part of fundamental rights to live in terms of Article 9 of the Constitution and is definitely not in the public interest.*

8. Meticulous perusal of the judgment revealed that observations relating to minor penalty of "Censure" were tendered by Learned Apex Court in the matter relating to the terms and conditions of a Civil Servant, whose services were governed under Civil Servants Act 1973 and Government Servants (Efficiency & Discipline) Rules 1973 (E&D Rules). It is informed that SEPCO has adopted The Pakistan WAPDA Employees (Efficiency and Discipline) Rules, 1978 (WAPDA E&D Rules) to deal with the service matters of its employees. Before proceeding further, it would be appropriate to review the relevant provision of WAPDA E&D Rules and the E&D Rules to draw a conclusion whether there was any similarity in the above referred rules.

9. Under the provisions of WAPDA E&D Rules, the Competent Authority was authorized to impose minor or major penalty subject to the outcome of an inquiry

conducted under these rules. Rule 4 provides for the penalties which reads as under:

**4. Penalties**

(1) *The following are the minor and major penalties namely:*

**a. Minor Penalties**

- i. censure;*
- ii. withholding for a specified period, promotion or increment, otherwise than for unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post.*
- iii. Deleted Vide O.M. No. S/ DD (R)/ 07456/20/Vol. VI/96845 -97624 dated 19-11-1983.*
- iv. recovery from pay of the whole or any part of any pecuniary loss caused to Wapda by negligence or breach of orders.*

**b. Major Penalties**

- i. reduction to a lower post or time-scale; or to a lower stage in a time scale;*
  - ii. compulsory retirement;*
  - iii. (iii) removal from service; and*
  - (iv) dismissal from service.*
- 2. Removal from service does not, but dismissal from service, does disqualify for future employment.*
  - 3. In this rule removal or dismissal from service does not include the discharge of a person: –*
    - a. appointed on probation, during the period of probation or in accordance with the probation or training rules applicable to him; or*
    - b. appointed, otherwise than under a contract, to hold a temporary appointment, on the expiration of the period of appointment; or*
    - c. engaged under a contract, in accordance with the terms of the contract.*
  - 4. No officer subordinate to the appointing authority, and no officer subordinate to that specifically designated by the Authority as the competent authority to exercise powers under these rules shall be competent to impose a penalty on an employee.*

10. Rule 4 of the E&D Rules is the relevant provision regarding imposition of penalties by the Competent authority on a civil servant subject to the outcome of enquiry conducted under these rules. Rule 4 reads as under:

#### **4. Penalties.-**

(1) The following are the minor and major penalties, namely-

##### **(a) Minor Penalties:**

- (i) censure;
- (ii) withholding, for a specific period, promotion or increment, otherwise than for unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post;
- (iii) stoppage, for a specific period, at an efficiency bar in the time scale, otherwise than for unfitness to cross such bar;
- (iv) recovery from pay of the whole or any part of any pecuniary loss cause to Government by negligence or breach of orders;

##### **(b) Major Penalties:**

- (i) reduction to a lower post or time-scale, or to a lower stage in a time scale;
  - (ii) compulsory retirement;
  - (iii) removal from service; and
  - (iv) dismissal from service.
- (2) Removal from service does not, but dismissal from service does, disqualify for future employment.
- (3) In this rule removal or dismissal from service does not include the discharge of a person-
- (a) appointed on probation, during the period of probation, or in accordance with the probation or training rules applicable to him; or
  - (b) appointed, otherwise than under a contract, to hold a temporary appointment, on the expiration of the period of appointment; or
  - (c) engaged under a contract in accordance with the terms of the contract.

11. Comparison of the above rules made it explicitly clear that the provisions and language contained in Pakistan WAPDA Employees (Efficiency & Discipline) Rules 1978 and Government Servants (Efficiency and Discipline) Rules 1973 were *pari materia* to each other. Therefore, interpretation of any of the provisions of rules relating to Efficiency and Discipline of employees of Federal Government

employees will equally apply to the employees of a public limited company having adopted the WAPDA E&D Rules of service.

12. Adverting to the case of the Petitioners, they have agitated the grievance that while performing duty in SEPCO they were imposed minor penalty of "Censure". SEPCO, a public limited company being employer has put promotions of petitioners into halt on account of such minor penalty. "Censure" is generally considered a minor disciplinary action, often a formal reprimand or expression of disapproval for misconduct or poor performance, which per the ratio of the judgment of Honorable Apex Court in the case of Abdul Majeed (Supra) will not debar any employee from right of promotion to next higher grade, if otherwise found eligible. It is settled law that promotion cannot be claimed as a matter of right and concerned institution was better placed to determine the suitability and eligibility of an employee for promotion to next higher grade.

13. Honorable Supreme Court of Pakistan in the case of **Captain Sarfaraz Ahmad Mufti v. Government of the Punjab and others reported as 1991 SCMR 1637**, refused to grant leave against the order of Learned Lahore High Court, wherein it was held that on the ground of minor penalties civil servant cannot be ignored and refused to grant promotion. It is pertinent to note that the words used by Learned Lahore High Court in respect of minor penalty in the judgment is plural i.e. minor penalties. For the sake of convenience, the excerpts from the judgment are reproduced below:

*2. The facts in brief are that the respondent, who was serving as a Superintendent: Jail in NPS-17, was due for promotion to NPS-18, but twice ignored by the Departmental Promotion Committee. The reason for refusing to grant him promotion in the first instance was that an inquiry was pending against him, but as found later on this inquiry ended in merely administering a warning to him. The basis for the second denial was that he was censured in consequence of another inquiry. It is noteworthy that during this interregnum, the persons junior to the respondent were awarded promotion in NPS-18. The petitioner before us is one of such promotees.*

*3. The respondent was ultimately promoted on 11-6-1986 and he filed a representation before the Government claiming pro forma promotion. As*



*the Authorities concerned failed to take decision in the matter, he filed a writ petition in the High Court for the redress of his grievance. An Assistant Advocate -General appeared before the High Court and made a statement on behalf of the Provincial Government that the respondent's case would be decided within 10 days. In pursuance of this commitment, the Home Secretary sent a summary to the Chief Minister suggestive of rejection of the respondent's representation. Accordingly, it was turned down and an intimation thereof was given to the respondent vide letter dated 12-5-1990. This compelled him to invoke the writ jurisdiction of the High Court once again. As stated in the opening part of this order, this writ petition was accepted. The High Court found that the rejection of the respondent's representation at the hands of the Chief Minister was designedly manoeuvred and as only minor penalties were imposed on him, these could not have posed a hurdle for consideration of his case for promotion by the Promotion Board. It was observed that under the rules, on account of minor penalties, award of promotion to the respondent could not have been withheld. The High Court also noticed that the respondent's case for promotion found ample support from the policy letters issued by the Government.*

*4. The petitioner was not a party to the proceedings before the High Court. The grievance voiced by him is that the High Court has virtually issued orders to the Provincial Selection Board to confer pro forma promotion on the respondent, and if such promotion is granted to him he might rank senior to the petitioner.*

*5. We are not persuaded by these submissions. The High Court has referred to certain policy letters of the Government under which the respondent's case for promotion merited consideration, but he was illegally ignored. The observations made by the High Court are neither intended to foreclose the proceedings before the Provincial Selection Board nor to influence their decision one way or the other. As regards the respondent's seniority, we find that the High Court has not expressed any opinion on this issue. With the above observations, this petition is dismissed and the leave prayed for refused.*

14. Petitioners have placed on record unreported order dated 03.10.2013 passed by Learned Single Bench of Lahore High Court in the case of **Nasrullah Khan**

**Nasir Versus Secretary Ministry of Water & Power etc. in W.P No 9018 of 2013,** wherein it is held that:

9. *The question with regard to the effect of Censure was dilated upon by the Honorable Supreme Court in the case of Abdul Majeed Versus Government of Pakistan reported in PLJ 2006 S.C 1429 wherein it was held “as censure was minor penalty of the sort or warning which might have not a serious stigma effecting the service career of person.” Same point was also dealt with by the Apex Court in the Human Right case No 5 of 2009 in its order dated 07.04.2009, the Learned Bench concurred with the above referred judgment and held that “Censure” is not a serious stigma debarring promotion. This Court while dealing with the effect of punishment of “Censure” on promotion prospects of PEPCO employees in the case of Munsif Shah Versus Managing Director Labour and Four others (2013 PLC(CS) 223) held that Censure being minor penalty was not hurdle in the way of an employee.*

15. Mr. Suleman Dahri, Learned Law Officer of the Respondent SEPCO, confirmed that under Company’s promotion policy, minor penalty of “Censure” was also considered as an adverse finding while deciding the fitness of an employee for promotion to next higher grade. Though the said policy has not been placed before us, however, if such policy was in existence, it was framed in violation of WAPDA E&D Rules as such to that extent was not sustainable under the law. The matters relating to the framing of rules regarding terms and conditions of service of the employees including appointment, transfer and promotion were in essence internal affairs of the department concerned, but such rules should be framed in consonance with the constitutional command, keeping under consideration the doctrine of equality enshrined under articles 25 and 27 of the constitution.

16. The Constitution is based on the seminal principle of trichotomy of powers. The legislature makes the laws; the executive executes it while the judicial branch is entrusted with the duty to interpret it. The judgment of the Honorable Supreme Court enunciating a principle of law has binding effect, in terms of article 189 of the Constitution which reads as under:

**189. Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan.**

17. Moreover, where Honorable Supreme Court deliberately and with the intention of settling the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of Art. 189 of the Constitution and is binding on all Courts in Pakistan. The doctrine of binding precedent promotes certainty and consistency in judicial decisions, and ensures an organic and systematic development of the law.

18. Reliance in this regard is placed on the case of **Federation of Pakistan through Secretary Finance Division and another reported as 2025 SCMR 532** Honorable Supreme Court of Pakistan has held that

*15. The doctrine of Stare Decisis is a Latin term that connotes "let the decision stand" or "to stand by things decided". No doubt, according to the hierarchical facade and veneer of our judicial system, the dominant consideration is that the law declared by this Court should be certain, translucent, and rational, as most decisions not only constitute a determination of rights of parties, but also set down a declaration of law that serve as binding principles in future cases, thereby contributing to the development of jurisprudence. The doctrine of precedents, vis-a-vis stare decisis, has fundamental value in ensuring an objective of certitude and firmness in the legal system. The rule of adherence to judicial precedents finds its expression in the doctrine of stare decisis. This doctrine posits that, when a point or principle of law has officially been decided or settled by the ruling of a competent court in a case where it was directly and necessarily involved, it will no longer be considered as open to re-examination or to a new ruling. This policy of the courts is conveniently termed as the doctrine of stare decisis. The rationale behind this policy is the need to promote certainty, stability, and predictability in the law.*

19. In the case of Abdul Majeed (Supra) and Captain Sarfaraz Ahmad (Supra), Honorable Supreme Court of Pakistan decided point of law relating to the terms and conditions of the government servants, on the effect of penalty of "Censure" on the future career of an employee, thus had the binding effect to follow. It is a settled principle of law, that if a Court of Law or Tribunal decides a point of law relating to the terms and conditions of the employees, the same benefit shall accrue in favor of other similarly placed employees

irrespective of the fact whether they approached the Court or not, as has been held by Honorable Supreme Court of Pakistan in the case of **Hameed Akhtar Niazi Versus THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF PAKISTAN and others reported as 1996 SCMR 1185**, wherein it was held that:

*We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.*

20. Since the employees of PEPCO, MEPCO and other distribution companies were enjoying the benefit of interpretation of a point of law relating to the impact of minor penalty of Censure on future progression of the employees, rendered in the cases of Captain Sarfaraz Ahmed and Abdul Majeed (Supra), therefore, under the doctrine of equality enshrined in articles 25 and 27 of the Constitution, the employees of SEPCO were also entitled for the same benefit. For the aforementioned discussion, We are of the considered opinion that the imposition of minor penalty of “Censure” will not mar the future progression of the petitioners, as such on this score alone, Petitioners shall not be deprived of the right of promotion to next higher grade.

The petition stands disposed of, along with pending applications.

Judge

Judge

Manzoor

Approved for reporting

17.09.2025

Larkana