

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-4745 of 2024

(*Tufail Ahmed Soomro v Federation of Pakistan & others*)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul-Karim Memon

Date of hearing and judgment: 19.12.2024

Petitioner present in person
Ms. Wajiha Mehdi, Assistant Attorney General

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: Through this constitution petition petitioner has prayed as under:

1. *To direct Respondent Nos No. 1 and 2 for posting/adjustment of the petitioner as per direction contained in judgment dated 01.01.2015 of Civil Review petition No. 193 of 2013*
2. *To direct respondent No.1 for the payment of salaries in Grade-19 with effect from 14.12.2016 till today as per direction contained in judgment dated 05.01.2015 of Civil Review petition No. 193 of 2013*

2. The petitioner, a former supervisor at Pak Saudi Fertilizers, was transferred to the Sindh Local Government Board in 1997. However, in 2005, his appointment was deemed ad-hoc due to a lack of specific transfer provisions. Despite this, he was recommended for promotion to BS-19 in 2016, and the promotions were approved in 2017 and 2022. The Supreme Court's 2015 judgment nullified the petitioner's absorption into the SCUG, leading to his repatriation to Pak-Saudi Fertilizer Ltd. However, as the company had already been privatized long ago, therefore, he was left without a job and salary. Despite appealing the repatriation and seeking adjustment in another department, the petitioner remains unemployed. The petitioner seeks validation of his appointment and promotions by adjusting his service to any of the government-owned and controlled organizations in terms of the ratio of the judgment rendered by the Supreme Court in the cases of *Criminal Original Petition No. D-89/2011 2013 SCMR 1752* and *Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456)*, the supreme court has declared certain laws of the Government of Sindh ultra vires the Constitution, whereby absorptions and out-of-turn promotions with backdated seniority to certain employees had been validated. The said laws granted cover to certain employees/civil servants who were absorbed since 1994. An excerpt of paragraphs 162 and 164 of the judgment in *Ali Azhar Khan Baloch* is reproduced:-

“162. By the judgment under review, we had directed the Sindh Government to repatriate the officers beneficiaries of the legislation, which was struck down by the judgment under review. We are informed that many Departments of the Federal Government have declined to accept the officers

repatriated by the Sindh Government in compliance with the judgment under review. The Additional Advocate General, who appeared in the Review Petition has brought to our notice the grievances of the officers, who belong to the Federal Government or to the institution run under the patronage of the Federal Government inter alia, on the ground that their period of lien with the parent Department has expired and or there was no vacancy to accommodate them.”

164. The list of the officers is reproduced herein below:--

3. The petitioner submitted that he was transferred to the Sindh government in 1997 and later absorbed into the Local Government Department, where he was promoted to BS 19. However, the Supreme Court's judgments in Criminal Original Petition No. D-89/2011 and Civil Review Petition No. 193/2013 have led to the withdrawal of his absorption/appointment by transfer to the Sindh Local Government Department and was directed to report back to his parent department. As per the petitioner in compliance with Notification No. SLGB/SCUG/Admn-1/1(25)/2016/2202 Karachi and Supreme Court judgments he submitted his Duty Joining Report in the office of Establishment Division as the Supreme Court in the case of Ali Azhar Khan Baloch ordered that affected officers must report to the Secretary Establishment Division within 15 days and a Devolution Cell shall be created to facilitate their posting to their parent departments or other appropriate federal departments, ensuring continuity of service, salary, perks, seniority, and promotion rights, however, nothing could be done in the intervening period. He submitted that he may be allowed to report to the Secretary Establishment Division who shall facilitate his posting to another federal department, ensuring continuity of service, salary, perks, seniority, and promotion rights. He prayed for allowing the petition.

4. The learned Assistant Attorney General argued that the petitioner was initially an employee of a public limited company and later transferred to the Sindh Local Government Board. However, following a Supreme Court judgment, his transfer was revoked, and he was directed to return to his original employer. The Assistant Attorney General contended that since the petitioner was not a civil servant appointed under the Civil Servants Act 1973, he cannot be included in the surplus pool and, therefore, his request for adjustment in another department cannot be granted.

5. We have heard learned counsel for the parties and have perused the material available on record with their assistance and case law cited at the bar.

6. Pak-Saudi Fertilizers Limited (PSFL) was a state-owned fertilizer company privatized in 2002. It was acquired by Fauji Fertilizer Company

Limited (FFC) under the privatization policy decision. We have been informed that during the privatization, employees had two options: a severance package or a transfer to FFC. Most employees chose to transfer to FFC, ensuring job continuity. In such a situation, the Supreme Court in Para 165 & 166 has directed as follows:—

"We, in the peculiar circumstances of the matter, direct the aforesaid officers to report to the Secretary Establishment Division, Islamabad, within 15 days from the date of this judgment. The Secretary Establishment shall create a Devolution Cell in the respective parent Departments and, on availability of the vacancy in the parent Departments, they will be posted. In case, the Department of the Federal Government and or the Organization to which the officer belongs has been devolved, the Secretary Establishment shall post them in terms of Section 11-A of the Civil Servants Act to another Department in conformity with the scheme of the Civil Servants Act. All these officers shall be entitled to their salaries and other perks from the date they were relieved from the Sindh Government. They will also be entitled to their inter-se seniority and promotion, subject to the Rules, with their batch-mates as if they were never relieved from their parent Department."

"166. The Attorney General for Pakistan shall keep in touch with the Secretary of Establishment and ensure that this part of the judgment is implemented in the above terms. The Attorney General shall report compliance within two months from the date of communication of the judgment."

7. In essence the Supreme Court has directed that if the officer's parent department has been devolved, the Secretary Establishment will post his/her to another federal department according to Section 11-A of the Civil Servants Act. However, in the present case, the parent department of the petitioner was privatized in 2002, before his repatriation in 2016.

8. To see whether Para 165 & 166 of the judgment rendered in the case of Ali Azhar Khan Baloch are applicable in the case of the petitioner.

9. This kind of issue as agitated in the present proceedings was raised in the Supreme Court whereby the following order was passed:-

"205. We have laid down the principles which cover the case of the petitioner. The absorption of the petitioner in Public Health Engineering was unwarranted. Therefore, we direct the Chief Secretary Sindh, to create a surplus pool in KMC and the petitioner shall be posted in the pool till he is posted against a vacancy in the Department. He would be entitled to his inter se seniority with his batchmates with whom he was working in KDA at the relevant time before his absorption into Public Health Engineering. The petitioner shall be given salary from the date he was de-notified, within 15 days from the date of communication of this judgment. At the same time the Officer with whom he was mutually transferred, shall be reverted to his parent Department with the same benefits as detailed above. The Chief Secretary Sindh shall submit a compliance report for our perusal in Chambers. The Review Petition is disposed of in the above terms."

10. The Supreme Court's judgment, being in rem, applies to all and can be referenced even if the petitioner was not directly involved in the case. However, the Sindh government incorrectly repatriated the petitioner to a

non-existent organization at the relevant time. They should have sent him to the Establishment Division as per the Supreme Court's order. But at the same time, we are cognizant of the fact that a non-civil servant does not fall under the category of individuals covered by Section 11-A of the Civil Servants Act, 1973. This section specifically applies to civil servants who are rendered surplus due to the reorganization or abolition of a division, department, or office. Non-civil servants, by definition, are not subject to the provisions of the Civil Servants Act. Their terms and conditions of service are typically governed by separate contracts or agreements with the employing organization. Therefore, the provisions of Section 11-A, including the possibility of being posted to another department, would not apply to non-civil servants.

11. The petitioner's transfer to the Sindh government was wrong. He ought to have been placed in a surplus pool of devolved government-owned organizations, as per the Supreme Court's ruling/principles laid down in paragraphs 165, 166, and 205. The Establishment Division Secretary must review his case by providing a meaningful hearing to him within three months.

12. In view of the above facts and circumstances of the case, this petition stands disposed of in the above terms. Let a copy of this order be transmitted to the Secretary of the Establishment Division government of Pakistan for information and compliance.

JUDGE

JUDGE