

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-2559 of 2023

(Zakir Ali Khan and 41 others
Versus
Ministry of Education, Government of Sindh & others)

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

Date of hearing and order: 03.4.2025

Mr. Matloob Hussain Qureshi advocate for the petitioners
Mr. K.A. Vaswani, Assistant AG

ORDER

ADNAN-UL-KARIM MEMON, J. – This Constitutional Petition has been filed by 42 Junior School Teachers (JSTs) employed by the Sindh Education Department, between 1983 and 1996, seeking regular promotion to the next rank and, as an alternative, Time-scale Promotion/incentives, under four-tier Formula (TSP).

2. It is the case of the petitioners that they were appointed as JSTs in BPS-9 (now BPS-16) between 1983 and 1996. Despite holding higher qualifications (M.A., M.Sc., B.Ed.), they have not received timely promotions or upgradation of their post. Petitioners have averred that their seniority lists were prepared, but Departmental Promotion Committees (DPCs) were repeatedly postponed without assigning reasons, hindering their career progression. However, in the intervening period, many teachers retired or died without promotion to the next rank due to departmental delays. As per petitioners, the DPCs were not held from 2011 to 2019. The petitioners highlighted that in 2011, Junior School Teachers (JSTs) received Time Scale 16, a lower scale than the Time Scales 17 and 18 awarded to teachers in similar roles in Sindh, KPK and Baluchistan. They further submitted that while comparable teachers in other provinces and other Sindh-based cadres also received the higher scales, the JST petitioners were later denied promotion. Petitioners further added that in 2020, the respondents complied with the orders dated 29.10.2019 of this Court in C.P. No. D-1593 of 2011 and with the approval of Chief Minister Sindh, some Junior School Teachers were promoted to the scale of Higher School Teachers (HSTs) after a long time. They also highlighted a disparity where teachers with lower qualifications (Arabic Teachers, Drawing Teachers) can reach BPS-19 and BPS-20, while those teaching higher-level subjects are limited, which is a discriminatory attitude on the part of the respondent department. Petitioners next submitted that the Government Secondary Teachers Association (GSTA) had requested an incentive up to BPS 17 for JSTs and equivalent BPS 14 after 21 years of service, referencing

Notification No (SR-IV)1-52/2010 PT-V dated 30.04.2015, which already granted a time-scale-based Higher Grade incentive to the teaching staff of the Bureau of Curriculum & Extension Wing, Sindh Jamshoro. Despite discussions with the Minister of Education & Literacy Department in Karachi regarding this Government Secondary Teachers Association Sindh (GSTA) demand, it has not been approved (a summary for the incentive grant to JSTs is attached as Annexure F). They also referred to a "four-tier formula" for time-scale promotions for other teacher categories, which they believe should apply to them if DPC is not convened. They mentioned that now the Sindh Textbook Board has awarded BPS-17 to JSTs, after completion of 21 years of service. They also mentioned that high school teachers had already been awarded time-scale promotion on completion of 05 years in BPS-19 vide notification dated 29.03,2019. The petitioners asserted their right to time-scale promotion from BPS 16 to BPS 17 and then to BPS 18, including back benefits effective from the date similar promotions were granted to other cadres based on their service length (i.e., upon completing 21 and 26 years). In light of the aforementioned submissions, the petitioners prayed that this Court may order the respondent-Education Department to grant them time-scales to BPS 17 and BPS 18 as per their length of service, as stipulated under the four-tier formula established by the Government of Sindh for HST, Arabic Teachers, along with retroactive benefits.

3. The learned AAG has raised the question of maintainability of the petition under Article 212 of the Constitution, however, asserts that JSTs have received time-scale benefits up to BPS-16, as per policy decision. He argued that JSTs, initially appointed in BPS-9, are not comparable to teachers appointed in BPS-15, who are eligible for higher time-scales. He cites a clarification letter dated 04.10.2023 stating that JSTs are limited to BPS-16 under the existing policy. He explains the distinctions between teachers initially appointed in BPS-09 and those appointed in BPS-15 and the resulting differences in time-scale eligibility. He states that personal selection grades do not change the substantive scale of the employee. He further states that the promotions are the responsibility of the School Education & Literacy Department, to be handled according to civil service rules. He asserts that the petitioners' request to extend the benefit of the time-scale beyond BPS-16 is not justifiable under the policy. However, he submitted that the petitioners have requisite length of service, but due to policy decision their promotion could not be made due to changing of recruitment rules and policy decisions on the subject issue, as such petitioners request for time-scale promotion beyond BPS-16 cannot be made as HST/SST position is in BPS-16/17 (Gazetted Officer), whereas petitioners have already availed time-scale promotion up to BPS-16 and their further progression is halted in terms of recruitment rules notified on 15.1.2021. He prayed this Court to dismiss the petition.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. Regarding the objection to the petition's maintainability, the learned Assistant Advocate General (AAG) argued that Article 212 of the Constitution bars this petition, as the petitioners are civil servants who should approach the Sindh Service Tribunal (SST). The AAG further contended that this matter pertains to government policy, and the Supreme Court has repeatedly held that Courts should not interfere in such policies. However, concerning the Article 212 bar, we note that the current issue is not about the petitioners' terms and conditions of service; they simply seek implementation of the four-tier formula policy for promotion in their case. Therefore, this objection seems invalid.

6. It is the stance of the Government of Sindh that teachers initially appointed in BPS-09 under the 1989 Recruitment Rules, who were subsequently placed in running BPS-14 based on higher qualifications or experience, were/are eligible for the time-scale benefits extended to JSTs and equivalent (BPS-09) as per department's Policy Circular No.1 D(SR-1)1(52)/2010, dated June 7, 2010. Upon completing the required service, specifically, teachers drawing pay in running BPS-14 would be entitled to the time-scale benefit of BPS-15 after 21 years of service. Teachers who were granted Selection Grade BPS-15 before its discontinuation on November 6, 2001, as per Office Memorandum No. FD(SR-1)1-(51)/2001, would be entitled to the time-scale benefit of BPS-16 upon completing 25 years of service. At this stage, the petitioners countered the respondent department's assertion by submitting that when the Selection Grade system was abolished in 2001, individuals who had been granted BPS 15 were subsequently allowed Time-Scale 16 upon completing 25 years of service. The petitioners maintained that, having already completed 25 years of service themselves, they should receive the same treatment and be rated similarly, despite the Accounts Office clarifying that any teacher awarded PS-15 Selection Grade before its discontinuation on November 6, 2001 (per Office Memorandum FD(SR-1)1-(51)/2001), or granted a personal BPS-15 scale, was and is ineligible for consideration as an HST or equivalent teacher (BPS-15) under the existing time-scale policy, because these awards were personal and their original substantive scale under recruitment rules remained unchanged, making any excess benefits recoverable, if the present case aligns with this reasoning, then this apparent discrimination requires resolution by the respondent-department within two months, following a hearing.

7. It has come to our attention that the positions of PST, JST, and HST have been renamed and re-designated, vide Notification dated 14.10.2014, reflecting a modernization of the teaching cadre. Additionally, the government mandates the appointment of Gazetted Officers as Headmasters/Headmistresses in all government schools as per recruitment rules notified in 2021. However, promotions for Junior School Teachers are subject to specific criteria, including

length of service, required training, and adherence to promotion policies. Despite these regulations, the petitioners, who possess advanced degrees (M.A., M.Sc., B.Ed.) and were appointed as JSTs between 1983 and 1996 (initially in BPS-9, now BPS-16), assert that they have not received timely promotions or post-upgradation. They contend that while seniority lists were prepared, the Departmental Promotion Committees (DPCs) were repeatedly postponed without explanation, thus impeding their career advancement.

8. If this is the stance of the petitioners, it is important to note that the Sindh Civil Servant, (Appointment, Promotion & Transfer), Rules, 1974, define "promotion" as appointing a civil servant to a higher-ranking position within their service or cadre. However, seniority and merit have to be considered for promotions to selection posts as per recruitment rules for promotion in BPS-18 and onwards, while seniority-cum-fitness is to be considered for non-selection posts. Time-scale promotions, however, are distinct, as they involve movement to a higher pay scale (BPS) based on years of service. Specifically, to advance from BPS-17 to BPS-18, five years of service in BPS-17 are required. Similarly, seven years of service in BPS-18 are needed for promotion to BPS-19, and seven years in BPS-19 for promotion to BPS-20.

9. The four-tier formula serves as a guideline for allocating teacher posts in the respondent department, specifically for re-designations or post upgradations. The Sindh government has allowed the re-designation/upgradation of posts for I.T./Computer Science Teachers (and potentially other teaching staff) based on the four-tier formula. The distribution of positions for I.T./Computer Science faculty is structured as 50% are designated for teachers at BPS-17, 34% for Assistant Professors at BPS-18, 15% for Associate Professors at BPS-19, and 1% for Professors at BPS-20. However, a notification dated February 14, 2023, issued from the Finance Department confirmed the Sindh government's authorization of time-scale incentives for teaching staff, as detailed in a June 7, 2010 letter. This 2010 circular specifically grants Junior School Teachers (JSTs) and equivalent teachers in BPS-9 time-scale benefits up to BPS-16 after 25 years of service, without further progression in their career.

10. The four-tier formula provides Junior School Teachers (JSTs) with a time-based promotion alternative, enabling advancement through pay scales (BPS) based on service duration and meeting specific criteria. Specifically, Elementary/Junior School Teachers in BPS-9 are eligible for time-scale benefits up to BPS-12 after a designated service period as discussed supra, while High School Teachers (HSTs) or equivalent positions can achieve a time-scale promotion to BPS-20 after completing five years in BPS-19. However, completion of mandatory training as approved by the Administrative Department is often a requirement for promotion or time-scale advancement. Besides Promotions and time-scale advancement can also be based on seniority-cum-fitness.

11. The Sindh School Education & Literacy Department, acting under the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, issued a notification on January 15, 2021. This notification revised the appointment procedures for SST (BPS-16) positions, outlining the updated methods, qualifications, experience, and conditions. However, there are different notifications dated 13.3.2014, office order dated 05.12.2023, clarification order dated 04.10.2023 issued by the Finance Department, as such the respondent-department has to look into the case of the petitioners in its true perspective to redress their grievances timely without discrimination.

12. Prima facie, the petitioners' promotion prospects have been significantly hindered by the respondent-department. Consequently, the four-tier time-scale promotion stands as their sole remaining path for career advancement. This situation arose from the respondent-department's repeated alterations to recruitment rules, which ultimately led to the implementation of a time-scale promotion policy, ostensibly to mitigate employee dissatisfaction within the education department. It is undeniable, however, the respondents failed to conduct Departmental Promotion Committee (DPC) meetings promptly, effectively preventing the petitioners' progression to the next rank. This demonstrates a clear lack of diligence and consideration on their part.

13. The petitioners appointed as Junior School Teachers (JSTs) in BPS-16 between 1983 and 1996, and possessing higher qualifications (M.A., M.Sc., B.Ed.), experienced, significant delays in their promotions. They possess the requisite length of service to claim promotion to the next rank, in case DPC is convened. The respondent-department's intentional obstruction of the petitioners' timely promotions, compelling them to remain in their existing positions, invalidates their subsequent argument of insufficient service length to claim the Higher Secondary School Teacher (HST) position or its equivalent position for further advancement is flawed one for the reasons already outlined. Consequently, the competent authority within the respondent-Education Department is hereby directed to rectify this issue by granting the petitioners a hearing and subsequently awarding them the rank they are legally entitled to, whether through promotion or time-scale incentives, along with all applicable service benefits, without discrimination as pointed out, within two months from the date of receiving this order.

14. This petition is disposed of in the aforementioned terms, along with any pending application(s).

JUDGE

HEAD OF CONST. BENCHES