

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Aziz-ur-Rehman**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P No. D- 6629 of 2018**

Imran Khan Sahito

**Versus**

Province of Sindh,  
Through Chief Secretary,  
Government of Sindh,  
& 04 others

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**Date of hearing: 29.04.2019**

**Date of Judgment: 08.05.2019**

Mr. Ahmed Ali Ghumro, Advocate for Petitioner.

M/s. Abdul Jalil Zubedi & Shehryar Meher, Assistant AG, Sindh.

Mr. Muhammad Ishaque Rajper, Advocate for Respondents No.3 & 4.

M/s. Malik Naeem Iqbal, Faizan Hussain Memon and Saleem Khaskheli, Advocates for Respondent No.5.

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## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** Through the instant Petition, the

Petitioner has sought the following relief[s]:-

- a) To direct Respondent No.5 under what authority of law, he has been restored to BS-19 from BPS-16 and then promoted in BS-20 in flagrant violation of orders and judgments of Hon'ble Supreme Court of Pakistan, therefore, the act of the Respondents is illegal, unlawful, having no legal effect, void ab initio, and therefore, liable to be set-aside.
- b) To direct Respondent No.1, 2, & 3 to show under what authority of law, he had restored Respondent No.5 in BS-19 and subsequently promoted him in BS-20 in violation of the judgment of the Hon'ble Supreme Court of Pakistan, therefore, the act of Respondent No.3 is not sustainable in the eyes of law and therefore liable to be set-aside.
- c) To hold that Respondent No.1 & 3 have issued the Office Order dated 9-6-2017 and 27.09.2017 as well as posting Notification dated 15-8-2018 of Respondent No.5, as Managing Director SITE Ltd. are illegal and in violative of the judgment of the Hon'ble Supreme Court of Pakistan, therefore, said Office Order and Notification are illegal, unlawful, without any legal effect and liable to be set-aside.
- d) To hold that all the action done and orders passed by the Respondent No.5 after restoration in BS-19 and promotion in BS-20 are illegal, unlawful, without any lawful authority and justification.

- e) To hold that Respondent No.5 is restored in BS-19 and then promoted in BS-20 in violation of the Judgment of the Hon'ble Supreme Court of Pakistan.

**2.** Concise facts of the case, as per pleadings of the parties, are that, through the instant Petition, the Petitioner has asked for issuance of Writ of quo-warranto under Article 199 (1) (b) (ii) of the Constitution against the Respondent No.5 to vacate the office as Deputy/Managing Director, Sindh Industrial Trading Estate Limited [**"SITE"**] in BPS-20. Per Petitioner, the basic promotion of the Respondent No.5 in BPS-19 & 20 is/was against the judgment passed by the Hon'ble Supreme Court of Pakistan, in the case of Criminal Original Petition No.89 of 2011 reported as 2013 SCMR 1752, where through this landmark judgment, those who were granted out of turn promotions, were reverted. Further, by order dated 27.9.2016 specific directions were given to the Managing Director of SITE to streamline the service structure of the said organization by confirming to the principles enunciated in the case reported as *Contempt Proceedings against Chief Secretary, Sindh* (2013 SCMR 1752) and *Ali Azhar Baloch vs. Province of Sindh* (2015 SCMR 456) in letter and spirit within 15 days. The aforesaid directions were complied with by the Respondent-SITE through office order dated 06.10.2016. An excerpt of the same is reproduced as under:-

Dated: 6/10/2016

**OFFICE ORDER**

In pursuance of the Honourable Supreme Court of Pakistan in Judgment in Criminal Original Petition No.106 to 111 of 2016, dated: 27.09.2016. Wherein Managing Director SITE Limited has been directed to give effect to the notifications and/or office orders issued earlier by them, de-notifying the employees on the ground of out of turn promotions, irrespective of the interim orders obtained by them from the Sindh High Court either in suit or in High Court Appeal or in any Petition whatsoever.

Therefore, Mr. Ahmed Nawaz Jagirani is hereby again de-notified and directed to join his original position/posting, with immediate effect.

S #	Name of Officer	From	To
1.	Ahmed Nawaz Jagirani S/o M. Nawaz Jagirani	Dy. Managing Director BS-20	Director Administration /Public Relation BS-19

Note:-

i) *Aggrieved, if any, shall be at liberty to approach Honourable Supreme Court of Pakistan in review.*

i) *The Director Finance is directed to deduct and adjust the salary drawn by above officer.*

**MANAGING DIRECTOR**

Petitioner further approached the Honorable Supreme Court of Pakistan. The Honorable Supreme Court on 24.10.2016 passed the following order:-

“We have heard Mr M Sarwar Khan, the learned Additional Advocate General, Sindh, Managing Director (S.I.T.E) and the Petitioners present in person. The M.D, S.I.T.E is directed to streamline the service structure of the Sindh Industrial Trading Estate Ltd. by conforming the principles enunciated in the case reported as Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), in letter and spirit, within 15 days from today.

2. The Petitioners’ Counsel further complains that inspite of the directions contained in the aforesaid judgments, Ahmed Nawaz Jagirani has not been de-notified to his original position and is serving in BS-19 even today. Ahmed Nawaz Jagirani shall appear in person on the next date of hearing to justify as to how after being appointed as P.R.O (BS-16) he could be promoted to BS-19, under the garb of up-gradation. The M.D, S.I.T.E and the Additional Secretary, Services, shall place before us the service profile of Ahmed Nawaz Jagirani. The M.D, S.I.T.E and the Secretary, Services, shall issue requisite notification in the intervening period in compliance with the aforesaid judgments of this Court and report compliance, failing which this Court shall initiate contempt proceedings against the M.D, S.I.T.E and or any other official who is found guilty of willful defiance of order of this Court.

Adjourned to 08.11.2016.”

However, record reflects that Respondent No.5 filed review petition numbered as Cr. Org. Petition No.224/2016 in Review Petition No.193 of 2013 before the Honorable Supreme Court, which was dismissed by the Honorable Supreme Court vide order dated 26.3.2018 for non-prosecution. An excerpt of the order is reproduced as under:-

“CRL.R.Ps.185 TO 189/2016 & CRL.R.P.18/2017

Having heard the learned Counsel for the parties, no case for review has been made out. Dismissed accordingly.

**CRL.O.P.224/2016**

**Nemo for the petitioner. Dismissed accordingly.**

CRL.O.P.221/2017

No case for initiation of contempt proceedings has been made out. Dismissed accordingly.”

We have noticed that the Respondent-SITE vide office order dated 27.9.2017, in defiance of the orders of the Honorable Supreme Court promoted the Respondent No.5 as Deputy Managing Director

SITE in BPS-20 and thereafter the Contempt Application No. 157/2017 filed by the Petitioner before the Honorable Supreme Court was withdrawn vide order dated 26.3.2018, with the permission to approach this Court under Article 187 of the Constitution of Islamic Republic of Pakistan, 1973. In the meantime, the Respondent No.5 was again given additional charge as Managing Director in BPS-20 vide Notification dated 15.8.2018 and was allowed to look after the charge of the post of Managing Director, SITE. The Petitioner has challenged the aforesaid actions of the Respondents and has filed the captioned Petition on 17.9.2018.

**3.** Notice was issued to the Respondents, who filed their para-wise comments. However, the Respondent No.5 filed Counter Affidavit and denied the allegations leveled against him.

**4.** Mr. Ahmed Ali Ghumro, learned Counsel for the Petitioner has argued that Petitioner has called in question the promotion of private Respondent No.5 in BPS-19 and BPS-20 under Article 199 (1)(b)(ii) of the Constitution of Islamic Republic of Pakistan, 1973 in an unprecedented manner against the norms of service rules; that the Honorable Apex Court's judgment in the case of Criminal Original Petition No.89 of 2011 reported as 2013 SCMR 1752, those who were granted out of turn promotions, were reverted, but the Respondent No.5 is still holding the post of BPS-19 and now promoted to BPS-20, in violation of the aforesaid judgment. Learned counsel for the Petitioner contended that Respondent No. 5 is occupying the present post in violation of the judgment rendered by Hon'ble Supreme Court in the case of Ali Azhar Khan Balouch (supra). He next contended that Hon'ble Supreme Court has declared out-of-turn promotions, person specific up-gradation and change of cadre as illegal and directed the Respondent

No.1/Chief Secretary, Government of Sindh, for repatriation of the officials to their original position. But, the Respondents are in league with each other to gain personal benefits to defeat the basic spirit of the judgment passed in the case of Ali Azhar Khan Baloch (supra) and retained the beneficiaries on their original position/posts. He next contended that the post of Public Relation Officer BPS-16 has been up-graded/re-designated in an arbitrary manner without following Rules and Regulations. He lastly prayed for issuance of Writ in the nature of quo-warranto against the Respondent No.5 to meet the ends of justice.

**5.** M/s. Abdul Jalil Zubedi and Shehryar Meher, Assistant Advocate Generals, Sindh representing Respondent No.1, supported the contention of the learned Counsel for the Petitioner.

**6.** Mr. Muhammad Ishaque Rajper, learned Counsel for Respondents No.3 & 4 has referred to the `Comments` filed on behalf of Respondents No.3 & 4 and raised the question of maintainability of the instant Petition. He, however, finally argued that if any order is passed by this Court, the same shall be complied with in its letter and spirit.

**7.** Malik Naeem Iqbal, learned Counsel for Respondent No.5 has referred to the `Counter Affidavit` filed on behalf of the Respondent No.5 and argued that the instant Petition is not maintainable in law; that the Petitioner has personal vendetta thus, not entitled for grant of any relief from this Court, therefore, Writ Petition is not maintainable against the Respondent No.5; that the Petitioner is not an aggrieved person within the meaning of Article 199 (1)(a)(b)(ii) of Constitution of the Islamic Republic of Pakistan, therefore, is not entitled for any relief; that the Petitioner has raised multiple frivolous grounds to harass Respondent No.5; that the Petitioner has not approached the Court with clean hands

and has also not disclosed the true facts before this Court. He further added that Respondent No.5 is well experienced and was validly promoted in BPS-20 by the Competent Authority for the aforesaid post, hence there is neither any defect nor inherent disqualification under the law therefore the instant Petition is misconceived; that there is no order passed by the Honorable Supreme Court de-notifying the Respondent No.5. He also stated that the instant Petition is not maintainable under Article 199 of the Constitution. In support of his contentions, he relied upon an unreported order dated 08.11.2016 passed by the Hon'ble Supreme Court in *Crl. Org. Petitions No.106 to 111, 122 & 174 of 2016 in Civil Review Petition No.193 of 2013*. He further submitted that the Notification dated 09.6.2017 was issued by the Respondent-SITE and argued that the aforesaid Criminal Original Petitions were withdrawn vide order dated 08.11.2016 passed by the Hon'ble Supreme Court and all interlocutory orders, therefore, stood merged in the final order of withdrawal and stood vacated. In support of his contention, he relied upon the cases of *SUO MOTU Case No.11 of 2011 [PLD 2014 SC 389]* and *Federation of Pakistan through Secretary Ministry of Interior v. General (R) Pervez Musharraf and others [PLD 2016 SC 570]*. He lastly prayed for dismissal of the instant Petition.

**8.** We have heard the learned Counsel for the parties and have perused the material available on record besides case law cited by them.

**9.** In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution. We have noticed that the Sindh Industrial Trading Estate Limited [SITE] was established by virtue of policy decision through Sindh Government. SITE is a public limited company fully

owned by the Sindh Government, which is under the administrative control of Ministry of Commerce and Industry, Government of Sindh. As per the material placed before us SITE is a Company limited by Guarantee, which was incorporated under the Companies Act, 1913 (now the Companies Ordinance, 1984) and is being managed by the Board of Directors, appointed by the Government of Sindh. Their employees are not civil servants. The SITE does have service Rules called as [SITE Employees (Service Structure) Articles, 2013] published in the Sindh Government Gazette 26<sup>th</sup> September, 2013, which are not statutory Rules. Besides the aforesaid issue, we are not inclined to record our findings as to whether an employee of the SITE can seek redressal of relief in service matter by approaching a Civil Court as we have not been provided any assistance by the Counsel for the parties. The Honorable Supreme Court, in Paragraph 121 and 158 of the judgment in the case of *Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456)* has held as under:-

“121. It was contended by Messrs Aqil Awan, Shoaib Shaheen, Muhammad Munir Peracha and Tariq Mehmood, learned ASCs, that the impugned judgment is only applicable to Civil Servants and does not cover non-civil servants. We, with respect, disagree with the contentions of the learned Counsel. **The impugned judgment would be equally applicable to the Government Servants, employees of any statutory or non-statutory organization controlled by the Sindh Government**, who were wrongly absorbed in different Cadres, Services, Posts of the Government Departments, Statutory Organizations against their service Rules. The contention of the learned Counsel was that the petitioners were non-Civil Servants and were absorbed from different organizations to Sindh Councils Unified Grades Service under Rule 9(1) of the Rules of 1974, read with Rule 12(5) of the Unified Grades Service Rules 1982. We have already held that the power to appoint by transfer under Rule 9(1) would only extend to a Civil Servant. The Sindh Councils Unified Grades Service Rules 1982 regulate the terms and conditions of the employees appointed therein. Rule 3(1) provides composition of Service, whereas Sub-Rule (2) of Rule 3 spells out its Sub-Branched. Rule 3(4) places a restriction on the members for transfer from one Branch or Sub-Branch to another Branch or Sub-Branch within the service group. Rule 12 of the (Unified Group) Service Rules deals with the seniority of the members. Rule 12(5)(a) confers powers of transfer by Appointment on the competent authority. The petitioners, who were not members of the Unified Services and were wrongly absorbed in the Service of Unified Group, in deviation of the Service Rules of 1982 cannot be allowed to continue in the Unified Services Group. The Chief Minister or the Board cannot induct any stranger in the service of Unified Group either by exercising powers under Rule 9(1) of the Rules of 1974 or by Rule 12(5) of the Rules of 1982. Any such induction is against the recognized norms of Service law and, therefore, the petitioners were liable to be repatriated to their parent departments forthwith in terms of the judgment under review. 'Absorption' of the petitioners under the garb of 'Appointment by Transfer' in the Unified Services Group has directly affected the rights of the employees in the service, guaranteed under Articles 4 and 9 of the Constitution. Such act on the part of the Chief Minister

or the Board had circumvented the very framework of the Service Rules of 1982 by introducing a parallel system based on discrimination and favoritism, which the law does not recognize.”(Emphasis Added).

“158. In the same manner, the Civil Suits filed by the employees of statutory bodies or Government Servants relating to their terms and conditions of service inclusive of the disciplinary proceedings, who are serving in the organizations having statutory service Rules, shall be transferred to be heard by a Division Bench in Constitutional jurisdiction treating them as Constitutional Petitions for disposal in accordance with law”

**10.** Record further reflects that an order dated 24.10.2016 was passed by the Honorable Supreme Court of Pakistan in Criminal Original Petitions No.106 to 111 & 174 of 2016, whereby direction was issued to the Respondent-SITE to issue Notification de-notifying the employees, who were granted out of turn promotions.

**11.** Perusal of record further shows that the Honorable Supreme Court in its order dated 27.9.2016 had noticed that after de-notifying, the employees, who were given out of turn promotions, they approached this court through Civil Suits bearing No.2142 of 2015, 2264/2015, 2611/2015, 2433/2015, 3/2016, 136/2016, 1449/2015, 933/2015, 2292/2015, H.C.A. No.333/2015 and W.P. No.514 of 2014 and obtained interim orders to defeat the judgment and orders of the Honorable Supreme Court. As per record, the Respondent No. 5 was one of the beneficiary of out of turn/non cadre employee, who also filed **High Court Appeal No. No.333/2015 (Re-Ahmed Nawaz Jagirani vs. Sindh Industrial Trading Estate Ltd).** The order dated 27.9.2016 of the Hon'ble Supreme Court is reproduced as under:-

**“We have heard the learned Counsel for the Petitioner and the learned Additional Advocate General, Sindh. We are informed by the Additional Secretary, Services, Government of Sindh, present in Court, that more than 350 employees of Sindh Industrial Trading Estate were de-notified, in compliance with the judgments of this Court reported as Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456). After de-notification, the employees who were given out of turn promotions approached the Sindh High Court through Civil Suits, challenging the order of the competent authority. It appears that the first order obtained by the employees was passed in suit No.933 of 2015. In the said proceedings, the learned Sindh High Court suspended the operation of the Officer Order which was issued in compliance with the aforesaid judgments. Likewise, other employees filed suits bearing No.2142 of 2015, 2264/2015, 2611/2015, 2433/2015, 3/2016, 136/2016, 1449/2015,**

933/2015, 2292/2015, H.C.A. No.333/2015 and W.P. No.514 of 2014. Through the aforesaid proceedings the orders of the competent authority were suspended and the employees are continuing in defiance of the aforesaid judgments. The ground on which these orders were obtained was that both these judgments do not apply to non-civil servants. It appears that the learned High Court was not properly assisted and had passed the interim order without going through para 121 of the judgment in the case of Ali Azhar Baloch (supra). This Court has dealt with this issue and has already held that the aforesaid judgments are applicable to the civil servants, government servants, employees of statutory or non-statutory organizations controlled by the Sindh Government, who are wrongly absorbed in different cadres, services, posts or other departments against their service rules. The Sindh Industrial Trading Estate is a statutory body, which is under the administrative control of the Industries Department, Government of Sindh, therefore, they will also be regulated by the aforesaid two judgments. This Court has also observed in the said judgments that the persons aggrieved by any order of the department have to approach this Court in review. In spite of these directives, the civil suits were entertained by the Sindh High Court, defeating the spirit of the judgments. Even the Sindh Industrial Trading Estate has wrongly withdrawn the notifications issued earlier on the recommendations of the Human Rights Committee. Once the employees were de-notified in compliance with the judgments of this Court, the employees aggrieved have to approach this Court in review instead of obtaining interim orders from the Sindh High Court. We, therefore, direct the Managing Director, S.I.T.E and or any other competent authority to give effect to the notifications and or office orders issued earlier by them de-notifying the employees on the ground of out of turn promotions, irrespective of the interim orders obtained by them from the Sindh High Court either in suit or in High Court Appeal or in any Petition whatsoever.

3. The notifications shall be issued forthwith and the aggrieved, if any, shall be at liberty to approach this Court in review, if so advised, as the proceedings before us confirm the fact that many of the employees have obtained orders from the Sindh High Court in different suits and or on the recommendation of the H.R Committee. Neither the H.R Committee nor the High Court was competent to sit in appeal against the findings of this Court, by granting relief of this nature, as the aforesaid judgments of this Court can only be interpreted by this Court and not any other forum, as mandated by the Constitution.

5. The Additional Secretary, Services, requests time to file concise statement in the interim period. The M.D, S.I.T.E is also required to file compliance report.

6. Adjourned to 24th October, 2016.”(Emphasis Added).

**12.** The order of the Honorable Supreme Court, in our view, fully covers the case of Respondent No.5. He, therefore, cannot, through any proceedings initiated subsequent to the aforesaid orders can obtain a finding with the motive to defeat the findings/observation of the Honorable Supreme Court, as it appears to have been done by him.

**13.** Petitioner has filed documents showing details of service record of Respondent No. 5 [Page-53 of the Memo of Petition]. As per profile of the Respondent No.5, he was appointed as Public Relations Officer in BPS-16 in the year 1993; however, his services were terminated on account of abolition of his post. Such

termination order was assailed in Civil Suit No.394 of 1994 before this Court (O.S.) which was later on transferred to the Senior Civil Judge Karachi (West) and numbered as Civil Suit No.45 of 2003 and a decree was passed in his favour vide judgment and decree dated 20.07.2003, though the civil court did not have jurisdiction to entertain a suit pertaining to service. He, however, was reinstated on 22.12.2003. We are also surprised to note that the Respondent No.5 claims that his post i.e. Public Relations Officer was upgraded/re-designated in BPS-19, he became Director Public Relations vide office order dated 10.8.2005, his post was further re-designated to Director, Administration and Public Relations vide Board Resolution dated 10.11.2006 and he was posted as Deputy Managing Director, SITE Limited, his promotion / up-gradation from BPS-19 to BPS-20 was also made vide office order dated 04.6.2010.

**14.** The aforesaid service profile of the Respondent No.5 explicitly show that a Scale-16 post was upgraded and re-designated up to BS-20. In this regard, we have to look into the logic behind specific up-gradation of such person.

**15.** The foremost questions which require our findings are as under:-

- i) Whether up-gradation is distinct from the expression promotion?
- ii) Whether up-gradation is restricted to the post and not with the Person occupying it?
- iii) Whether the aforesaid up-gradation of the Respondent No.5 is in violation of the dicta laid down by the Honorable Supreme Court in its various pronouncements?
- vi) Whether the promotion of the Respondent No.5 in BS-19 and BS-20 is in defiance of the orders of the Honorable Supreme Court?

**16.** To answer the first and second proposition, in our view for up-gradation of post, the following conditions are pre-requisite:-

- i) Firstly up-gradation is restricted to the post and not with the person occupying it.

ii) Secondly up-gradation of posts does not mean automatic up-gradation of the incumbents of these posts as well; in fact the appointment against the upgraded post is required to be made in the manner prescribed in the Recruitment Rules for that particular post.

iii) Thirdly up-gradation cannot be made to benefit a particular individual.

**17.** To justify up-gradation, the Department needs to establish that it requires restructuring, reform and to meet the exigency of service in public interest. In the absence of the aforesaid pre-conditions, up-gradation is not permissible under the law. Our view is supported by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch & others v. Province of Sindh & others [2015 SCMR 456].

**18.** The up-gradation otherwise is attached to the office and it is not a promotion. The moment a person leaves the upgraded post, he will fall back to his substantive seat. Interestingly the up-gradation was tainted with malice and was person specific to give benefit to Respondent No.5 by brushing aside all norms of laws.

**19.** We also have to see whether the Respondent No.5 possessed minimum length of service to earn promotion. The record does not show that Respondent No.5 qualified for up-gradation/promotion up to BS-20. Since the Respondent No.5 was not promoted from BPS-17 to BPS-19, and admittedly the posts were up-graded/re-designated to extend benefit to him, therefore, in our view he cannot claim promotion in BPS-20 as the posts he occupied were up-graded from BPS-17 to 19 at times which is not promotion; therefore promotion in BPS-20 of the Respondent No.5 was without legal authority. The law on the above proposition is very clear as the Honorable Supreme Court has already enunciated the above principle of law in the case of Government of Pakistan & others v. Hameed Akhtar Niazi & others [PLD 2003 SC 110]. We are further fortified by the decision rendered by the Hon'ble Supreme Court in

the case of Regional Commissioner Income Tax, Northern Region, Islamabad and another vs. Syed Munawar Ali and others [2016 SCMR 859], the Hon'ble Supreme Court has held in paragraphs-6&7 as under:-

“6. We have heard the learned Counsel for the parties and have perused the record. The expression "up-gradation" is distinct, from the expression "Promotion", which is not defined either in the Civil Servants Act or the Rules framed thereunder, and is restricted to the post (office) and not with the person occupying it. The up-gradation cannot be made to benefit a particular individual in term of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the up-gradation, the Government is required to establish that the department needs re-structuring, reform or to meet the exigency of service in the public interest. In the absence of these pre-conditions, up-gradation is not permissible.

7. The aforesaid definition of the expression "up-gradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. In fact, this Court in the judgment titled as Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) and an unreported judgment of this Court passed in the case of Chief Commissioner Inland Revenue and another v. Muhammad Afzal Khan (Civil Appeal No.992 of 2014) has held that the issue relating to up-gradation of civil servants can be decided by a High Court in exercise of its constitutional jurisdiction and bar contained under Article 212(3) of the Constitution would not be attracted. The policy of up-gradation, notified by the Government, in no way, amends the terms and conditions of service of the civil servant or the Civil Servants Act and or the Rules framed thereunder. The Service Tribunals have no jurisdiction to entertain any appeal involving the issue of up-gradation, as it does not form part of the terms and conditions of service of the civil servants. The question in hand has already been answered by the aforesaid two judgments of this Court.”

**20.** In our view, the case of the Respondent No.5 is fully answered by the aforesaid judgments of the Honorable Supreme Court.

**21.** The grounds agitated by the Respondent No.5 in the Counter Affidavit that his up-gradation/re-designation was permissible from BPS-16 to BPS-19 and further promotion in BPS-20 was lawful. It is stated that we are not in agreement with the contentions of the learned Counsel for the Respondent No.5 for the aforesaid reasons, whereas the Respondent No.5 lacks qualification for promotion, which was for tenurial period as provided under the law. The Board of Directors in 412<sup>th</sup> Meeting held on 20.9.2017

was not even competent to grant promotion to the Respondent No.5 in Grade-20. We have noticed that under the garb of purported exercise of up-gradation/re-designation of the post of Senior Public Relation Officer, the Respondent No.5's cadre was changed and was promoted as Deputy Managing Director SITE in BPS-20. His posting against an administrative cadre post i.e. Managing Director, SITE BPS-20, which was ex-facie unauthorized as he was not a civil servant or a cadre officer, therefore, he could not have been given look after charge.

**22.** In our view, in such like matters provisions of sub clause (1)(b)(ii) of Article 199 of the Constitution, are fully attracted authorizing the High Court to issue a "Writ of Quo-warranto" requiring a person within its territorial jurisdiction holding or purporting to hold a Public Office to show under what authority, he claims to hold that Office. It is also clear that, while exercising powers under Clauses (b) (ii) of Article 199 of the Constitution, the High Court if satisfied, could declare that the Holder of Public Office is not entitled to such office. The aforesaid Office, being a Public Office is amenable to the writ jurisdiction of this Court under Article 199 of the Constitution. We are fortified by the said comments of the Honourable Supreme Court of Pakistan in the case of Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others [PLD 1975 SC 244] on the issue. It is well settled law that the person invoking the jurisdiction under Article 199 of the Constitution of Pakistan is not required to fulfill the stringent conditions required for bringing himself within the term of an 'aggrieved person', any person can approach this Court and challenge the usurpation or unauthorized occupation of a Public Office by an incumbent on the ground that he is not

qualified to hold public office. The issue of *locus standi* in such like matters is insignificant and immaterial.

**23.** To address the moot question involved in the present proceedings, we seek guidance from order dated 24.10.2016 of the Hon'ble Supreme Court passed in Criminal Original Petitions No.106 to 111 & 174 of 2016, giving directions for de-notifying officers/officials working in SITE to their original position. Paragraph No.2 of the order (supra) is reproduced as follows:-

**“2. The Petitioners’ Counsel further complains that inspite of the directions contained in the aforesaid judgments, Ahmed Nawaz Jagirani has not been de-notified to his original position and is serving in BS-19 even today. Ahmed Nawaz Jagirani shall appear in person on the next date of hearing to justify as to how after being appointed as P.R.O (BS-16) he could be promoted to BS-19, under the garb of up-gradation. The M.D, S.I.T.E and the Additional Secretary, Services, shall place before us the service profile of Ahmed Nawaz Jagirani. The M.D, S.I.T.E and the Secretary, Services, shall issue requisite notification in the intervening period in compliance with the aforesaid judgments of this Court and report compliance, failing which this Court shall initiate contempt proceedings against the M.D, S.I.T.E and or any other official who is found guilty of willful defiance of order of this Court.”**

**24.** In our view, once the Hon'ble Supreme Court of Pakistan has concluded in its order referred to hereinabove, this Court cannot travel into the merits of the case nor could take a different view. Ex-facie the Respondent-SITE and Respondent No.5 have committed contempt of the orders of the Honorable Supreme Court for which they have failed to offer any plausible explanation either in their pleadings or before this Court during arguments as to how Respondent No.5 was justified to have reached BS-20 and was posted as Managing Director, SITE. The petition of this nature cannot be dismissed on technical grounds once it has been brought to the notice of this Court that a person holding the post/public office is in contempt and Respondent-SITE in defiance has extended favour to him. We may record that administrative /cadre post is notified in the cadre schedule issued by the Sindh

Government. Only a civil servant qualifying for such post can be posted against such administrative/cadre post.

**25.** We have also examined the stance of the Respondent-Department whereby they have disclosed in paragraph No.9 that the Respondent No.5 was reinstated in BPS-19 from the post of BPS-16 and further promoted in BPS-20 in accordance with law and there is no violation of the judgment of the Honorable Supreme Court. In our view, the aforesaid assertion of the Respondent-SITE negates the basic orders passed by the Honorable Supreme Court in the aforesaid proceedings whereby the Respondent-SITE was directed to de-notify the Respondent No.5, therefore, they cannot take somersault and restore the service of Respondent No.5 in BPS-19 from the post of Public Relation Officer BPS-16, under the garb of up-gradation/re-designation and subsequently promoting him in BPS-20. Per Respondent No.5, the post of Public Relation Officer had already been abolished by Board of Resolution dated 18.5.1994 and his service was terminated on 05.6.1994 and subsequently reinstated in 2003, then the question arises that for which post he was reinstated and the same was re-designated subsequently in higher grade and continued to be re-designated and up-graded up to PBS-20. We are unable to understand the logic of the Respondent-department, which prima-facie shows favour to the Respondent No.5.

**26.** Perusal of record shows that there are serious discrepancies in the service record of Respondent No.5 regarding his reinstatement in service, up-gradation/re-designation, promotion and change of cadre in Sindh Industrial Trading Estate Ltd, which cannot be ignored.

**27.** The case laws cited by the learned Counsel for the Respondent No.5 are distinguishable from the case in hand.

**28.** The above discussion leads us to an irresistible conclusion that all orders passed in favour of the Respondent No.5 by the Respondents No.1 to 4, including his promotion as Deputy Managing Director, SITE in BS-20, after orders of the Honorable Supreme Court as discussed in the preceding paragraphs are violative of law as a result thereof the instant petition is allowed and the up-gradation, promotion and posting of Respondent No.5 in BS-20 are declared as without lawful authority. Consequently, Office Order dated 27.9.2017 issued by Respondent No.3/Managing Director SITE and Notification bearing No.SOI(SGA&CD)-3/05/2007 dated 15<sup>th</sup> August, 2018 issued by the Respondent No.1 are set aside. The SITE shall immediately comply with the judgment of the Honorable Supreme Court in letter and spirit failing which they will be exposed to contempt proceedings along with Respondent No.5 who is beneficiary of the aforesaid act of SITE. All the pending Applications are disposed of. Let a copy of this order be communicated to the Chief Secretary, Sindh for information and compliance and for initiating departmental proceedings against all those officials who were responsible of defying orders of the Honorable Supreme Court as narrated in the preceding paragraphs under intimation to the Bench.

**JUDGE**

**JUDGE**