

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-4754 of 2014
(Nabi Hussain & another v Managing Director Water & Sewerage Board & others)

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

Date of hearing and order: 10.4.2025

Ms. Afsheen Aman advocate for the petitioners
Nemo for Karachi Water & Sewerage Board
Mr. Ali Safdar Depar, Assistant AG

ORDER

ADNAN-UL-KARIM MEMON, J. – The petitioners are now retired employees of the Karachi Water & Sewerage Board (KW&SB), state that they were initially appointed as Sub Inspectors in BS-11 on August 19, 1993, and subsequently promoted to Inspectors in BS-14 in 2007, and retired in BS-16. They contend that a settlement, known as Agreement-1993, was reached in 1994 between the KW&SB Management and the KW&SB Mazdoor Union (CBA), which they claim was approved by the KW&SB Governing Body on June 19, 1994. According to Clause No. 117 of this agreement, its implementation was to commence from August 19, 1993. Furthermore, Clauses No. 93 and 94 stipulated the upgradation of the Sub Inspector (BS-11) and Inspector (BS-14) posts to BS-14 and BS-16, respectively. While KW&SB issued an upgradation order on June 25, 2011, they implemented it from that date instead of the agreed-upon date of August 19, 1993. The petitioners submitted that this delay had resulted in financial losses and that they possessed a fundamental and legal right to have their salaries adjusted based on the upgradation effective from August 19, 1993. Following the rejection of their departmental appeal (filed on July 25, 2011), a reminder (sent on May 8, 2014), and a legal notice (issued on June 11, 2014), their claim was ultimately rejected by KW&SB on August 18, 2014. Consequently, they sought a declaration that the order dated June 25, 2011, was/is legally invalid and ineffective, and they request this court to order the fixation of their pay per the upgradation effective from August 19, 1993.

2. The learned counsel for the petitioners has argued that the implementation of the upgradation order effective from June 25, 2011, instead of August 19, 1993, has resulted in financial losses for her clients. She further asserted that the petitioners possess fundamental and legal rights to have their pay fixed according to the upgradation from August 19, 1993, which she claims the respondent department is violating without any lawful basis. In conclusion, the learned

counsel urged the court to allow the present petition, specifically requesting the provision of pro forma benefits to the petitioners, considering their retirement from service during the pendency of these proceedings.

3. In response to the petitioner's assertions, KW&SB has submitted that the initial employment and subsequent promotions of the petitioners, the Sub-Inspector position underwent an upgrade from BS-08 to BS-11 in 1991. They acknowledge the petitioners' promotions to Inspector (BS-14) in 2007-08 and their eventual upgrade to BS-16, effective from June 25, 2011. However, KW&SB underscores that this latter upgrade received provisional approval from the Chairman and remains subject to the formal approval of the Government of Sindh, for which a request was submitted on June 30, 2011, and was/is currently pending. Addressing the petitioners' claim concerning the Agreement-1993, KW&SB partially acknowledges its existence. However, they clarify that the specific clauses about the upgradation of the subject posts were not finalized in 1994, and no unconditional agreement was ever reached. KW&SB states that there was only a principal agreement to forward the matter to the Government for their consideration, contingent upon its alignment with the standards of the Excise & Taxation Department. However, KW&SB refutes the petitioners' contention regarding the "Governing Body's" approval of the agreement. They clarify that it was the "Board" of KW&SB that considered the matter and recommended it for the Government's approval. They submitted that Resolution No. 5, dated June 19, 1994, did not explicitly approve the claimed upgradation. KW&SB asserts that Paragraph 4 of the petition pertains to internal administrative and financial matters that were already settled and approved within the Board's authority. Regarding the central clauses of the alleged agreement concerning the upgradation (as mentioned in Paragraph 5), KW&SB explicitly disagrees. They contend that these clauses were agreed upon conditionally and were always subject to the approval of the Government of Sindh, which they maintain is the sole competent authority to sanction the requested upgrade, as communicated in their letter dated June 30, 2011. Concerning the issuance of the upgradation order (as described in Paragraph 6), KW&SB submits that it was issued with the formal, albeit provisional, approval of the Chairman of KW&SB, with an effective date of June 25, 2011. This provisionally, they reiterate, was contingent upon the subsequent approval of the Government of Sindh. KW&SB further clarifies the internal hierarchy of authority, stating that while the Managing Director and Chairman have authority up to BS-16 and BS-17, respectively, the ultimate authority to upgrade sanctioned posts within the organization rests with the Government of Sindh. KW&SB directly disputes the petitioners' assertion that Clauses 93 and 94 of the alleged Agreement-1993 were never formally approved by the Board, nor were they provisionally implemented between August 19, 1993,

and June 25, 2011. Based on the aforementioned points, KW&SB also disagrees with the petitioners' claim of financial losses resulting from the alleged delayed implementation of the upgradation order. KW&SB submits that the conditional and provisional nature of the upgrade renders it without full authority in the absence of government approval. Furthermore, they contend that retrospective financial benefits are not permissible under the applicable service rules. In response to the petitioners' filing of a departmental appeal (as detailed in Paragraph 10), KW&SB argues that their claim falls outside the scope of Rule 3(1) of the SCSR Appeal Rule-1980, which stipulates a 30-day limitation period for appeals against orders related to the terms and conditions of service. They also assert that the KW&SB Employees (General Conditions of Service) Rules, 1987, do not apply to the petitioners' claim, thereby justifying the rejection of their appeal. Regarding the petitioners' reminder, KW&SB does not deny the petitioners' assertion that they sent a legal notice and that KW&SB subsequently issued a rejection letter. Finally, addressing the petitioners' claim for retrospective pay fixation (as outlined in Paragraph 14), KW&SB submits that since the upgradation was considered effective from June 25, 2011, on a provisional and conditional basis, the question of applying it retrospectively from August 19, 1993, does not arise. They maintain that the benefits of the upgraded pay scale will only become effective upon the formal approval of the Government, and therefore, they do not agree with the petitioners' claim of financial loss. They prayed for the dismissal of the petition.

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

5. The petitioners' case hinges on the validity, approval, and interpretation of Agreement-1993, particularly Clauses 117, 93, and 94, and the alleged breach of the agreed-upon implementation date.

6. KW&SB directly refutes the petitioners' claim that Clauses 93 and 94 of Agreement-1993 were approved or provisionally implemented between August 19, 1993, and June 25, 2011. Consequently, KW&SB disagrees with their claim of financial loss due to delayed implementation, submitting that the up gradational conditional and provisional, and lacked full authority without government approval.

7. It is well settled that the Courts, in the exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness, etc. Indeed, arbitrariness, irrationality, perversity, and mala fide will render the policy unconstitutional. However, if the policy cannot be

faulted on any of these grounds, the mere fact that it would hurt the interests of a party does not justify invalidating the policy.

8. Prima facie, the CBA agreement's financial clauses, including the claimed upgradation, lack validity without government approval. Furthermore, the petitioners challenged the 2011 issuance of the upgradation order, which had provisional Chairman approval effective June 25, 2011. Therefore, having filed this petition in 2014, approximately three years after the initial cause of action, the petitioners cannot claim its retrospective implementation.

9. Upgradation with retrospective effect" refers to a situation where an employee's pay scale is increased to a higher level, without a change in their duties or position, and this increase is applied to a period before the official date of the upgradation. It is further clarified that upgradation cannot be construed to be promotion, as is generally misunderstood. Up-gradation is carried out without necessarily creating a post in the relevant scale of pay it is carried out under a policy and specified scheme. It is only for the incumbents of isolated posts, which have no avenues or channels of promotion at all. Up-gradation under the scheme is personal to incumbents of the isolated posts to address stagnation and frustration of incumbents on a particular post for a sufficient length of service on the particular post without any progression or avenue in the service.

10. Based on the preceding facts and circumstances, this court is of the considered view that, given the respondents' policy decision as reflected in the office order dated June 25, 2011, consequently, this petition is hereby dismissed, with no order as to the allocation of costs.

JUDGE

HEAD OF CONST. BENCHES