

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitution Petition No. D – 1156 of 2025
(Muhammad Kaleem Vs. *Province of Sindh & others*)

Date	Order with signature of Judge(s)
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Fresh Case.

Before:

Muhammad Karim Khan Agha J;
Adnan-ul-Karim Memon J;

Date of hearing and order: 24-03-2025

Syed Shoa –un-Nabi advocate for the petitioner.
Nemo for the respondents.

ORDER

ADNAN-UL-KARIM MEMON, J: The petitioner submits this petition to rectify the denial of their rightful up-gradation or promotion to the next higher grade, which should have occurred based on their time scale. He seeks to be placed in the appropriate grade, effective from the original due date, and to receive all lost service benefits.

2. The petitioner's counsel argues that his client, initially appointed in Basic Pay Scale (BPS) 1 in 1993, was promoted to Driver in BPS-5 on May 25, 1996, a position he holds to this day. Despite nearly 30 years of service across the Education and Health Departments of Orangi Town, the petitioner has not received any further promotion. Numerous requests for up-gradation to BPS-7, consistent with the treatment of drivers in other Sindh departments, have been submitted to the respondents, including recent applications dated February 21, 2025, and March 3, 2025, to the Chairman and Municipal Commissioner of TMC Orangi Town. However, these applications have been ignored. Furthermore, the counsel points to a Finance Department notification dated April 30, 2015, which mandated time-scale-based up-gradation for government employees. He also cites a letter dated January 5, 2022, from the Sindh Government, which granted BPS-7 up-gradation to drivers in the Sindh Labour Court and Labour Appellate Tribunal, effective February 21, 2018. The counsel contends that this establishes a precedent for the petitioner's claim. He prayed for allowing the petition.

3. We have heard the learned counsel for the petitioner on the maintainability of the petition and perused the record with his assistance.

4. In principle, the issue is about the grant of time-scale incentives. Prima facie, the time scale is not a promotion under the Service Jurisprudence rather this is an incentive granted to the officer due to the non-availability of their promotion avenue in their cadre.

5. So far as Upgradation” is concerned, it is distinct from promotion. In Regional Commissioner Income Tax and another v. Syed Munawar Ali and others (2016 SCMR 859), the Supreme Court of Pakistan held that “upgradation” is not defined in the Civil Servants Act or the Rules framed thereunder. It applies to the posts and not the person occupying them. In Federal Public Service Commission v. Anwar-ul-Haq and others (2017 SCMR 890), the apex Court held that upgradation is carried out without necessarily creating posts in the relevant pay scales. It is done under a policy and a specific scheme. It is exclusively used for incumbents of isolated positions with no other advancement options, and its purpose is to overcome the issue of their stagnation and frustration. The Supreme Court's explanation from Fida Muhammad v. Government of Khyber Pakhtunkhwa and others (2021 SCMR 1895), clearly distinguished between upgradation and promotion. Promotion involves a move to a higher position with increased responsibilities and rank. Upgradation, on the other hand, provides financial relief by placing an employee in a higher pay scale, without changing their job duties or position. It's a mechanism designed to address the stagnation of employees who have remained in the same pay scale for a long time, particularly when they lack opportunities for promotion. Upgradation is a policy tool used to alleviate the hardship of long-term stagnation.

6. we repeatedly asked the petitioner’s counsel as to how his cadre was changed from BPS-1 to the post of Driver BS-5 and whether the post of driver is the promotion post he failed to reply the query and insisted that in the year 1993 he was appointed as Chowkidar in Education Department of KMC and vide office order dated 25.05.1996 he was appointed as Driver in Education Department East KMC. We are not satisfied with this assertion for the simple reason that the post of Driver is an independent post, whereas Chowkidar has its own service hierarch. So far as application for up gradation of pay scale or grant of promotion is concerned that has already been taken care of in the preceding paragraph. Besides promotion depends on seniority cum fitness, availability of vacancy under the recruitment rules, as such petitioner has failed to meet the criteria, therefore this court is not in a position to direct the respondents to upgrade the post of Driver and promote the petitioner next rank.

7. In the light of the above facts and circumstances of the case, we are of the considered opinion that since this is the policy decision, we have no option but to dismiss the petition in limine.

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