

**IN THE HIGH COURT OF SINDH, KARACHI**  
**Constitution Petition No. D- 6200 of 2022**

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Date Order with signature of Judge

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**Present: *Mr. Justice Muhammad Junaid Ghaffar***  
***Justice Ms. Sana Akram Minhas.***

**Petitioner:** Zakir Hussain Samo  
Through Mr. Muhammad  
Arshad Khan Tanoli, Advocate.

**Respondents:** The Province of Sindh & others  
Through Mr. Ali Safdar Depar,  
Assistant Advocate General.

**Date of hearing:** 28.09.2023

**Date of Order:** 18.12.2023

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Petition, the  
Petitioner has sought the following reliefs: -

A) To Direct the Respondents No. 2 & 3 to prepare and issue the Final Seniority list of Deputy Director (Executive) (BPS-18) in compliance of section 8 (1) of the Sindh Civil Servant Act 1973 and rule 9 (1) & (2) of Sindh Civil Servant (Probation, Confirmation & Seniority) Rules 1975 within the period of (30) days time or as may deem fit and appropriate by this Hon'ble Court

B) To Direct the Respondents No.2 & 3 to Convene the meeting of Departmental Selection Board-II for considering the Petitioner for promotion to the post of Additional Director (Executive) (BPS-19), in the light of principles of law laid down by the Hon'ble Supreme Court in the case Tariq Aziz-ud-din reported 2010 SCMR 1301.

C) To Direct the Respondents to Consider the Petitioner for pro forma promotion to the post of Additional Director (Executive) (BPS-19), in the light of principles of law laid down by the Hon'ble Supreme Court in the case Mrs. Aqeela Asghar Ali reported PLD 1991 SC 1118, 2010 SCMR 1301, in case of Petitioner reached the age of Superannuation during pendency of this Petition.

D) To restrain the Respondent No.2 & 3 to make any appointment /promotion against the vacant post of Additional Director (Executive) (BPS-19), during pendency of above Petition

E) To grant any other relief which is deemed fit and proper under the circumstances of the case.

2. Learned Counsel for the Petitioner has contended that the Petitioner is at Serial No.1 of the provisional seniority list of Deputy Directors (Executive) BS-18 dated 02.03.2022 in the Anti-Corruption Department; whereas, pursuant to a budget document (2022-2023), it came into the knowledge of the Petitioner that a post of Additional Director in BS-19 has been created; but despite several requests / representations, neither the Petitioner has been promoted; nor any meeting of the Departmental Promotion Committee (“DPC”) has been convened. According to him, the Petitioner, at the time of filing of this Petition, was eligible to be promoted to Grade-19 and since, during pendency of this Petition he has retired; therefore, he is entitled for a proforma promotion to Grade-19. Per learned Counsel the Petition is otherwise maintainable as the objection raised by the Respondents is not relevant as no final order has been passed against the Petitioner; hence, he could not have approached the Service Tribunal. In support he has relied upon the cases reported as ***Secretary Agriculture, Livestock and Cooperation Department, Peshawar and others Vs. Anees Ahmad (2021 SCMR 1266)***, ***Dr. Syed Sabir Ali Vs. Government of the Punjab through Secretary, Health Punjab and others (2008 SCMR 1535)*** and ***S.H.M. Rizvi and 5 others Vs. Maqsood Ahmad and 6 others (PLD 1981 SC 612)***.

3. On the other hand, learned AAG has opposed the Petition on the ground that no vested right can be claimed for promotion; whereas, the post of Grade-19 is yet to be operationalized; hence, neither there is any post available in Grade-19, nor the Petitioner is entitled for any such promotion. He has further argued that even otherwise this Petition is incompetent and not maintainable as the remedy available to the Petitioner is before the Service Tribunal in view of Article

212 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, this Petition is liable to be dismissed.

4. Heard learned Counsel for the Petitioner as well as learned AAG and perused the record. At the very outset, it may be of relevance to note that instant Petition has been presented before this Court on 14.10.2022; whereas, the Petitioner was supposed to retire on 22.10.2022 and admittedly he stands retired even before comments could be called and this Petition could be heard and decided as the first hearing dated was fixed on 28.10.2022. On being confronted as to the conduct of the Petitioner in approaching this Court so belatedly inasmuch as the cause of action, if any, had accrued much earlier in time as the seniority list was issued on 02.03.2022; learned Counsel for the Petitioner has contended that the post in Grade-19 was sanctioned in the Budget for the year 2022-2023, whereas, time and again requests were made to consider the case of the Petitioner for promotion but no response was given; hence, in the alternative, Petitioner is entitled for a proforma promotion. Per settled law, if a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into field for his rescue<sup>1</sup>. If he lost his promotion on account of any administrative oversight or delay in the meeting of DPC or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits<sup>2</sup>. It is further settled that if due to any non-vigilance and insensitivity of the a department, promotion

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<sup>1</sup> Federation of Pakistan v Jahanzeb & Others [2023 PLC(CS) 336]

<sup>2</sup> ibid

of employees who are on the verge of retirement has been delayed, then the employees are not to suffer; entitling them to claim proforma promotion<sup>3</sup>.

5. It is not in dispute that the Petitioner was at Serial No.1 of the last seniority list issued by the Respondent department, whereas, it is also not in dispute that a post of Additional Director (BS-19) has been created and sanctioned. In the comments it has been stated that the said post is not yet operationalised; however, for this the Petitioner cannot be blamed. It is further stated in the comments that delay in conducting a meeting of the Promotion Committee has occurred due to non-finalisation of promotion Rules for the newly created post. This again is not the fault of the Petitioner. Therefore, in the given facts, the Petitioner appears to have been subjected to discrimination and has been deprived to claim his right to be considered for further promotion. Though the law does not confer any vested right to a Government servant to seek promotion but he surely has a right in law to be considered for grant of promotion<sup>4</sup>. In Government service claiming a higher grade or promotion to the next position is not a matter of right; but at the same time, one being otherwise eligible, has a right to be considered for such promotion in accordance with the relevant law and rules.

6. As to the objection regarding maintainability of this Petition raised by learned AAG, it is not in dispute that insofar as the Petitioner is concerned, he is only asking to be considered for promotion to the post of Grade-19 which was created while he was in service. According to section 9(1) of the Sindh Civil Servants Act, 1973, a Civil Servant is to be

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<sup>3</sup> Secretary Agriculture Peshawar v Anees Ahmad (2021 SCMR 1266)

<sup>4</sup> Secretary Agriculture Peshawar v Anees Ahmad (2021 SCMR 1266)

considered for promotion if he is eligible on account of possessing the prescribed minimum qualification. This requires determination of his eligibility first and then whether he is fit to be promoted. As per section 4 of the Sind Service Tribunal Act, 1973, the right to prefer an appeal to the Tribunal can be invoked subject to the fulfilment of two pre-conditions: (i) in case a departmental appeal, review or representation is provided under the law, no appeal to the Tribunal shall lie unless such a remedy is availed by the aggrieved civil servant; and (ii) a period of 90 days has elapsed since such departmental appeal, review or representation has been preferred<sup>5</sup>. Admittedly, neither any final order has been passed by the departmental authority against the Petitioner; nor we have been assisted in any manner, that against such order, any appeal, review or representation to a departmental authority has been provided under Sindh Civil Servants Act, 1973 or any Rules thereof. Similarly, Section 4(b) of the said Act also prohibits an appeal in that no appeal lies to the Tribunal against an order of a departmental authority determining fitness or otherwise of a person in respect of promotion. In the instant matter, the Petitioner's eligibility is yet to be determined and his claim for promotion to Grade-19 has not yet been decided finally by anyone. Rather, an excuse has been given that certain rules were to be framed which have not been done, and since the Petitioner is retired now, his eligibility cannot be decided now. This does not appear to be a correct approach as already noted above. Nothing had prevented the Respondents from deciding his fate in this regard and failure on their part cannot be attributed to the Petitioner. Therefore, in that case the Petitioner, could not have approached the Tribunal for

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<sup>5</sup> Dr. Sayyid A.S.Pirzada v The Chief Secretary (2023 SCMR 1087)

rederessal of his grievance. In fact, the Petitioners main prayer is for directions to convene a meeting of the DPC to consider his case for grant of promotion and not beyond that.

7. In view of hereinabove facts and circumstances of this case, it appears that a case for exercising discretion has been made out. Since the Petitioner stands retired now, therefore, this Petition is allowed to the extent that eligibility of the Petitioner be considered for proforma promotion to Grade-19, and if found eligible, he shall be promoted accordingly.

Dated: 18.12.2023

**J U D G E**

**J U D G E**

Ayaz