

Order Sheet

HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 1585 of 2024

[Shah Nawaz v. Province of Sindh & others]

Before :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Riazat Ali Sahar

Petitioner : In person

Mr. Rafiq Ahmed Dahri, Asstt: A.G., along with Shahzad Ali Jat, Assistant Education Officer (Primary), Badin

Date of Hearing & Decision: 15.12.2025

ORDER

ADNAN-UL-KARIM MEMON, J.- Through the captioned Constitutional Petition, the Petitioner has prayed as under:-

- a) Direct the respondents to regularize the petitioner in BPS-09 from the date of appointment, according to the letter No. SO(P-I (2)(II)/2022 and allow him due promotion according to Notification No. FD(SR-I)(520/2010 in BPS-12 on 19.8.2017 and in BPS-14 on 19.8.2022 and upgrade him in BPS-16 on 20.8.2022 according to Notification No. SO(P I) SELD / UPGRDATION /2022 and recalculate the salary in accordance with the law.
- b) Costs of the Petition may be saddled upon the respondents.

2. It is the case of the Petitioner that he is serving as a Primary School Teacher (BPS-12) at Government Primary School Khan Muhammad Laghari, Union Council Allah Dino Sirewal, Taluka Matli, District Badin. The Petitioner was initially appointed on contract basis on 16.08.2008 through the IBA Test. At the time of appointment, he was placed in BPS-07, whereas other similarly placed teachers were appointed in BPS-09. The Petitioner was regularized after almost four years of continuous service; however, his regularization was not granted from the initial date of appointment, which, according to him, violates the judgments passed by this Court as well as the Supreme Court. It is contended by the petitioner that newly appointed Primary School Teachers (PSTs) have been upgraded from BPS-09 to BPS-14, while the Petitioner, despite having completed sixteen years of service, is still serving in BPS-12. The Petitioner submitted several applications to the Respondents, requesting that his service be regularized from the date of his initial appointment in BPS-09 w.e.f. 16.08.2008; that he be promoted to BPS-12 w.e.f. 16.08.2017, to BPS-14 w.e.f. 16.08.2022; and further be upgraded to BPS-16 w.e.f. 20.08.2022. He also relied upon a letter dated 20.05.2022 issued by the official Respondents, whereby his upgradation from BPS-09 to BPS-14 was recommended. Despite these

representations, no action was taken by the Respondents, compelling the Petitioner to file the present Petition. He lastly prayed to allow this Petition.

3. Learned AAG submitted that at the time of his initial appointment, the Petitioner did not possess the requisite professional qualification, namely, PTC. It was further stated that upon acquisition of the said qualification, his pay scale was maintained in BPS-09 from the date of declaration of PTC result; that the Petitioner was appointed purely on a contract basis, and there exists no law permitting the regularization of services from the date of contractual appointment; that the post of PST was upgraded to BPS-14 w.e.f. 14.07.2022, and that according to the summary submitted by the Secretary, Education Department, to worthy Chief Minister Sindh dated 18.03.2022, all existing PSTs possessing the minimum qualification of graduation and currently working below BPS-14 may be upgraded to BPS-14. Since the Petitioner does not fulfill the requisite qualification as per the record, he is not entitled to such consideration. He lastly prayed for dismissal of the Petition.

4. We have heard learned counsel for the parties and have carefully perused the record with their assistance.

5. From the pleadings and submissions, the following issues arise for determination:

i. Whether the Petitioner is entitled to regularization of service from the initial date of contractual appointment, i.e. 16.08.2008.

ii. Whether the Petitioner is entitled to fixation of pay and promotions/upgradation from BPS-09 to BPS-14 and thereafter BPS-16 retrospectively.

iii. Whether denial of upgradation on the ground of lack of requisite qualification is lawful

6. It is an admitted position that the Petitioner was appointed on contract basis through a competitive process, i.e. the IBA Test on 16.08.2008. However, his services were regularized after about four years. At the time of initial appointment, he did not possess the mandatory professional qualification (PTC). On the subject issue law is settled that service rendered purely on contractual or ad-hoc basis does not confer an automatic right of regularization from the initial date unless expressly provided by law or rules. The Supreme Court held that contractual employees cannot claim regularization from the initial date of appointment in the absence of statutory rules. It was held that regularization is a policy decision, and courts cannot rewrite service rules. Continuous service alone does not create a vested right to retrospective regularization. Since the Petitioner was appointed on contract basis and lacked mandatory qualification at the time of appointment, his claim for regularization from 16.08.2008 is untenable. The Respondents acted lawfully in regularizing him prospectively.

7. The Petitioner claims discrimination because similarly placed teachers were appointed in BPS-09. This claim of discrimination must be specifically pleaded and should be supported by documentary evidence of similarly placed persons with identical qualifications. Mere assertion of discrimination without proof does not entitle relief. The Petitioner failed to place on record any appointment orders of similarly placed teachers possessing identical qualifications at the time of appointment. Hence, the plea of discrimination fails.

8. It is admitted that the post of PST was upgraded to BPS-14 w.e.f. 14.07.2022. The summary approved by the competent authority stipulates a minimum qualification of graduation. Primarily, the upgradation is not a matter of right, and is subject to fulfillment of the eligibility criteria laid down in the policy. Upgradation cannot be claimed unless the employee strictly fulfills the eligibility criteria. Courts cannot direct relaxation of qualification requirements. The Petitioner admittedly does not fulfill the required qualification of graduation; therefore he is not entitled to upgradation to BPS-14, and the recommendation letter dated 20.05.2022 does not create a vested right, as recommendations are not binding approvals.

9. Promotion cannot be claimed retrospectively if granted without the availability of post, seniority, qualification and DPC approval. Retrospective promotions disturb the entire seniority structure and are impermissible. No promotion can be granted in violation of service rules. The Petitioner's claim for multiple retrospective promotions / upgradations is legally misconceived, unsupported by service rules and contrary to settled law.

10. In view of the above discussion, the Petitioner has no legal right to regularization from the initial date of contractual appointment. The claim for appointment in BPS-09 retrospectively is unsubstantiated. The Petitioner does not fulfill the requisite qualification for upgradation to BPS-14. Retrospective promotions and upgradations claimed by the Petitioner are contrary to the law. No mala fide, arbitrariness, or violation of constitutional rights has been established. The Petition lacks merit hence is liable to be dismissed, being inconsistent with established principles of service jurisprudence and authoritative pronouncements of the Supreme Court of Pakistan.

11. In view of the above, this petition is not maintainable and is accordingly dismissed with pending application(s).

JUDGE

JUDGE

