

*Order Sheet*  
IN THE HIGH COURT OF SINDH KARACHI  
**Constitutional Petition No.D – 4434 of 2020**  
**Constitutional Petition No.D – 5842 of 2020**

Date	Order with Signature of Judge
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1. For orders on office objection.
2. For hearing of CMA No.18702 / 2020.
3. For hearing of main case.

**16.03.2021** :

Mr. Zia-ul-Haq Makhdoom, advocate for the petitioner in C.P No.D-4434/2020.  
Mr. Zulfiqar Ali Domki, advocate for the petitioner in C.P No.D-5842/2020.  
Mr. Zamir Hussain Ghumro, advocate for respondent No.5 in C.P No.D-5842/20  
Mr. Ali Safdar Depar, Assistant Advocate General Sindh.

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The instant Constitution Petitions, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, have been filed by the petitioners, seeking a declaration to the effect that the posting and transfers on Own Pay and Scale basis, look after charge and in addition to his duties are illegal, unconstitutional, contemptuous and violative of fundamental rights as such the same are liable to be set-aside on the premise that he/she is not entitled to hold the higher post under Rule 8-A (i) of Sindh Civil Servant (Appointment, Promotion & Transfer) Rules, 1974, and without the approval of the Departmental Promotion Committee, more particularly, the aforesaid assignment given to her/him is in direct conflict with the decision rendered by the Honorable Supreme Court of Pakistan in the case of Province of Sindh & others v. Ghulam Fareed & others [2014 SCMR 1189]. Learned counsel for the petitioners has taken us to several notifications where the officials have been appointed on OPS beyond and above their pay scales. These notifications are appended as annexure C-1 onwards. In response to the contents of the petitions, comments have been filed and through their showing, it appears that such appointments on OPS are not denied specifically. It is however pleaded that since the eligible officers were not available, therefore, this recourse was adopted and some of the officers from the lower pay scale were appointed on OPS on a higher pay scale. This could hardly be a stopgap arrangement for six months and unless recourse is made for such appointments strictly on merits considering the promotion or direct appointment, as the case may be, these OPS officers should not have been allowed almost for more than six months, apparently in compliance of the judgment of the Hon'ble Supreme Court. When this was confronted with learned Assistant Advocate

General Sindh, he submits that compliance report in this regard following the mandate given by the Hon'ble Supreme Court of Pakistan shall be filed in a week. We have inquired from the learned AAG to show us any provision of law and or rule under which a Provincial Civil Servant can be appointed on an OPS basis. He concedes that there is no specific provision in Sindh Civil Servants Act or rule which permits appointment on an OPS basis. He, however, submitted that in exigencies, the Government makes such appointments as a stopgap arrangement. Obviously, this practice of appointment on OPS basis has always been discouraged by the Hon'ble Supreme Court of Pakistan in the aforesaid case, as it does not have any sanction of law, besides it impinges the self-respect and dignity of the Civil Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of nature, if allowed to be vested in the Competent Authority, will offend valuable rights of the meritorious Civil Servants besides blocks promotions of the deserving officers. In this respect, learned AAG referred to Rule 8-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, and argued that the Competent Authority is empowered to appoint a Civil Servant on acting charge and current charge basis; besides, it provides that if a post is required to be filled through promotion and the most senior Civil Servant eligible for promotion does not possess the specific length of service, the appointment of the eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board.

To appreciate the stance of the learned AAG on the issue of OPS, we have noticed that in the connected matter, if required, comments may also be filed before the next date of hearing. To be fixed after two weeks.

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