

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

## **CP No.D-57 of 2016**

(Ghulam Hassan and 40 others v. Province of Sindh and 04 others)

## **CP No.D-7622 of 2018**

(Zulfiqar Khushk and 04 others v. Province of Sindh and 05 others)

## **CP No.D-7111 of 2018**

(Ahmed Habib-ul-Islam v. Government of Sindh and 03 others)

## **CP No.D-3409 of 2019**

(Abdul Rauf and 03 others v. Province of Sindh and another)

## **CP No.D-6110 of 2020**

(Ghulam Murtaza and 05 others v. the Province of Sindh and 02 others)

Mr. Sarmad Hani, advocate for the petitioners in CP No.D-7622/2018.

Mr. Akhtar Hussain Shaikh, advocate for the petitioners in CP No.D-6110/2020

Mr. Faisal Siddiqui, advocate assisted by Ms. Amna Usman, advocate for the petitioners in CP No.D-3409/2019

Nemo in CP No.D-7111/2018 and CP No.D-57 of 2016

Mr. Abdul Jalil Zubedi, AAG

Dates of hearing : 19.01.2023, 16.2.2023, 09.3.2023 and 15.03.2023

Date of Judgment : 12.06.2023.

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

**ADNAN-UL-KARIM MEMON, J.** – These matters have been remanded to this Court by the Supreme Court of Pakistan through order dated 09.09.2022 passed in Civil Appeals Nos.347 to 356 of 2022, which is reproduced as under:-

“We have heard the arguments of the learned counsel for the appellants as well as the respondents. It has been pointed out that the learned High Court has not addressed all legal and factual issues involved in the matter and has misconstrued the basic point in the case, which was that there was actually no merger of two cadres. It appears that entire judgment is based on the presumption that there had been a merger which would affect the rights of the petitioners before the learned High Court. It has further been pointed out that it is clearly stated in the rules that the same will not apply either to the question of seniority or promotion of officers, who are in the respective existing cadres and would continue to be governed by the old rules. We further notice that the learned High Court has neither discussed the rules that it had proceeded to strike down nor has it examined the same in juxtaposition with the Articles of the Constitution of

Islamic Republic of Pakistan (the constitution), on which it has relied to strike down the rules.

2. On perusal of the impugned judgment, we find that having misunderstood the crux of the controversy, the High Court has recorded findings and reached conclusions, based on assumption, which we say with great respect are not entirely correct. In this view of the matter, we are inclined to hold that the impugned judgment is unsustainable. It is accordingly set aside. However, in view of the legal and constitutional issues involved in the matter as well as the fact that other connected matters are pending before the learned High Court, we consider it appropriate to remand the matter to the High Court, where it will be deemed to be pending.

3. We also note that the Government of Sindh was a necessary party in the matter and the learned Advocate General Sindh should have been given an opportunity to address the Court. It would be appropriate if the matter is heard again in its entirety after notice to the learned Advocate General, Sindh and hearing all other interested parties in the matter and decided in accordance with law through a reasoned order. Consequently, these appeals are allowed in the afore-noted terms and the judgments dated 13.08.2021 of the learned High Court of Sindh are set aside.

4. In view of the fact that the controversy apparently relates to terms and conditions of service, the High Court shall also consider the applicability of Article 212 of the Constitution. We are sanguine that these matters will be taken up, heard and decided as expeditiously as possible and preferably within a period of four months from the date of receipt of a certified copy of this order. The office shall immediately transmit a copy of this order to the Registrar Sindh High Court for seeking appropriate orders from the Hon'ble Chief Justice Sindh High Court.”

2. That on remand to this Court, it was assigned to this Bench as per roaster sitting. We accordingly issued notices to the parties as well as to the learned Advocate General Sindh under Order XXVII-A CPC to appear and assist this Court.

3. Before recording the contentions of the parties we would like to give the background of the cases, which is material to reach correct conclusion in these proceedings.

4. The material facts relevant to the case in hand are that, in 2011 the officers of Provincial Civil Service (Secretariat) (PSS) filed CP No.1898 of 2012 before this Court and sought following relief(s):-

“a) To direct the official Respondents to notify the draft Rules of Sindh Civil Servants (Provincial Management Service) Rules, 2006 **where under Petitioners are made to require to obtain necessary training in the relevant fields so that they may not be discriminated with the Officers of Ex-PCS Cadre and further direct the Respondents to implement the lawful order of competent Authority viz. Chief Minister of Province of Sindh.**

b) To direct the Official Respondents **to issue notification in the meanwhile relieving the Petitioners for joining Sindh Civil Services Academy Karachi for pre-Service training, Karachi as it has been done in the case of Ex-PCS Cadre.**

c) .....

d) .....

5. The said petition was allowed in the following terms:

“...Such rules if notified would certainly cater for good governance as it has already been established in other provinces and all required formalities have been completed. The subject draft rules are prepared in terms of section 26 of Sindh Civil Servants Act, 1973 and even otherwise, it is well within the domain of the authority concerned to amend and streamline the subject rules, if at all required. **There seems to be no justification for withholding the notification of the subject rules and on the contrary the absence of such notified rules would create a sense of insecurity amongst the PSS cadre who at present do not have a policy or mechanism where they could be selected for the training which could enable them to complete for their promotion.** Accordingly, by short order dated 13.08.2013 we allowed this petition as prayed and these are the reasons for the same.” **Emphasis Added.**

6. Subsequently, the Executive Provincial Civil Service (Ex-PCS) Officers filed application under Section 12(2) CPC in the aforesaid petition agitating that the petitioners (PSS officers) had fabricated the facts and misled this Court to get Provincial Management Service (PMS) Rules framed under the disguise of purported training rules. The said application was dismissed vide order dated 25.04.2016 in the following terms:

“...In the instant case, the applicants have failed to demonstrate any case of fraud or misrepresentation.

10. As a result of the above discussion, the listed applications are dismissed and interim orders are vacated. However, it is significant and noteworthy to have a fliting look to paragraph No.8 of the counter affidavit filed to the main petition by the respondents No.1 to 4 wherein they have admitted the draft rules for creation not the PMS by merging two provincial services rules but the same could not be notified due to disagreement over sharing formula related to the post various grade by the Ex.PCS and PSS. Though the judgment contained the directions to issue a Notification of the subject Rules but at the same time the court remarked that ‘The subject draft rules are prepared in terms of section 26 of Sindh Civil Servants Act, 1973 and even otherwise, it is well within the domain of the authority concerned to amend and streamline the subject rules, if at all required.’ This finding leads us to the conclusion that in order to deal with the disagreement over sharing formula and for other related issues, a venue was left upon for the government in the main judgment to amend and streamline the subject Rules, therefore, the applicants may file representation to the concerned authority or in alternative they may wait till such time the Rules are notified so that they may challenge the vires of Rules if any through proper legal proceedings.”

7. The Division Bench of this Court while disposing of the application under section 12(2) CPC of the Ex-PCS officers was misled in ordering the merger of the two cadres which was prima facie neither the subject matter of the petition nor was prayed for. PMS Rules merging the two cadres, gave rise to a controversy, and the original relief of training Rules of PSS was completely overlooked by the Services & General Administration Department (S&GAD), in a bid to favor PSS officers by framing PMS Rules.

8. Against the aforesaid dismissal of the petition, the Ex-PCS officers filed Petition for leave to Appeal (CPLA) before the Supreme Court through CP

No.522-K/2016, which was disposed of vide order dated 07.03.2017 in the following terms:-

“Learned counsel for the parties would be satisfied if the relevant rules are approved and notified by the Government of Sindh by independent application of mind and without being influenced by the impugned order dated 22.06.2016 passed by the learned High Court of Sindh.

Learned Advocate General Sindh states that a Summary for the rules has been sent to the Chief Secretary, which shall ultimately be approved by the Chief Minister. Suffice it to say that such rules shall be framed and notified by the concerned authority with independent application of mind without being influenced by any order passed by the High Court of Sindh and the parties may seek appropriate remedy if they are aggrieved of the said rules.”

9. In compliance with the orders passed by Supreme Court, a summary was floated to Chief Minister Sindh, (CM) which needs to be reproduced hereunder as it has direct bearing on the issues raised in these proceedings. The CM approved para 8 of the summary as under:-

“Mr. Riaz Ahmed and other officers of Provincial Secretariat Service filed Civil Petition No. D-1898 of 2013 before Hon'ble High Court of Sindh. They prayed for issuance of directions to the official respondents to notify the rules of Sindh Civil Servants (Provincial Management Service) Rules, 2006 where under they are made to require to obtain necessary training in the relevant fields, so that they may not be discriminated with the officers of Ex-PCS cadre. The Hon'ble Court passed orders dated 22.6.2016 in the said CP, which are reproduced below (Annexure-I):

"As a result of above discussion, the listed applications are dismissed and interim orders are vacated. However, it is significant and noteworthy to have a fleeting look to paragraph No.8 of the counter affidavit filed to the main petition by the respondent No. 1 to 4 wherein they have admitted the draft rules for creation of PMS by merging two Provincial Service Groups but the same could not be notified due to disagreement over sharing formula relating to the post of various grade by the Ex-PCS and PSS. Though the judgment contained the directions to issue a Notification of the subject Rules but at the same time the court remarked it.

"The subject draft rules are prepared in terms of section 26 of the Civil Servant Act, 1973 and even otherwise it is well within the domain of the authority concern to amend and streamline the subject rules, if at all required".

This finding leads us to the conclusion that in order to deal with the disagreement over sharing formula and for other related issues, a venue was left upon for the Government in the main judgment to amend and streamline the subject Rules, therefore, the applicants may file representation to the concerned authority or in alternate they may wait till such time the Rules are Notified so that they may challenge the vires of Rules if any through proper legal proceedings."

2. Mr. Abdul Wajid Sheikh and others filed leave to appeal No. 522-K of 2016 before the Hon'ble Supreme Court of Pakistan. The Hon'ble Court has passed orders dated 7.3.2017, as under (Annexure-II):

"Learned counsel for the parties would be satisfied if the relevant rules are approved and notified by the Government of Sindh by independent application of mind and without being influenced by the impugned order dated 22.6.2016 passed by the learned High Court of Sindh.

Learned Advocate General Sindh states that a Summary for the rules has been sent to the Chief Secretary, which shall ultimately be approved by the Chief Minister. Suffice it to say that such rules shall be framed and notified by the concerned authority with independent application of mind without being influenced by any order passed by the High Court of Sindh and the parties may seek appropriate remedy if they are aggrieved of the of rules."

It is submitted that the draft rules for formation of Provincial Management Service were prepared and vetted by the Law Department on 11.09.2006 through Regulation Wing of Services, General Administration and Coordination Department on 2-11-2009, before filing of the said C.P in the Hon'ble High Court of Sindh, by the PSS Officers for creation of Provincial management Service in Government of Sindh. However, these rules were not approved by the Competent Authority (Chief Minister Sindh) under Section 26 of the Sindh Civil Servants Act, 1973.

The Hon'ble Supreme Court of Pakistan in its Order dated: 07-03-2017 has passed order that such rules shall be framed and notified by the concerned authority with independent application of mind without being influenced by any order passed by the Hon'ble High Court of Sindh.

It is pointed out that the idea of formation of PMS arose during the District Government setup when the officers of Provincial Secretariat Service were being posted in District Governments. After revival of Commissionerate system the scenario has completely changed. The duties, functions and training of the officers of the PSS and Ex-PCS are entirely different.

It may also be observed that in Federal Government there are two separate service groups i.e. Secretariat and PAS. These are two different cadres in the Establishment Division has not created any Federal Management Service by amalgamating the two cadres.

Keeping in view the above position and orders passed by the Hon'ble Supreme Court of Pakistan, the subject issue was discussed by the Chief Secretary Sindh with Secretary (1&C) and Secretary (Services), SGA&CD and after detailed deliberations, it has unanimously been decided that the PSS & Ex- CS are two separate cadres / Groups of service and their amalgamation and formation of PMS may not be supported and the matter may accordingly be placed before the Chief Minister Sindh.

**In view of above, it is proposed that the proposal for formation of Provincial Management Service and its rules, by amalgamating the PSS & Ex CS Groups may not be considered and be discouraged as both the cadres / groups are separate.**

The Honorable Chief Minister, Sindh may like to approve proposal at para-8 above."

10. On 18.9.2017, the CM approved Para 8 of the summary. The PSS officers filed a contempt application inter-alia, on the ground of non-compliance with the orders of the Supreme Court which was numbered as Criminal Original Petition No.180/2017, upon which, the Supreme Court passed the following order:-

"..The respondent was directed to take note of the above said order and undertaking but he rigidly held his stance despite understanding the gravity of the consequences of non-compliance of an order of this Court and knowingly well that he was advocating such non-compliance. This seems to be sheer disregard and disobedience to the Court's order. Let a notice be issued to him under the provisions of Section 17 of the Contempt of Court Ordinance, 2003 to explain his position within One

Week as to why he should not be proceeded for contempt of Court in terms of the said Section read with the provisions of Article 204 of the Constitution of the Islamic Republic of Pakistan.”

11. That on receipt of the contempt notice, the officials of the Sindh Government did not bring to the notice of the Supreme Court the contents of Para 8 of the summary which appears to have been proposed keeping in view the judgments of the Supreme Court, related to service law. Instead, another summary was floated for the CM, on the pretext that the Supreme Court has endorsed the PMS Rules, and the CM was made to approve second Summary which was completely contradictory to the contents of the earlier Summary which CM had approved concealing the true legal picture from the Supreme Court which reads as follows:-

“22. Discussed. In the instant rules, a new Service namely Provincial Management Service (PMS) has been proposed which will be created whenever new induction through competitive examination is made. The present services of Ex-PCS and PSS will continue as per existing rules and policies governing their services till the last incumbent of their respective service retires.

23. With the above clarification, draft rules of Provincial Management Service Rules, 2018 are approved.”

12. Finally a compliance report was submitted before the Supreme Court and the Contempt Petition was disposed of vide order dated 21.03.2018 in the following terms:-

“States that the order dated 07.03.2017 whereby we had directed the framing of the rules has been complied with. Therefore, we do not intend to proceed further with this matter. The petition is accordingly disposed of”

13. It is pertinent to mention here that in the earlier round of litigation, the Ex-PCS officers challenged the vires of Sindh Civil Servants (Provincial Management Service) Rules, 2018 (PMS Rules-2018) in CP No.D-7622/2018 and this Court vide common judgment dated 13.08.2021 allowed their petition and declared the PMS Rules 2018 as *Ultra Vires* to the provisions of the Constitution. The PSS officers being aggrieved by the aforesaid judgment filed Civil Appeal Nos.347 to 356 of 2022 before Supreme Court and by judgment dated 09.09.2022 the Supreme Court set aside the judgment of this court and remanded the matters to this court for a decision afresh, which order has already been reproduced hereinabove.

14. At the outset, we have taken up CP No.D-7622/2018 and CP No.D-6110/2020 and have asked learned counsel to satisfy us on the maintainability of the petitions on the touchstone of Article 212(2) of the Constitution. The other Petitions, clubbed with, were not heard as the issues raised therein have no direct nexus with the above two petitions.

15. The learned counsel for the petitioners in CP No.D-7622/2018 opened the arguments and submitted that present petitions are not hit by Article 212(2) of the constitution. According to him the issue raised in these petitions does not pertain to the terms and conditions of the civil servants, therefore, Sindh Service Tribunal (SST) has no jurisdiction. His next contention was that in service matters, this Court assumes the jurisdiction through service law; that Civil Servants can challenge the vires of Service Rules or Notifications under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution) if the same are against their fundamental rights or based on *mala fide* on the part of Executives framing such Rules or issuing Notifications; that Article 212(2) of the Constitution specifically places bar upon all other courts except the Service Tribunal to grant an injunction, make any order, or entertain any proceedings in respect of any matter relating to the terms and conditions of service even if there is malafide, or coram non iudice issue; however, according to learned counsel the Civil Servants cannot challenge the Service Rules or Notification before the SST on the touchstone of violating fundamental rights which could only be entertained under Article 199 of the Constitution; that under Sections 4 and 5 of the Sindh Service Tribunals Act, 1973, (SSTA, 1973) only an aggrieved civil servant could file an appeal against any final order, whether original or appellate, made by a departmental authority in respect of terms and conditions of service, whereas in the present case, the terms and conditions of service of the petitioners are not in dispute; therefore, SST lacks the jurisdiction in the matter; that under Section 5, the SST could only entertain service appeals of civil servants by either confirming, setting aside, varying, or modifying the order appealed against; therefore, the bar of jurisdiction under Article 212(2) of the Constitution is not attracted in the instant petitions which are maintainable, and the objections to the maintainability of the petitions be overruled in terms of the dicta laid down by the Supreme Court in its various pronouncements.

16. His further submission was that by PMS Rules, 2018 framed under section 26 of the Sindh Civil Servants Act, 1973 (SCS Act,1973); the Sindh Government through executive order has merged Ex-PCS Cadre and PSS Cadre in violation of sections 8 and 9 of the SCS Act, 1973. He next contended that the Supreme Court in its judgment in the case of *Ali Azhar Khan Baloch vs. Province of Sindh* (2015 SCMR 456) at page 503 para 111 and *Muhammad Bachal Memon V. Tanveer Hussain Shah*, (2014 SCMR 1539) at 1553 para 25 have held that two cadres having distinct job description cannot be merged to and that too by rules framed under section 26 of SCS Act, 1973. He added that irrespective of the fact that petitioners Ex-PCS cadre has been declared dying Cadre in the PMS

Rules and their seniority has been protected; the petitioners also have a right to seek enforcement of principles laid down in the Supreme Court judgment which on the face of it nullifies the impugned Rules. He submitted that petitioners have competently filed these petitions and are maintainable on the aforesaid grounds as they are seeking protection of their fundamental rights given under the constitution and recognized by the judgments of the Supreme Court.

17. On merits learned counsel submitted that Rules 5(i), (iii), (iv) & (v) and schedule attached to the PMS Rules, 2018 are ultra-vires to the SCS Act, 1973, and have been framed in violation of the dicta laid down by the Supreme Court of Pakistan in the cases of Contempt proceedings against the Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch (supra) therefore, the action of Sindh Government in framing impugned rules are violative of the judgments of the Supreme Court and therefore, be enforced under Article 189 of the Constitution. The impugned rules have been framed through executive order in violation of the Supreme Court judgments hence are void ab-initio which give rise to the petitioners to invoke jurisdiction of this Court under Article 199 of the Constitution; that the Constitution of the Islamic Republic of Pakistan, 1973, is the supreme law of the Country and all other statutes derive power from the Constitution and are deemed to be subordinate to it. If legislature over-stretches itself beyond the powers conferred by the Constitution or contravenes any constitutional provision, such law is considered to be unconstitutional and ultra vires to the Constitution.

18. The learned counsel further submitted that the service of Ex-PCS officers was governed under West Pakistan Civil Services (Executive Branch) Rules 1964 (Rules 1964); Whereas the service of PSS officers was governed under West Pakistan Secretariat (Section Officer) Services Rules 1962 (Rules, 1962) and West Pakistan Deputy Secretaries Recruitment Rules 1963 (Rules, 1963); that the Governor on 10<sup>th</sup> December 1964 while exercising the powers under Articles 178 and 179 of the Constitution framed the Rules of 1964, and formed Ex-PCS group; however, PSS Rules were framed in pursuance of Presidential Proclamation 1962; that Ex-PCS cadre officers are assigned to a post related to revenue, quasi-judicial, field posts, as envisaged under Recruitment Rules, whereas the PSS officers are assigned Secretariat posts (Desk Job) in Karachi as envisaged in their Recruitment Rules discussed supra; that Ex-PCS Officers and PSS officers are appointed through combined competitive examination by Sindh Public Service Commission (SPSC); that those who secure higher marks are allocated Ex-PCS Cadre while the others who secure less marks are allocated



PSS Cadre and other posts like labour, excise etc. in other words selection, appointment of Ex-PCS and PSS, labour and excise are allocated cadres (department) on merits basis dependent on the marks they secure in Combined Competitive Examination (CCE). Additionally that PSS officers after the initial examination, do not undergo further intensive mode of training, exams, and viva voce and are appointed to a non-field posting according to their Recruitment Rules; however, Ex-PCS officers on the other hand undergo comprehensive training in academy and field training; therefore, the powers conferred upon Ex-PCS Officers are distinct from PSS Officers as provided in the Recruitment Rules; that neither the job description nor recruitment Rules of PSS cadre are interchangeable with Ex-PCS Cadre; therefore, such merger of two existing distinct cadres into one service i.e. Sindh Civil Servants (Provincial Management Service) was/is illegal, unlawful and violates the provisions of sections 8 and 9 of the SCS Act,1973 and the Rules framed thereunder.

19. The learned counsel further contended that the PSS is a different service, with completely different job description, which is confined to Secretariat Service at Karachi whereas the Ex-PCS is a revenue administrative / field service; the aforesaid merger of two different services in one service as per schedule attached with the rules is an indirect way to make non-civil servant as civil servants; and non-cadre officers as cadre officers which neither the SCS Act, 1973 nor Rules framed thereunder allows; that the statutory procedure prescribed for making the Rules has not been followed; therefore, the impugned Rules are repugnant to the provision of the SCS Act,1973; besides the impugned Rules are in conflict with Sections 8 and 9 of the SCS Act,1973 and further the PMS Rules of 2018 have introduced a parallel mechanism for appointment of PMS Officer negating the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 (APT Rules,1974) framed under the SCS Act,1973; that Sections 8 and 9 of the SCS Act,1973 compartmentalize different classes of civil servants into three categories: (i) Service (ii) Cadre (iii) Post, which means if a person is initially appointed in one service or cadre he would remain in the same cadre, service, or post. His vertical growth or progression shall remain within his category which SCS Act, 1973 compartmentalizes. The PMS Rules 2018 in fact had amended Sections 8 and 9 of the SCS Act, 1973, which Act has been protected by Article 240(b) of the Constitution. The Rules impugned cannot be framed without amending SCS Act, 1973 by the Provincial Assembly; therefore the impugned Rules-2018 ex-facie are not only violative of the SCS Act, 1973 but also infringes Article 240(b) and 242(1B) of the Constitution; that amalgamating two separate independent cadres in one service is violative of the

language of Sections 8 and 9 of the SCS Act, 1973 which has protected compartmentalization of different categories of civil servants. The PMS Rules 2018 have been framed to defeat the judgments of the Supreme Court. He lastly submitted that PMS Rules 2018 are in consistence with the judgment of the Supreme Court in the cases of Contempt Proceedings against Chief Secretary Sindh and others, Muhammad Bachal Memon and Ali Azhar Khan Baloch are violative of Article 4, 8, 9, 25 and 240(b) of the Constitution; besides Sections 8 and 9 of SCS Act, 1973; therefore, the Notification dated 20.03.2018 notifying Sindh Civil Servants (Provincial Management Service) Rules, 2018 are liable to be declared ultra vires of the Constitution of Pakistan and SCS Act, 1973.

20. Learned counsel further contended that the plea that similar rules were framed by the Khyber Pakhtunkhwa (KPK) and Punjab, the aforesaid rules were framed in 2004 and 2007 respectively, before the judgment passed by the Supreme Court in the cases of Contempt Proceedings against Chief Secretary Sindh and others and Ali Azhar Khan Baloch, whereby the supreme court has held that two cadres with distinct job description cannot be merged, therefore, the said ground cannot be held to justify framing of PMS Rules 2018. Even the Supreme Court in its judgment has further restrained the Assembly / Parliament from passing such law relatable to civil service which is violative of Article 240 of the Constitution.

21. He next contended that whenever a new service is created the preamble must mention the object for the creation of such service. The PMS Rules, 2018 are silent and do not mention the object which necessitated the government to create the new Service that too by Executive order. He lastly prayed for allowing CP No.D-7622/2018 and CP No.D-6110/2020 filed by the Ex-PCS officers and for the dismissal of connected petitions filed by Section Officers.

22. The learned counsel for the petitioners in CP No.D-6110/ 2020 has adopted the arguments of learned counsel for the petitioners in CP No.D-7622/2018 and added that the initial appointment of the petitioners was made by the recommendation of the SPSC vide advertisement dated 19.2.2018 when the PMS Rules 2018 were not in the field, therefore, the PMS Rules 2018 do not apply to the case of the petitioners who participated in CCE, 2018 as the said rules have no retrospective effect, therefore, the recommendation by the SPSC under PMS Rules through a press release dated 25.10.2019 for the appointment under PMS is illegal and unconstitutional. He also argued that offer letters issued to the petitioners on 30.1.2020 under PMS Service Rules, 2018 are also unconstitutional. He lastly submitted that Rules 5 (i), (iii), (iv) & (v) of PMS

Rules 2018 and the schedule attached thereto are not valid rules under the law and are liable to be struck off.

23. The learned counsel for interveners/respondents has argued that Rule 5 (i), (iii), (iv) & (v) of PMS Rules 2018 are intra-vires to the SCS Act, 1973 on the ground that the SCSA,1973, as noted above, has been enacted according to the provisions of Article 240 of the Constitution of Pakistan, 1973; that Rules, 1964 are adopted under Section 26(2) of SCS Act, 1973, and can be amended, altered, or repealed under Section 26(1); that Section 26(2) of the SCS Act,1973 provides that any rules or instructions regarding any terms and conditions of service of civil servants duly made or issued by an authority competent to make them and enforce immediately before commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act; that PMS is not the merger of Ex-PCS and PSS cadres rather it is the creation of a new service with the appointment of new employees; Whereas, the existing cadres Ex-PCS and PSS are declared dying cadres because no new appointment is to be made in these services, but these cadres are protected under their separate entities under Sections 5(i), (iii), (iv) & (v) of the PMS Rules, 2018; that in PMS Rules, separate seniority lists of these two dying cadres are maintained with separate promotion-sharing formulas; therefore, it is the competence of Rule Making Authority i.e. Government to repeal one rule on the enactment of another under Section 26(1) of the SCS Act,1973; that Ex-PCS service cannot be equated with PSS service because all provincial services can only be compared with provincial services of sister provinces. Further, the induction in Provincial Administrative Service (PAS) service is 100% through Central Superior Service (CSS) whereas, the Ex-PCS service is appointed with 50% direct induction through CCE of SPSC, 44% by promotion from Mukhtiar-kars, and 6% by politically motivated nomination, which always remained beyond its share of 6%. Moreover, the assumption is that candidates with higher merit prefer Ex-PCS over PSS is incorrect. It is the convenience and choice of the individual, for most of the candidates from urban Sindh especially Karachi prefer PSS to maintain posting in Karachi city; Sections 6, 7, 8, and 9 of the Act deal with “Probation”, “Confirmation”, “Seniority” and “Promotion” of civil servants. The PMS Rules are not in conflict with these Sections. The PMS Rules protect the unity and seniority of Ex-PCS and PSS cadres under Section 5(i), (iii), (iv) & (v) of the PMS Rules, 2018. On the contrary, PMS Rules create a new service without affecting the hierarchy of existing Ex-PCS and PSS cadres.

24. Learned counsel further emphasized the impact of Ex-PCS absorption on PSS seats is destroying the careers of PSS officers; PMS Rules are the way forward and agree with the provincial government system in vogue in other provinces. It addresses the inherent discrimination amongst the PSS officers and promotes the culture of trained and well-experienced bureaucracy in the province. He prayed that PMS Rules 2018 may be allowed and induction of dying cadres in PMS by maintaining a separate seniority list and proportionate promotion-sharing formula may be allowed on the pattern of PMS Punjab. He submitted that rules framed in exercise of delegated powers available under the parent statute do not require further approval thus the PMS rules were rightly framed by the competent authority under the delegated powers. He further submitted that summary for the Chief Minister Sindh dated 05.9.2017 had been superseded by another summary for the Chief Minister Sindh dated 01.3.2018 in which the PMS Rules was approved with certain clarifications, therefore, there was/is no occasion for the Ex-PCS officers to object in framing the PMS Rules as they had already conceded in the Supreme Court and no review of order dated 07.3.2017 was sought by them as such the PMS Rules are not ultra vires to any provision of law. In support of his contentions, learned counsel has relied upon the cases of Muhammad Bachal Memon v. Tanveer Hussain Shah (2014 SCMR 1539), Pakistan Medical and Dental Council v. Muhammad Fahad Malik (2018 SCMR 1956), Pir Bakhsh v. Chairman Allotment Committee (PLD 1987 Supreme Court 145) and Mirpurkhas Sugar Mills Ltd. v. Province of Sindh (2020 CLC 232). He lastly prayed for dismissal of CP No. D-7622 of 2018 and CP No. D-6110/2020.

25. The learned AAG has adopted the arguments of Mr. Faisal Siddiqui; however, he submitted that the captioned petitions are not maintainable on the ground that petitioners are Civil Servants and their petitions under Article 199 of the Constitution are barred by Article 212 of the Constitution as the subject matter of the petitions relates to terms and conditions of Service and only the Sindh Service Tribunal has the exclusive powers to deal with the subject petitions; that with the approval of competent authority/ Chief Minister, Sindh the cadre strength / list of the posts in each grade from BS-17 to BS-21 of SGA&CD was notified; that the creation of PMS by abolishing / merging two services i.e. Ex-PCS and PSS is an administrative dispensation and does not infringe upon the rights of existing members of two dying cadres as their terms and conditions of service will remain same till the last incumbent retires from services as provided under Rule 5(iv) of the said Rules; that the post of Section Officer (SO) in PSS (BPS-17) meant for initial recruitment were made as per the

method prescribed vide notification dated 10.19.1993 through CCE by the SPSC. Similarly, the post of Assistant Commissioner (Ex-PCS/ BS-17) meant for initial recruitment was made as per the method prescribed under Rules, 1964 through CCE by SPSC. However, in pursuance of orders dated 07.03.2017 passed by the Supreme Court, the Sindh government had framed PMS Rules, 2018; that as per Schedule-II of Rule 4 of PMS Rules, 2018, 50% posts of PMS (BS-17) shall be filled by promotion of 25% each from Mukhtiarkar and Superintendents / Private Secretaries who are graduates and have passed the prescribed Departmental Examination; that the PMS Rules 2018 are framed under Section 26 of the SCS Act, 1973; that the Supreme Court in Civil Petition No.33-K/2018 called report regarding the determination of share between the two services respectively and observed that “there seemed to be hardly any point on which this Court could pass an order and the petition was dismissed and leave was declined.” Thereafter cadre strength/list of posts falling in BPS-17 to 21 was notified vide notification dated 03.10.2018; that creation of PMS by abolishing/merging two services i.e. Ex-PCS and PSS is an administrative dispensation and does not disturb the rights of existing Section Officers / Ex-PCS officers/ members of two dying cadres. He further submitted that the Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, this Court has no jurisdiction to interfere in policy decisions. He lastly prayed for the dismissal of the aforesaid petitions.

26. We have heard learned counsel for the parties and have gone through the case law and perused the record with their assistance.

27. After hearing the contentions of the parties, we find it appropriate to formulate the following points to reach a just conclusion:-

- i) Whether Petitions No.D-7622/2018 and CP No.D-6110/2020 are maintainable in view of the bar contained under Article 212(2) of the Constitution. And
- ii) Whether the petitioners in C.P No.D-7622/2018 and CP No.D-6110/2020 have locus standi to challenge Sindh Civil Servants (Provincial Management Service) Rules, 2018. And
- iii) Whether Sindh Civil Servants (Provincial Management Service) Rules, 2018 are ultra-vires to the law and the Constitution 1973. And
- iv) Whether, by framing the Sindh Civil Servants (Provincial Management Service) Rules, 2018 the Executive have merged two cadres namely Ex-PCS and PSS by introducing a new service in violation of sections 8 and 9 of the Sindh Civil Servant Act, 1973 and Article 240 and 242 of the Constitution. And
- v) Whether Sindh Civil Servants (Provincial Management Service) Rules, 2018, can be framed by the competent authority under Section 26 of the Sindh Civil Servant Act, 1973.

28. First and foremost the issue of the maintainability of Petitions No.D-7622/2018 and CP No.D-6110/2020 needs to be decided. The Service Tribunal is indeed a substitute for other Courts in service matters having jurisdiction to decide the questions of fact and law but it does not mean that the Service Tribunal had the jurisdiction to determine the constitutionality of a Rule framed by the competent authority. In this context, the arguments have been addressed with a prayer to only declare the Rules 2018 as ultra-vires and/or intra-vires. However, in the present matter, the petitioner's terms and conditions of service are not in dispute to attract the bar of jurisdiction under Article 212 of the Constitution. In our view, this Court has the jurisdiction to examine the legality and constitutionality of the PMS Rules, 2018 framed under section 26 of the SCSA, 1973 and the issues raised have no nexus with the terms and conditions of the service of the petitioners. We have also gone through the judgments of the Supreme Court in the cases of Contempt Proceedings against Chief Secretary Sindh and others supra, and have noticed that the Supreme Court has held that Civil Servants also have fundamental rights while interpreting Articles 4 and 9 of the Constitution which is reproduced as under:-

“117. According to the list, there are in all 582,746 civil servants in the Sindh Government. The present impugned legislation is likely to affect the civil servants, who are presently working in BS-11 to BS-22, which comes to 153745 in number. The Civil Servants under the mandate of the Constitution have been guaranteed the fundamental rights being citizens. Article 4(1) provides that all citizens are entitled to enjoy equal protection of law and have inalienable right to be treated in accordance with law. In this respect the Act of 1973 framed under the command of Articles 240 and 242 of the Constitution provides protection to all the Civil servants by assuring them that the law promulgated by the Parliament and/or Provincial Assemblies will be subject to the Constitution. The phrase "subject to the Constitution" has been used as prefix to Article 240 which imports that Assemblies cannot legislate law against service structure provided in Part XII of Chapter 1 of the Constitution.

118. Article 9 of the Constitution provides protection to every citizen of life and liberty. The term "life and liberty", used in this Article is very significant as it covers all facets of human existence. The term "life" has not been defined in the Constitution, but it does not mean nor it can be restricted only to the vegetative or animal life or mere existence from conception to death. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The term "life" includes 'reputation' 'status' and all other ancillary privileges which the law confers on the citizen. A civil servant is fully protected under Article 9 and cannot be deprived of his right of reputation and status. Under the impugned instruments a person, who without competing through the recruitment process is conferred status of a civil servant. The impugned legislation has amended service laws in a manner to deprive the civil servants from their rights to status and reputation under Article 9 of the Constitution.

119. A civil servant, who after passing the competitive exam in terms of the recruitment rules, is appointed on merits, loses his right to be considered for promotion, when an employee from any other organization is absorbed under the impugned legislative instruments, without competing or undertaking competitive process with the backdated seniority and is conferred the status of a civil servant in complete disregard of recruitment rules. Under the impugned enactments, it is the sole discretion of the Chief Minister to absorb any employee serving in any

other organization in Pakistan to any cadre in the Sindh Government. *The discretion of the Chief Minister to absorb any employee from any part of Pakistan to any cadre with backdated seniority directly affects the fundamental rights of all the civil servants in Sindh being violative of the Article 4 which provides equal protection of law to every citizen to be treated in accordance with law, which is inalienable right of a citizen.*” Emphasis added.

29. For the aforesaid reasons we hold that through these petitions the petitioners can approach this Court under Article 199 of the Constitution to enforce their fundamental right, therefore, merely declaring petitioners Cadre as dying Cadre will not deprive them from filling these petitions consequently these petitions are maintainable.

30. On merits, let us have a glance at impugned PMS Rules 2018, which were framed under section 26(1) of the SCS Act, 1973 and notified on 20.03.2018, and published in the official gazette on 3<sup>rd</sup> January 2019. An excerpt of the PMS Rules, 2018, is as under:

2. **Definitions.**-In these rules, unless the subject or context otherwise requires:-
  - (a) ‘Appointing Authority’ means the authority specified in column 4 of Schedule II;
  - (b) ‘Chief Minister’ means the Chief Minister of Sindh;
  - (c) ‘Department’ means the Services, General Administration, and Coordination Department;
  - (d) ‘Government’ means the Government of Sindh;
  - (e) ‘Graduate’ means the holder of a Bachelor or equivalent degree from a recognized university or Institute;
  - (f) ‘Provincial Management Service’ means the Provincial Management Service (PMS) consisting of the posts as provided in Schedule-1;
  - (g) ‘prescribed departmental examination/training’ means the examination/training prescribed by the Government to be conducted by the Department or any other agency appointed by the Government for the purpose of confirmation or promotion;
  - (h) ‘Schedule’ means a Schedule appended to these rules;
  - (i) ‘Secretariat’ means the Sindh Secretariat; and
  - (j) ‘Service Group’ means Group of ex-PCS and PSS separately
3. **Nomenclature of the posts.**—The Provincial Management Service (PMS) shall consist of the posts specified in Schedule-1.
4. **Method of Appointment.**—The method of appointment, minimum qualification, age limit and other conditions for Provincial Management Service (PMS) shall be given in Schedule II.
5. **Repeal and Savings.**- The West Pakistan Civil Service (Executive Branch) Rules, 1964, issued under the Services and General Administration Department Notification No.SOI(S&GAD)1-5/92 dated 25<sup>th</sup> September 1993, prescribing the method of appointment to the post of Deputy Secretary in the Secretariat and the S&GAD Notification No.SOX(SGA&CD)3-58/84 dated the 10<sup>th</sup> October 1993 prescribing the method of appointment to the post of Section Officer in the Secretariat are hereby repealed:

Provided that –

- (i) for the purpose of promotion in inter-se-seniority in respective service Group of ex-PCS and PSS shall continue to be maintained separately;
  - (ii) for the purpose of promotion in BPS-18 and above the share between ex-PCS and PSS shall be as determined by the Government;
  - (iii) their service shall be governed by the laws and rules in force immediately before the commencement of these rules;
  - (iv) the incumbents of ex-PCS and PSS shall form as a part of the dying cadre till the retirement of the last such incumbent;
  - (v) the last incumbent of either Group shall rank senior to the first incumbent of the Provincial Management Service.
6. **Transitional.**-The condition of graduate in column 7 para (2)(b) of Schedule-II shall not apply for a period of three years from the commencement of these rules for the incumbents holding the posts immediately before such commencement for promotion to BPS-17 posts.

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[See rule3)

The following posts in different grades shall form the cadre strength of the PMS in each grade:-

1) PMS: BS-17	Section Officer/Assistant Commissioner and other officers holding equivalent posts as per details at Annexure Part-I.
2) PMS: BS-18	Deputy Secretary/Deputy Commissioner/Additional Deputy Commissioner and other officers holding equivalent posts as details at Annexure Part-II.
3) PMS: 19	Additional Secretary/Deputy Secretary and other officers holding equivalent posts as per details at Annexure Part-III
4) PMS:20	Secretary to Government of Sindh/Commissioner and other officer holding equivalent posts as per details at Annexure Part-IV.
5) PMS: 21	Additional Chief Secretary to Government of Sindh and other officers holding equivalent posts as per details at Annexure Part-V
6) PMS: 22	Chairman, Planning and Development Board and other officers holding equivalent posts as per details at Annexure Part-V.

6) PMS: 22	Chairman, Planning and Development Board and other officers holding equivalent posts as per details at Annexure Part-V.
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31. To address the main question involved in these proceedings that whether Sindh Civil Servants (Provincial Management Service) Rules, 2018 are ultra-vires to the SCS Act, 1973, and the Constitution due to the merger of two cadres namely Ex-PCS and PSS. We need to look at the significant features of the PMS Rules before examining them in depth.

32. Rule 2(f) of the PMS Rules 2018 defines the Provincial Management Service as “Provincial Management Service means Provincial Management Service consisting of the post provided in schedule-I of PMS Rules 2018.



33. Rule-3 mentions the nomenclature of the post specified in schedule-1 of the PMS Rules.

34. Schedule-1 of the Rules specifies posts in different grades to form cadre strength of the PMS. In the last column of the schedule, the PMS post in BPS-17 shows Section Officer/Assistant Commissioner **and other Officers holding equivalent posts as per details Annexure-I.** The Schedule reflects the post of BPS-18 to 22 from Deputy Secretary / Deputy Commissioner and onwards with same terms and other officers holding the equivalent post.

35. The aforesaid schedule-1 of the PMS Rules clearly suggests that Ex-PCS cadre and PSS cadre have been merged together with an addition that it also introduces yet another class of officer by saying **any other officer in BPS-17 to BPS-22** working in Sindh Government or in service of Sindh Province whether in any department / autonomous body / statutory body or in any organization under the administrative control of the Sindh Government can be inducted in PMS service and posted as a Civil Servant or Cadre Officer irrespective of his passing the CCE which was prerequisite for appointment to the cadre of Ex-PCS or PSS as per the written test. Moreover, the Sindh Government has further retained the powers under the PMS rules to appoint any such other officer of BS-17 to BS-22 as PMS Officer and post on Cadre post given in Schedule-1 per Annexure I to Annexure V.

36. The PMS Rules in fact has provided a window to the blue-eyed officers of the Sindh Government to be inducted in PMS Service in complete defiance of the Judgments of the Supreme Court in the case of *Contempt Proceedings against Chief Secretary Sindh and others* which had closed the backdated entry of the officers/persons. The Sindh Government through the impugned rules will appoint / all those officers who are non-cadre officers or non-civil servant who has not passed CCE in the PMS service and post them as cadre officer. In fact the impugned Rules as instrumental for appointment of all those officers who did not qualify and or appeared in the competitive examination but through these Rules they are provided opportunity to be appointed on Cadre posts mentioned in Annexure I to Annexure V of Schedule-1.

37. Now in order to appreciate as to how the two cadres Ex-PCS and PSS are merged in the PMS Rules, we must look back at the original Cadre. Section Officer belongs to PSS and Assistant Commissioner belongs to Ex-PCS. There is yet another category of the officers specified in schedule 1 “**and other officers holding equivalent posts**”. This category even on the face of it confers status of

civil servants upon the non-civil servant besides non-cadre officer acquires the status of cadre officer as per schedule 1. Introducing this category of officers is not provided in the SCS Act, 1973, and is in violation of the principles laid down by the Supreme Court in the case of Contempt Proceedings against Chief Secretary Sindh and others, and Ali Azhar Khan Baloch. Traveling further if we see the language of sections 8 and 9 of the SCS Act, 1973, we find that section 8 compartmentalizes different classes of civil servants in three categories, (i) Service (ii) Cadre, and (iii) Post.

38. The aforesaid classes provide that if a civil servant is initially appointed in one category i.e. Service, Cadre, or Post, he would stay in the same compartment. His vertical growth or progression shall remain within his class/compartment under the SCS Act, 1973. The Supreme Court in the case of Ali Azhar Khan Baloch, at paragraph 111 has already dealt with the issue as under:-

“111. Keeping in mind the aforesaid scheme provided by the Act, we would like to examine the scope of Rule 9(1) of the Rules. In the first place, the definition given by section 2(1)(d) of the Act clearly manifests that initial appointment is an appointment made otherwise than by promotion or transfer. This definition has to be read with Part-II of Rule 6(A) of the Rules, which relates to appointments by promotion or transfer. Section 5 of the Act, which deals with the initial appointment to a Service or a Civil Post, has to be read with section 8(1) where it is provided that for proper administration of service or cadre, the appointing authority is required to prepare a seniority list with the categories given in the section based on the recruitment Rules, which are framed in consultation with S&GAD under section 26 of the Act. The relevant Rule in this respect is Rule 3. **In other words, Section 8 of the Act compartmentalizes the different classes of Civil Servants by dividing them in three categories i.e. service, cadre or post as prescribed by recruitment Rules of their departments. This distinction of class has been specifically introduced by the legislature with the sole object that if a person is initially appointed in one service or cadre or post, his progression would remain in the same cadre, service or post. His vertical growth or progression shall remain within his class by compartmentalizing the Act which regulates his terms of service.** What is more interesting is that section 5 of the Act does not vest any discretion in the Government to relax the Rules for change of cadre. The language of section 5 is very clear and mandates that the appointments to the Civil Service or post shall be made in the prescribed manner:”  
**Emphasis Added.**

39. We have already reproduced hereinabove the interpretation of Section 8 of SCS Act, 1973, by the Supreme Court which clearly establishes that the impugned Rules have merged two independent existing cadres against the language of sections 8 and 9 of the SCS Act, 1973, which has protected compartmentalization of the different classes of Civil Servants.

40. Now can the Sindh Government by executive order merge the two cadres without amending Sections 8 and 9 of the SCS Act, 1973. The answer would be negative. In fact, the plain reading of the impugned Rules will lead to the

conclusion that they are in conflict with the aforesaid judgments of the Supreme Court.

41. As against this under the Federal Service Structure a cadre officer is an officer who appears in the CSS conducted by the Federal Public Service Commission (FPSC). Likewise, in the Sindh Province, the SPSC conducts CCE for recruiting cadre officers in the Province. The basis of allocating the cadre to the candidates is merit based. A candidate is allocated a post, service, or cadre by order of merit provided under the Recruitment Rules.

42. We have already noticed the observation of the Supreme Court in regard to the classification of Civil Servants while interpreting section 8 of the SCS Act, 1973. The basis of this classification is provided in the service structure of Sindh pursuant to Sindh Civil Services Classification and Recruitment Rules, 1952, (SCSCR Rules, 1952). These rules were made under section 241 of the Government of India Act, 1935. Under these rules, only Ex-PCS Officers were posted on revenue/field posts whereas PSS Officers were given Secretariat Post. Therefore, cadre of Assistant Commissioner and Section Officer remained separate and different.

43. The term cadre has not been defined under the SCS Act, 1973, but has been defined in rule 9 (4) of the Fundamental Rules, 1922 (FR, 1922). The Supreme Court, however, interpreted the term Cadre in the case of Naimatullah Butt and others versus the Government of Punjab (1988 SCMR 1453). The relevant paragraph is reproduced as under:-

“Cadres, as is well-known, is the strength of a service or part of a service sanctioned as a separate unit and each cadre consists of a certain number of posts. There being no legal bar on the authority of the Government to keep the members of the teaching staff transferred from Local Body Institutions to the Education Department of the Provincial Government as a separate cadre and there being no violation of any specific term and condition of the appellants’ service, no ground exist for interference with the impugned order passed by the Service Tribunal.”

44. The Sindh Civil Services Classification and Recruitment Rules, 1952 continued to hold the field, and the classification of cadre, service, and post provided for under the said rules were incorporated under Sections 8 and 9 of the SCS Act, 1973.

45. Before discussing further on the issues raised in these proceedings, it is expedient to have a look at the recruitment rules of Ex-PCS officers and PSS officers. Initially, the appointment of Ex-PCS officers was made under Rules, 1964, whereas the appointment of PSS officers was made under Rules, 1962, notified on 10<sup>th</sup> October 1993.

46. Primarily as appear from the aforesaid rules the Provincial Civil Service Executive Branch and Provincial Civil Service Secretariat Branch are two separate and distinct cadres of service having separate method of appointment, promotion, transfer, training, and posting as well as seniority under the SCS Act, 1973, the APT Rules 1974 and in principle, cannot function together under the recruitment rules discussed supra for the reason that the job description of Assistant Commissioner and Section officer is different under the hierarchy of service law and Sindh Secretariat Instructions, 2010.

47. **Job Description of Assistant Commissioner (AC).**

Assistant Commissioner is responsible for monitoring and supervision of revenue department in his Taluka. He acts as a collector in the area of his jurisdiction and represents the government of Sindh at the Sub Division level. He also has judicial powers in the revenue area, he listens to appeals against the decisions of Mukhtiarkar. AC is also responsible to help the victims of natural disasters at his Taluka level. He also acts as driving license issuance authority in his area of jurisdiction. He supervises the encroachments removal campaigns. He inspects the local government institutes and departments like schools and health centers. He controls the prices of daily use items in his Sub Division because he also plays the role of price magistrate. He has official rights to attest the documents and domiciles. He arranges annual audits of all Taluka offices. AC is responsible to reconcile the accounts and expenditures of his Taluka. He supervises Polio, Coronavirus, and other vaccination campaigns. He monitors civic service, traffic plans, bus *addas*, and developmental projects in his area. He is responsible to assist and obey DC and Commissioner. AC is also involved in the process of wheat procurement. AC is also responsible to maintain law and order in his Taluka. In these areas, he liaises with the police for harmony and checking law and order. Consolidation of land, Land transfer approval, and deeds approval are also duties of AC. He is also responsible to perform any other task assigned by the government. During his service, AC can reach to the posts of Deputy Commissioner (DC), Deputy Secretary, Commissioner, Additional Secretary, and even Chief Secretary. Assistant Commissioner is appointed in the following manner;

- a) by initial appointment;
- b) by the promotion of revenue-qualified/selected Mukhtiarkars, subject to qualifying Collector Part-I & II Examination as prescribed in the West Pakistan Civil Service (Executive Branch) Rules, 1964, and training.

48. **Job Description of Section Officer**

Section Officer has to perform duties as directed by seniors. Draft laws, put up notes, prepare summaries, and manage the relevant record and data of concerned department. Reply to letters, communicate with other departments, etc. He is the head of concerned section. All the orders are issued by Section Officer after approval from the competent authority. In terms of Sindh Secretariat Instructions, 2010, Section Officer, is incharge of a section and may also be the controlling officer of branches headed by superintendents. He will normally be assisted by a nucleus ministerial staff such as an Assistant, a Clerk-cum-Record Keeper, and a Stenographer. Section Officers are appointed under Rule 5 of Rules, 1962. The Notification No.SOX (SGA&CD) 3-58/84 dated the 10<sup>th</sup> October 1993, which prescribes a method for recruitment of Section Officers in the following manner:-

50% by initial recruitment to be filled based on a competitive examination to be held by the Commission and the remaining 50% of the vacancies shall be filled by selection on merits with due regard to the seniority from among the Superintendents.

49. The aforesaid rule was further clarified by a notification dated 10.10.1993 of the S&GAD Government of Sindh, which provided for a quota of 50% by initial appointment and 50% by promotion.

50. The Ex-PCS and PSS officers even prior to 1973 were under distinct cadres and have always remained distinct. After coming into force, the Constitution of 1973, the provisions of Articles 240 (2) and 242 changed the Civil Service Structure of the Federation and the Provinces. Appointment to the service was to be made in the case of Federation by the parliament and in the case of the Province by or under the Act of the Provincial Assembly. The Sindh Civil Servant, Act, 1973 was enacted by the Sindh Assembly pursuant to Article 240(2) of The Constitution of 1973. The Provincial Assembly, Sindh (PA) retained different classes of civil servants in terms of sections 8 and 9 of the SCS Act, 1973 by classifying Service/Cadre and Post.

51. However, the Rules, 1964 and Rules, 1962, Deputy Secretary was to be treated as if he was made under section 26 (2) of the SCS Act, 1973.

52. Additionally, Section 8 of the SCS Act, 1973 provides that; for the proper administration of **service**, **cadre**, or **post** the appointing authority shall cause a seniority list of the members for the time being of such service, cadre, or post to be prepared. Section 9 of SCS Act, 1973 further provides that a civil servant

possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rules for departmental promotion in the service or cadre to which he belongs; even a Civil Servant cannot be transferred to any other cadre, department, post or service unless he is eligible for such post, in terms of the Rules 3(2) of the APT Rules 1974 and qualifies the test of Rules 4, 6, 7 and 8 of the 1974 Rules. Rule 9 of the Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975, (Rules,1975) provides that in each cadre in a department there shall be a separate seniority list of a group of civil servants doing similar duties and performing similar functions and for whose appointment same qualifications and experience have been laid down.

53. We cannot lose sight of the judgment of the Supreme Court in the case of *Muhammad Bachal Memon*, the relevant page 1553 para 25, which has also dealt with the issue of merger of Cadres by observing that if merger of cadres is intended to be made that would be made in accordance with the provisions of section 8 of the SCS Act, 1973. Whereas, from the above discussion, it is clear that the impugned rules are not framed strictly in line with sections of the SCS Act, 1973, and, therefore, are violative of the Supreme Court judgment. The relevant Para of the judgment is reproduced as under:-

“25. With great respect to the learned Judges of the High Court it is apparent that the implications of Articles 139 and 240 of the Constitution were not taken into account. Perhaps these constitutional provisions were not argued or brought to the attention of the Court thus leading to a judgment rendered per incuriam. As has been considered above by us, the rules of business cannot be made in respect of service matters. **Even if an attempt is made by the Provincial Government to provide for a change or merger of cadres this would have to be done in accordance with the provisions of section 8 of the Sindh Civil Servants Act, 1973, which relates to seniority or through legislation.** The issue before us is clearly an issue of seniority because Muhammad Bachal Memon etc. claim to be senior to Tanveer Hussain Shah while the latter claims seniority over Muhammad Bachal Memon etc. The issue of seniority is quintessentially a matter of service laws. It is for this reason that the provincial legislature has enacted the Sindh Civil Servants Act and has laid down the law as to seniority in terms of section 8 of the said statute. **Section 8 ibid has been supplemented by the prescribed rules viz. the Sindh Civil Servants (Probation, Promotion and Seniority) Rules, 1975. It is stated in Rule 9 thereof that a separate seniority list shall be maintained for each cadre in a Department.** Prior to 1-11-2002, the parties before us were employed in separate departments viz. C&W Department and Education Department. Their cadres were thus separate. The separate cadres continued, as noted above, even after 2002 and separate seniority lists were maintained even after 1-11-2002. It is only on 1-3-2012 that a combined seniority list has been prepared. We say with great respect that there is no legal basis for a combined seniority list even though there are two judgments of the Sindh High Court viz. (i) judgment dated 12-11-2010 passed by Division Bench of the Sindh High Court in C.P No. D-809 of 2006 etc; and (ii) post-

remand judgment dated 6-1-2004 of the Division Bench of the Sindh High Court in C.P No. D-1983.” **Emphasis Added.**

54. The Sindh Government, a delegate of the Provincial Assembly can make rules under section 26 of the SCS, Act, 1973. Section 26(I) and Section 26(2) of the SCS Act, 1973, are reproduced as under:-

“26. Rules.- (1) Government or any person authorized by it in this behalf, may make such rules as appear to be necessary or expedient for carrying out the purposes of this Act.

(2) Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.”

55. We have already taken note of the Supreme Court judgments reproduced hereinabove and can safely hold that the SCS, Act, 1973, recognizes a Civil Servant by his Service, Cadre and Post. The impugned Rules have been made under section 26(I) of the SCS, Act, 1973, which have merged two Cadres. Section 26(I) of the SCS, Act, 1973, confers power on the Sindh Government to facilitate and supplement the SCS, Act, 1973. Section 26(I) of the SCS, Act, 1973, is enabling provision and does not confer any authority on Sindh Government to frame rules thereunder which militate against the provisions of the SCS Act, 1973. The impugned Rules override the provisions of sections 8 and 9 of the SCS, Act, 1973, and that has been done by delegated legislation which could be accepted in the terms of ratio of the judgment passed in the case of *Muhammad Bashir Limited Vs. Government of Pakistan and others* (2015 SCMR 630). The relevant para 7 at page 636 is reproduced as under:-

“7. Can any executive authority be authorized to overrule a substantive provision of law such as section 25? Is the non obstante clause in section 25B valid? On the face of it, it is not possible for us to uphold the granting or delegation of authority to any executive or other body which entitles it to overrule a substantive provision of law. The principles of delegated legislation are very clear and hardly require any reiteration by us at this late stage. In brief, they entitle the delegate to carry out the mandate of the legislature, either by framing rules, or regulations, which translate and apply the substantive principles of law set out in the parent legislation or by recourse to detailed administrative directions and instructions for the implementation of the law. They are intended to enforce the law, not override it. They can fill in details but not vary the underlying statutory principles. In case of conflict they must yield to the legislative will. They are below and not above the law. The minutiae can be filled in but the basic law can neither be added to nor subtracted from.”

56. The SCS Act, 1973, under its sections 8 & 9 classify a civil servant according to his Service, Cadre, and Post which leads to the conclusion that the Provincial Assembly has reserved the powers to alter a service, Cadre, or Post in the service law and had never intended to confer this power to the executive. The

Sindh Government by framing impugned rules has exercised the powers of the Provincial Assembly which itself is a sufficient ground to hold that the impugned rules are violation of Article 240(b) of the Constitution which provides the framework of the civil service structure.

57. It is also an established principle of law that rules cannot travel beyond the original scheme of Act. However, in the case at hand, the impugned rules negate the provision of Sections 8 and 9 of the SCS, Act, 1973, as interpreted by the Supreme Court in the judgments referred to hereinabove. Besides the Supreme Court in the case of *National Electric Power Regulatory Authority*, (2016, SCMR, 550) at page 559 in para 11 has observed as follows:

“1. NEPRA Rules, 1998 are framed by the Authority under section 46 of the Act, 1997 with the approval of the Federal Government. Rules and or Regulations are the progeny or off spring of a Statute and are to be strictly in conformity with the provisions of the Statute where under same are framed. It is settled proposition of law that the rules framed under a Statute are to remain within the precinct of the Statute itself and cannot transgress the limits and parameters of the parent Statute itself. All efforts are to be made to interpret the rules so as to bring it in conformity and without injuring the intent and spirit of the Statute, where it is not possible then the rules in as much as it is injuring the very intent and spirit which must yield to the Statute. This view finds support from a case reported as *Ziauddin v. Punjab Local Government* (1985 SCMR 365 @ 368), wherein it was held as under:-

**"Rules framed under the statute could not go beyond and over reach the statute itself. To make implementation of statutory provision consistent harmonious directory effect must be given to requirement of Rule"**. Emphasis Added.

58. From the above principle, it is now settled that rules framed under the statute are to remain within the precinct of the statute itself. In principle, an action of the authority is intra vires when it falls within the limits of the power conferred on it by law but ultra vires if it goes outside this limit and the law can be struck down if it is found to be offending against the Constitution for the absence of lawmaking and jurisdictional competence or found in violation of fundamental rights. In the present case, the impugned rules are inconsistent with the provision of SCS Act, 1973 as discussed supra. On the subject issue, we are also guided by the decisions of the Supreme Court in the cases of *Muhammad Tariq Badr and another. v. National Bank of Pakistan and others* (2013 SCMR 314), *Shafique Ahmed Khan, and others. v. NESCOM through Chairman, Islamabad, and others* (PLD 2016 SC 377) and *Muhammad Zaman and others. v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad, and others* (2017 SCMR 571).

59. Besides above, the Supreme Court in the case of *Khwaja Ahmed Hassan v. Government of Punjab* (2005 SCMR 186) at page 226 has held that the command of the Legislature could not be overridden by the fiat of the Government. An excerpt of the same is reproduced as under:-



“42. It hardly needs any explanation that contemporaneous events may constitute an important extraneous side to the construction of a statute. The concept of such events embraces the history of the period when the statute was enacted, including the history of the statute itself, the previous state of the law, and the mischief or evil against which the statute was aimed as a remedy. In an over-all sense, contemporaneous events are the relevant conditions existing at the time of adoption of the law. As such, they may be consulted for the purpose of removing ambiguities in the language of an obscure Act. To know the mischief to be remedied or the course or necessity of a law, is to accomplish much of the task of knowing the true meaning. As Blackstone said, "the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the legislators to enact it. (BI Comm 61). It may not be out of place to mention here that after having examined the prevalent circumstances, as discussed in the preceding paragraph, we are of the view that framing of rule was not a bona fide exercise.

"It would be a grave departure from well-recognized legislative practice and it would be a mockery of the Legislature if the existence or efficacy of the provisions of a statute is left to the kind mercies of the rule-making powers of the Government. No interpretation favoring such a construction could commend itself to Courts. *It is something revolting to our jurisprudence to imagine that the command of the Legislature could be overridden by the fiat of the Government.*" Rama Rao v. Mund Kur AIR 1960 Mys 313, 314

43. *In the light of what has been stated hereinabove we are of the view that rule 14 is ultra vires being contrary to the provisions as envisaged in section 63 of the Ordinance and without legal effect.* The provisions as enumerated in section 63 of the Ordinance is not repugnant to the Constitution and is a valid piece of legislation.” **Emphasis Added.**

60. We have already discussed that the PMS officers comprise of three classes (i) Assistant Commissioner (ii) Section officer and (iii) and any other officer holding the equivalent post. The PMS Rules have not defined the term “Any other officer” nor the term “equivalent post”. Even these two terms have not been defined in the parent statute i.e. SCS Act, 1973. This fact alone leads to the conclusion that the Sindh Government intended to appoint by transfer and or by absorption those officers, who were never eligible to be posted on the cadre posts mentioned in the schedule–I, which were meant for Ex-PCS cadre or PSS cadre.

61. The Supreme Court in the case of *Ali Azhar Khan Baloch* has already discouraged this practice of the Sindh Government while nullifying the instruments impugned in those proceedings, the relevant paras are reproduced as under:-

“114. We, after looking at the scheme of the Act and the Rules framed thereunder, are clear in our minds that Rule 9(1) does not empower the Government or Selection Authority defined under the Act to appoint a Civil Servant or any other person by transfer to any other cadre, service or post without his eligibility, qualifications and the conditions laid down under Rules 3(2), 4, 6, and 8 of the Rules. Section 8 of the Act makes class of Civil Servants for proper administration and such class is not interchangeable at the whims of the Selection Authorities and/or the Government to extend favours to their blue eyed. There is no discretion given under Section 5 of the Act to appoint any person in Civil Service against a Civil Post in the manner other than prescribed by the Rules. Rule 9(1) does not confer permanent status on Civil Servant on his appointment by transfer nor it contemplates his absorption in the transferee Department as a consequence of his appointment. There is neither procedure nor mechanism provided under the Act or the Rules to treat appointment by transfer as

absorption in the transferee department. Rule 9(1) cannot be used as a tool to allow horizontal movement of a civil servant from his original cadre to another cadre against scheme of the Act and the Rules of 1974. The term 'transfer' has to be interpreted in its common parlance and is subject to the limitations contained in Rules 3, 4, 6, 7 and 8 of the Rules 1974. Any appointment by transfer under Rule 9(1) has to be for a fixed term, and, on completion of such term, the Civil Servant has to join back his parent department. The word 'appointment' used in the Rule 6(A) cannot be equated with the word 'initial appointment' used in the Act which excludes appointment by transfer and promotion. Therefore, restricted meaning has to be given to the expression 'appointment by transfer'. For the aforesaid reasons, we are clear in our minds that the concept of absorption of a Civil Servant and/or Government servant is foreign to the Act as well as Rule 9(1) of the Rules. Rule 9(1) does not permit transfer of non-Civil Servant to a non-cadre post or to a cadre post. We, in para 126 of the judgment under review, have not discussed the scope of Rule 9(1) as neither the Government nor any of the parties appearing before us had taken the plea that they were appointed by transfer and absorbed under Rule 9(1) of the Rules. However, we had recorded the following finding on Rule 9(1) which is reproduced:--

"No Civil Servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process. A Civil Servant can be transferred out of cadre to any other department of the Government subject to the restrictions contained under Rule 9(1) of the Rules of 1974."

115. Now, after we have scanned the entire scheme of the Act and the Rules framed thereunder, we are clear in our minds that the aforesaid finding was in accord with the Act which has been promulgated pursuant to Articles 240 and 242 of the Constitution. We further clarify that even a Civil Servant cannot be transferred to any other cadre, department, post or service unless he is eligible for such post, in terms of the Rules 3(2) and qualifies the test of Rules 4, 6, 7 and 8 of the 1974 Rules as discussed hereinabove.

116. The term 'transfer' used in Rule 9(1) has not been defined either in the Act or the Rules of 1974, therefore, we have to attach an ordinary dictionary meaning to it. The ordinary dictionary meaning of the term 'transfer' means 'to move from one position to another.' If this meaning is attached to the term 'transfer' used in Rule 9(1), it would lead to mean an ordinary posting of a Civil Servant from one position to another. Such transfer, however, cannot be construed to qualify the term 'absorption' as has been contended by the learned Counsel, which term is alien to the Act and the Rules. Therefore, the appointment by transfer under Rule 9(1), as has been interpreted by us, would be confined to the parameters laid down by the scheme of the Act and the Rules of 1974.

119. The learned Additional Advocate-General, as well as the counsel representing the petitioners had argued that the Competent Authority had the powers under Rule 9(1) of the Rules to absorb any person from within and/or outside the Province through appointment by transfer. We have already dealt with the scope of Rule 9(1) of the Rules, which permits appointment by transfer subject to the conditions prescribed therein. It does not permit absorption from one cadre to another cadre. The Competent Authority in the cases of the petitioners has ordered absorption by relaxing the rules, which is in deviation of the scheme of the Act framed pursuant to the dictates of Article 240, read with the qualifications incorporated in the Rules of 1974. We may observe that section 5 of the Act does not give any discretion to the Selection Authority to bypass the restriction by relaxing the Rules. If such discretion is allowed to prevail, it would destroy the fabric of Civil Service, which is protected by the mandates of Articles 240 and 242 of the Constitution. It is also a misconception that Rule 9-A permits transfer of a non-Civil Servant to a Cadre, Service or Post meant for a Civil Servant, recruited in the Cadre or Service or Post after competitive process. Such an appointment by transfer in the nature of absorption would only be permissible, if the pre-conditions laid under Rule 9-A of the Rules are met."

62. The PMS Rules confer powers on the government to appoint apparently by transfer under Rule 9 of APT Rules 1974, any officer as PMS Officer to be

posted against cadre posts mentioned in the schedule–I, negating the aforesaid judgment under this law. Even a non-civil servant can be made PMS Officer and posted against the cadre posts, in complete defiance of the aforesaid Supreme Court judgment. For example, an officer of Karachi Water & Sewerage Board (KW&SB) and Karachi Metropolitan Corporation (KMC) who is not a civil servant can be conferred the status of Civil Servant / PMS officer and posted on a cadre post.

63. The Supreme Court in the referred celebrated judgments on the service law has further held that the law does not confer such powers upon a Provincial Assembly to change the structure of service law in conflict with the provisions of Article 240(b) or Article 242(1B). In the case at hand, the PMS Rules, 2018 in complete contrast has changed the basic structure of service law under the garb of new service. An excerpt of the judgment in the case of *Contempt Proceedings against Chief Secretary Sindh and others (2013 SCMR 1752)* is reproduced as under:

“136. The transfer by appointing on deputation of an employee having no matching qualifications has created sense of insecurity which multiplied the concern of the civil servants when these deputationists were absorbed under the impugned legislative instruments. It is a misconception that by an amendment in the parent statute, the definition of 'civil servant' can be enlarged as has been done through the impugned legislations. By a deeming clause as introduced under the impugned legislation, an employee holding a post under any authority or corporation, body or organization established by or under any Provincial or Federal law or which is owned or controlled by Federal or Provincial Government or in which Federal Government or Provincial Government has controlling share or interest could not be conferred status of a civil servant. *The law does not confer such powers upon a Provincial Assembly to change the structure of service law in conflict with the provisions of Article 240(b) or Article 242(1B).*” **Emphasis Added.**

64. Progressing further on the subject issue, according to Sindh Government Rules of Business, 1986, a department means an administrative unit in the secretariat responsible for the conduct of business in the specified sphere; and, all the branches of the Service have been recognized as a separate and self-contained unit to fall within the definition of a "Separate Cadre" warranting preparation of separate Seniority Lists under section 8(1) of the SCS Act, 1973. If we closely examine the PMS Rules, we will safely conclude that though it is claimed that it has created a new service by merging two cadres but in fact the government has conveniently abolished the cadres of Assistant Commissioner and Section officer with all the cadre posts with same nomenclature has been retained allowing the PSS officers and outsiders to be appointed against these cadre posts under the garb of PMS officers, which previously was undone by the Supreme Court in the aforesaid judgment.

65. Besides the above, we have not come across any provision in the SCS Act 1973 that permits the merger of two distinct cadres i.e. Ex-PCS cadre and PSS Cadre, therefore the merger of two cadres as discussed supra is distinct from each other and is to continue in parallel combination making this distinction notwithstanding. Besides, no amendment in Sections 8 and 9 of the SCS Act, 1973, has been brought about for the merger of two groups / cadres which are continued parallel alongside each other.

66. By creation of PMS Services the competent authority has declared PSS and Ex-PCS Cadres as dying cadres by abolishing the post of Assistant Commissioner and Section Officer, and much emphasis has been laid on the point that cadres of the petitioners and PSS officers are declared as dying cadre and will automatically be deleted on retirement or death of the incumbent from Schedule of PMS service and the dying cadre post shall not be filled in by initial recruitment, by promotion or even under APT Rules, 1974. If this is the stance of the government then the question arises as to how in the intervening period, on what posts the PMS officer will be appointed which is falling into the dying cadre as mentioned in the schedule-I. Besides, no mechanism is provided to appoint the PMS Officers against the cadre posts. Primarily, the concept of dying cadre has not been fully explained either in ESTA code or in any other service law, however, to our understanding dying cadre means existing post continued but no fresh appointment is to be made in order to allow the cadre to exhaust gradually. In this case, the PMS Officers are being posted on cadre posts that were reserved for the said two cadres.

67. What we could not comprehend is that on one side the Ex-PCS and PSS cadres have been declared dying cadres (abolished) and on the other hand the PMS Officers would be posted against different posts meant for the said cadres. No job description has been provided nor is any mechanism for their posting provided, which ex-facie reflects malice on the part of the Sindh Government. What is further amazing is that in the definition clause of PMS Rules Ex-PCS and PSS cadres have merged as service groups separately both the cadres have been abolished.

68. The PMS Rules in fact have conferred absolute discretion in the Government to post any PMS Officer to any cadre post neither his/her eligibility nor qualification would merit consideration.

69. Adverting to the arguments of learned AAG that the Government is empowered to make rules in the interest of the public and to remove anomalies

in Service Rules and it is essentially an administrative matter falling within the exclusive domain and policy decision-making of the Government and the interference with such matters by this Court is not warranted as no vested right of Ex-PCS officers is involved in the matter of creation of new service, and this Court has no jurisdiction to strike down the PMS Rules.

70. We are not persuaded by the submissions made by the learned AAG for the reason that it is not the sole prerogative of the Government to create or abolish post, by declaring the existing longstanding two distinct cadres / posts as dying cadre under the garb of policy decision as portrayed and this court can interfere if the policy is capricious and not rational, or arbitrary, offending the basic principles of the Constitution and law. Reliance is placed on the case of Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (2012 SCMR 455). Moreover, abolishing the posts of Assistant Commissioner and Section Officer by creating a new service which Sections 8 and 9 of the SCS Act, 1973 do not permit.

71. It is now settled law that the merger of service of civil servants in different Cadres, Services, and Posts of the Government Departments as envisaged under sections 8 and 9 of the SCS Act, 1973, against their Service Rules, is a nullity in the eyes of law and violative of the dicta laid down by the Supreme Court in the cases of Contempt Proceedings against Chief Secretary Sindh and others, Ali Azhar Khan Baloch, and Muhammad Bachal Memon case, supra. The learned AAG has failed to make submissions on the principles laid down in the above judgments and instead has submitted that PMS Rules have been made under the administrative domain by the executive which arguments is negated by the aforesaid judgments.

72. The learned counsel Mr. Faisal Siddique has contended that the PSS cadre is always opted by Karachi-based candidates, he, however, has not placed any material in support of his contention. We are very clear in our mind that those who contest the Combined Competitive Examination always prefer the allocation of the Ex-PCS cadre which is always allocated to the outstanding candidates who have secured higher marks.

73. The next contention of Mr. Faisal Siddique relates to sharing-formula between Ex-PCS and PSS cadre. The sharing formula is a policy matter and the government after hearing the parties can decide it. This does not mean that the PMS Rules are a substitute for the aforesaid issue between these two cadres. It is

however for the Sindh Government to draft the rules for training of PSS officers as per their job description.

74. The contentions of Mr. Faisal Siddique have also not persuaded us in the face of principles laid down by the Supreme Court judgments as referred hereinabove. The contention of the learned AAG and Mr. Faisal Siddique that PMS Rules were framed under the direction of the Supreme Court is also incorrect. In fact the Supreme Court while disposing of the CP No.522-K/2016 vide order dated 07.03.2017 has clearly held that any party aggrieved by the framing of PMS Rules may challenge the same. Order dated 07.03.2017 is reproduced as under:-

“Learned Advocate General Sindh states that a Summary for the rules has been sent to the Chief Secretary, which shall ultimately be approved by the Chief Minister. **Suffice it to say that such rules shall be framed and notified by the concerned authority with independent application of mind without being influenced by any order passed by the High Court of Sindh and the parties may seek appropriate remedy if they are aggrieved of the said rules.**” **Emphasis added.**

75. Moreover, the issues were made complicated by concealing the original summary from the Supreme Court, which clearly establishes that initially the Sindh Government was not inclined to frame PMS Rules by merger but had confined themselves to frame PSS training Rules but under the misrepresentation the CM was compelled to approve second summary without hearing the viewpoint of Ex-PCS officers.

76. The Submissions of AAG and Mr. Faisal Siddique that the PMS Rules are applicable in Punjab and KPK Provinces. In the first place, the PMS Rules were framed in Punjab in 2004 and KPK in 2007 prior to the judgments of the Supreme Court. The judgment in the case of *Contempt Proceedings against Chief Secretary Sindh and others*, the Supreme Court has directed all the Provinces and the Federation to streamline their Service Structure in line with the parameters set in the judgment. Relevant para No.183 of the judgment is reproduced as under:-

“183. A copy of this judgment be sent to the Chief Justice, Sindh High Court through Registrar for circulating it amongst the learned Judges. **A copy of this judgment be also sent to all the Chief Secretaries of the Provinces as well as the Secretary, Establishment Division, Government of Pakistan, Islamabad, with the direction to streamline the service structure of civil servants in line with the principles laid down in this judgment.** The Chief Secretary and Secretary, Services, Sindh, are further required to comply with this judgment in letter and spirit and report compliance within three weeks.” **Emphasis Added.**

77. We, in this respect have Constitutional constraints to comment upon the continuance of PMS Rules in Punjab and KPK. We, however, are of the considered view that framing of PMS Rules by the Sindh Government actually

defies the judgments of the Supreme Court and an attempt has been made under the garb of creating new service, with the sole object, to politicize the Civil Service Structure again. The Sindh Government's similar action was nullified earlier by the Supreme Court in the cases of Contempt Proceedings against Chief Secretary Sindh and others and Ali Azhar Khan Baloch.

78. In view of the aforesaid discussion we hold that the petitioner's fundamental rights guaranteed under Articles 4 and 9 of the Constitution are protected in terms of the Supreme Court judgments. The Constitution also protects the Civil Service Structure which is the backbone of the Country to function smoothly, independent of political intervention, and all appointments are to be made on merit which has been done away by introducing PMS Rules.

79. We, for the aforesaid reasons, allow Petitions bearing No. D-7622 of 2018 and No. D-6110 of 2020, holding that PMS Rules are ultra-vires of Sections 8 and 9 of the Sindh Civil Servants Act, 1973 and Article 240(b) of the Constitution. The PMS Rules are violative of the principles laid down in the Supreme Court judgments in the cases of Contempt Proceedings against Chief Secretary Sindh and others and Ali Azhar Khan Baloch.

80. In the C.P No. D- 6110 of 2020, we have noticed that the candidates, who passed the Combined Competitive Examination and were allocated Ex-PCS Cadre/Assistant Commissioner were issued offer letters as PMS officers. These offer letters are against the law as already discussed hereinabove and we direct the Chief Secretary to ensure that successful candidates are allocated to the Ex-PCS cadre as per merit immediately.

81. The other petitions tagged with Petitions bearing No. D-7622 of 2018 and No.D- 6110 of 2020 are de-tagged and adjourned to be heard separately according to the roster as the issue in those petitions does not have direct bearing with these two petitions.

82. We are cognizant of the fact that the Sindh Government inspite of the restraining order passed at times continued appointing officers under PMS Rules. Those officers who have passed the combined Competitive Examination through SPSC be examined again by SPSC on the touchstone of the 1962 and 1964 Rules of Ex-PCS and PSS to evaluate their merit as was practiced earlier before coming into force the PMS Rules and allocate their Cadre on the merit. Once the SPSC has completed the exercise the officers shall be sent for the routine training as provided under the rules. This shall be done by the concerned department on the recommendation of SPSC within 15 days of the communication of this judgment.

However, any other officer of an equivalent post appointed as a PMS Officer would immediately be sent to his parent department as if he was never appointed as a PMS officer. The Chief Secretary Sindh shall ensure compliance and issue requisite notifications and report compliance through MIT-II of this Court.

83. Copies of this judgment shall be transmitted by fax to the Chief Secretary, Advocate General Sindh, Secretary (S&GAD) and Chairman SPSC for their information and immediate compliance.

Nadir  
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**JUDGE**