

**IN THE HIGH COURT OF SINDH, KARACHI**

C. P. NO. D-2946 / 2020 along with  
C. P. NO. D-3577, 3090 / 2021, 483/2022

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*  
*Mr. Justice Agha Faisal*

Petitioner in C.P. No. D-2946/2020: Aijaz Ali Pathan,

Petitioner in C.P. No. D-3577/2021: Ahmed Bux Narejo,  
Through Mr. Malik Naeem Iqbal,  
Advocate.

Petitioner in C.P. No. D-3090/2021: Syed Ghayasuddin Rashedi,  
Through Mr. Abdul Salam Memon,  
Advocate.

Petitioner in C.P. No. D-483/2022: Shah Jahan Khan,  
Through Mr. Zulfiqar Ali Langah  
holding brief for Mr. Shahab Sarki,  
Advocate.

Respondents: Federation of Pakistan & Another,  
Through Mr. Syed Yasir Shah,  
Assistant Attorney General.  
Assisted by Ms. Ayesha Bashir Wani,  
Joint Secretary, Establishment & Mr.  
Nawaz Ahmed, Additional Secretary,  
Establishment.

Date of hearing: 21.09.2022  
Date of Order: 21.09.2022.

**ORDER**

**Muhammad Junaid Ghaffar, J:** All Petitioners are Civil Servants working in different Grades with the Government of Pakistan and had filed these petitions seeking various reliefs including challenge to SRO 1493(I)/2019 dated 05.12.2019, whereby, a procedure was introduced for compulsory retirement of Civil Servants who had been superseded twice; however, for the present purposes, after rescindment of the said SRO, the only controversy left is in respect of interpretation of Rule 10(5) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 (“**Rules**”). After hearing the learned Counsel for the parties on 07.09.2022, we had passed the following order:-

“In all these petitions, the petitioners are aggrieved by their supersession in promotion matters within a span of one year from earlier supersession. Learned counsel appearing for the petitioner have referred to Rule 10(5) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019, and submits that second supersession is in violation of the said rules whereas learned Islamabad High Court and Lahore High Court have already set aside the said supersession

promotion made within a span of one year. While confronting learned Assistant Attorney General needs time to seek instructions as to how and in what manner rules have been violated by the respondents themselves.

It is informed that now a fresh promotion committee's meeting is being held later this month, therefore, to come-up on **15.10.2022 at 11:00 AM**. Learned Assistant Attorney General is directed to come prepared with instructions, failing which we would compel to pass appropriate orders. Office to place copy of this order in connected matters."

Learned Counsel for the petitioners submit that the petitioners have been superseded twice within one year which is in violation of Rule 10(5) of the Rules, as they ought not to have been considered for any promotion by the Central Selection Board ("**CSB**") until lapse of one year and as a consequence thereof the second supersession of the Petitioners by considering them in violation of the Rule as above for promotion is illegal and void, ab-initio; hence, liable to be set-aside.

On the other hand, learned Assistant Attorney General duly assisted by Ms. Ayesha Bashir Wani, Joint Secretary, Establishment and Mr. Nawaz Ahmed, Additional Secretary, Establishment has argued that in terms of Rule 4 of the Rules read with Schedule-I, thereof, the employees including Petitioners can be considered for promotion within a span of one year for Performance Evaluation Report (PER) pertaining to subsequent years. He has also placed reliance on the illustrations described in Schedule-I of the said rules.

We have heard the Petitioner's Counsel as well as learned Assistant Attorney General and have perused the record. It is a matter of record that the petitioners are Civil Servants and had been considered for promotion earlier and were superseded. It is also not in dispute that before expiry of one year from their last supersession, they were again considered for promotion and were again superseded. It is the second suppression which is under challenge before us on the ground that until expiry of one year from the earlier suppression, the petitioner's case could not have been considered by the CSB; and as a consequence thereof, their second suppression is illegal. It would be advantageous to refer to Rule 10(5) of the said Rules which reads as under:-

**"10. Consideration of promotion of civil servants who were deferred / superseded.** (1) A civil servant deferred, except under clause (d) of rule 7, shall be considered for promotion again after the reason on the basis of which the deferment took place ceases to exist.

(2) -----

(3) -----

(4) -----

(5) A civil servant, once superseded for promotion under rule 8 shall be eligible for reconsideration only after he / she earns one more PER of one full year.”

The above rule clearly provides that a Civil Servant shall be considered for promotion again in various situation; however, sub-rule (5) very clearly states that a Civil Servant once superseded for promotion under Rule 8 *ibid* (*it is also not in dispute that the petitioners were superseded under Rule 8*) shall only be eligible for reconsideration after he / she earns one more (PER) of one full year. Now from a bare perusal of the above provision, there appears to be no doubt in our minds, that this Rule is mandatory in nature and has been incorporated to safeguard the interest of an employee who has already been superseded to improve his performance and shortcomings in a year, and thereafter be considered once gain for a promotion. Any other meaning or interpretation would be absurd including any reliance on Rule 4 *ibid*, and Schedule-I thereof. It is settled law that a Schedule cannot override the basic Rule or Law under which it has been issued or annexed, whereas, if there are two conflicting provisions in law; then it is the duty of the Court to interpret them in such a manner so as to reconcile them and make them consistent with each other in order to ensure that none of them is rendered redundant<sup>1</sup>. The Rules and Regulations framed under the Ordinance could not go beyond and over-reach the Ordinance itself or be inconsistent with it as held in *Mian Ziauddin*<sup>2</sup> & *Multiline Associates*<sup>3</sup> and in the same manner, a Schedule attached to a Rule by itself cannot go beyond the said Rule. Here insofar as Rule 4 *ibid* is concerned, the same in fact does not by itself caters to the issue in hand; rather it is a guideline to CSB members, as to promotion; appointment on acting charge basis; deferment and supersession, whereas, Schedule-I is merely referred to in this Rule to provide further guidelines to the members of CSB while considering any of these situations. It is nowhere provided in this Rule that as to when a meeting of CSB shall be convened for considering promotion of an officer who has been superseded in the immediate past CSB. That is catered in Rule 10(5) which as noted hereinabove is very clear and explicit having attached with it no rider at all. As a consequence thereof, we do not see any reason to accept the contention of the Respondents that Rule 4 read

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<sup>1</sup> *Emmanul Masih v The Punjab Local Council Elections Authority* (1985 SCMR 729)

<sup>2</sup> 1985 SCMR 365

<sup>3</sup> PLD 1995 SC 423

with Schedule-I permits the CSB to consider any employee for promotion within a span of one year of his earlier supersession for the next promotion. Learned Counsel for one of the Petitioners<sup>4</sup> has placed reliance on the judgment of a Single Bench of the learned Lahore High Court now reported as *Dr. Muhammad Azeem Khan Vs. Federation of Pakistan through Secretary, Establishment Division and another (PLD 2022 Lahore 302)*, wherein the same view has been approved and we are fully in agreement with the said opinion of the learned Judge.

In view of hereinabove facts and circumstances of this case, all these Petitions are allowed to the extent that the Petitioners second supersession within a span of one year is held to be in violation of Rule 10(5) of the Rules in question, and accordingly, the second supersession of the petitioners are hereby set aside. The Petitions are allowed in the above terms, whereas, the Petitioners shall be considered for next promotion in accordance with the above observations and the Rule(s) in question in the next scheduled meeting of CSB.

**J U D G E**

**J U D G E**

Arshad/

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<sup>4</sup> Mr. Abdus Salam Advocate in CP No.3090 of 2021