

# THE HIGH COURT OF SINDH, KARACHI

**Before:**

**Justice Mohammad Karim Khan Agha**

**Justice Adnan-ul-Karim Memon**

**CP No D-5953 of 2021**

(Khalid Hameed Hashmi v. Province of Sindh & others)

Petitioner : through Mr. Arshad Khan Tanoli advocate.  
Respondents No. 1 to 4 : Malik Altaf Jawed advocate  
Respondent No.1 : Mr. Ali Safdar Depar

Dates of hearing : 13-05-2025

Date of order : 13-05-2025

## **ORDER**

**Adnan-ul-Karim Memon, J.,** The Petitioner, a BPS-19 officer in the Karachi Metropolitan Corporation (KMC), is challenging an order dated September 30, 2021, issued by Respondent No. 2. This order posted Respondent No. 5, a BPS-18 officer from the Pakistan Administrative Service (PAS), as Senior Director (Zoo, Safari & Recreation) (BPS-19) on an "own pay and scale" (OPS) basis as a stop-gap arrangement, replacing the Petitioner.

2. The case of the petitioner is that he is a confirmed BPS-19 officer under the Sindh Local Councils Employees (Service) Rules 2017 (which also incorporates the Sindh Civil Servants Act 1973 for unaddressed matters) and highlights that these rules mandate that all appointments follow them (Rule 4), with methods being promotion, transfer, or initial appointment (Rule 5). Appointments generally require a selection committee's recommendation (Rule 5(3)), and BPS-16+ initial appointments are made by the Commission, while promotions require government approval (Rule 6(1)). Critically, Rule 20(3) mandates government approval for BPS-19+ transfers/postings, a rule upheld by this Court on November 30, 2018 (CPD. No. 2659/2018). The Petitioner was rightly posted as Senior Director by Respondent No. 1 in July 2020 under Rule 20(3). However, Respondent No. 2 unlawfully disrupted and later reinstated this posting in February and May 2021, actions ultimately canceled by Respondent No. 1 as incompetent, restoring the Petitioner's original posting in June 2021. Astonishingly, Respondents No. 2 and 3, disregarding Rule 20(3) and this Court's judgment, issued another illegal order on September 30, 2021, posting Respondent No. 5 (BPS-18 PAS) as Senior Director (BPS-19) on OPS, an action fundamentally flawed, prompting this Petition.

3. The Petitioner's counsel argued that the challenged order is unlawful and exceeds the issuing authority's powers for several reasons. Firstly, Respondent No. 2 lacked the necessary authority to order the transfer and posting to a BPS-19 position, as Rule 20(3) of the Sindh Local Councils Employees (Service) Rules 2017 mandates government approval for such appointments. Secondly, the counsel contends that the posting disregards established Supreme Court principles, particularly in cases like Province of Sindh versus Ghulam Farid (2015 PLC (CS) 151), which strongly discourage the practice of appointing junior officers to higher grades on an "own pay and scale" basis. Furthermore, it is argued that the order contravenes rulings in Crl. Org Misc. No. 89-K/2011 & CRP NO.193-K/2013 (2013 SCMR 1752 & 2015 SCMR 456), which address the impropriety of posting deputationists to higher positions outside their established cadre. The counsel also asserts that the transfer of Respondent No. 5 from the PAS to the KMC is not allowed under the relevant service rules, namely the Sindh Local Councils Employees (Service) Rules 2017 and the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, as it fails to satisfy the requirements for transfers between different services, particularly concerning appointment procedures, the role of the selection committee, and the conditions governing such transfers. Finally, the counsel points to Respondent No. 2's prior attempts to disrupt the Petitioner's posting, which were subsequently nullified by Respondent No. 1 due to a lack of authority, as further evidence of the current order's illegality. Based on these arguments, the Petitioner seeks a court declaration that the impugned notification is illegal and void, the enforcement of Supreme Court judgments concerning proper civil service structure and transfer regulations, the repatriation of Respondent No. 5 to his original department, and an injunction preventing the Respondents from implementing the challenged notification while the petition is being considered.

3. The learned Assistant Advocate General (AAG), along with the learned Counsel for the KMC, argued that the petition had become ineffective. However, they conceded to granting the petitioner a suitable posting within his BPS-19 cadre, in accordance with his seniority and the KMC's established rules and regulations. At this point, the learned counsel for the petitioner pointed out that his client has been kept on Officer on Special Duty (OSD) status for a considerable time without any substantive posting, highlighting this as a demonstration of indifference on the part of the respondents.

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

5. The central submission of the Petitioner is that an entity without the requisite authority appointed a junior officer to a senior position, a direct violation of established service regulations and binding Supreme Court judgments on the subject issue. Subsequent attempts by similarly unauthorized bodies to withdraw and reissue related orders only underscore the Petitioner's assertion of procedural irregularities and a fundamental absence of legitimate legal authority in these actions.

6. Recognizing that the Supreme Court has already settled this legal point through various pronouncements, and noting the Respondents' in-principle agreement to assign the Petitioner a proper posting according to the law and KMC rules within two weeks, this petition is disposed of in terms of the statements made by the learned AAG and the learned counsel for the KMC, without addressing the merits of the case, and is subject to the applicable laws and KMC rules.

JUDGE

HEAD OF CONST. BENCHES

SHAFI