

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-3100 of 2021

(Muhammad Nusrat & others v. Province of Sindh & others)

Petitioners : through Mr. Faizan Hussain Memon
advocate
Respondent Nos. 1 to 3 : Mr. Ali Safdar Depar AAG
Date of hearing : 16-05-2025
Date of order : 16-05-2025

ORDER

Adnan-ul-Karim Memon, J. The Petitioners pray that this Court declare the impugned notifications dated 11.02.2016, 12.02.2016 and 17.02.2016 issued by respondent Auqaf, Religious affairs, Zakat and Ushr Department (ARAZU), illegal, malafide, unwanted and of no legal effect, thus are liable to be set aside and direct the Respondents to restore their promotions to the positions already held by them in BS-14 to 16, forthwith.

2. It is the case of the petitioners that they served with clean records in the Auqaf Department, Government of Sindh. The Petitioners contest the cancellation of their promotions as discussed supra. These promotions, granted to them in 2012 and 2015 following Departmental Promotion Committee (DPC) recommendations, were reversed as "out-of-turn" based on a Supreme Court judgment reported in **2013 SCMR 1752**. Despite the Petitioners' appeals and the Chief Administrator's 2017-2018 assertion that their promotions were not out-of-turn and should be reinstated, however, Respondent No. 2 remained inactive on the subject issue. However, the Advocate General Sindh advised in January 2020 that the promotions of the petitioners complied with the Supreme Court's ruling and recommended withdrawing the cancellation of promotions of the petitioners under the General Clauses Act, 1897, consequently, respondent No. 2 instructed Respondent No. 3 accordingly, who then requested Respondent No. 2 to revoke the notifications. Although lower-grade (BPS-1 to BPS-15) demotions were rescinded, the Petitioners (BPS-16 and above officer) still await action for reversal of the impugned notifications as discussed supra, whereby their promotion to higher rank was withdrawn.

3. The Petitioners' counsel contended that Respondent No. 2's inaction on withdrawing the cancellation of their promotions is arbitrary, unlawful, and unconstitutional. Counsel maintained that their promotions were legitimate, duly

recommended by the Departmental Promotion Committee and not "out-of-turn,/ out of cadre promotions, pointing out the discriminatory treatment compared to lower-grade employees of the same department, whose demotions were reversed. He underscored the Advocate General's legal advice supporting the reinstatement of the promotions and the Petitioners' rightful expectation of continued advancement. Consequently, the Petitioners' counsel urged this Court to declare the challenged notifications illegal, order the Respondents to immediately restore their promotions on the same position as already held by them and their subsequent promotion of some of the petitioners in 2023. Finally, the petitioner's counsel informed that during the case's pendency, some petitioners were promoted, providing a table outlining their current and original positions for this court's consideration for a just and proper disposal of the case.

4. The AAG opposed the petition, stating that the department followed the Supreme Court judgment (**2013 SCMR 1752**) with competent authority's approval to cancel 2012 Auqaf department promotions due to lack of authorization, ex-cadre postings, no clear vacancies, and ignored seniority. The AAG argued that under the Waqf Properties Act, Auqaf Manager appointments have a process, and the Chief Administrator's discretion must follow rules. He cited the 2016 Sindh Auqaf Rules and 2010 Waqf Properties Act, denying wrongdoing on the part of the respondents, and submitted that the petitioners had not proven Minister/Chief Secretary approval for BPS-17/18 promotions. The AAG contended that the DPC of the relevant time was flawed by disregarding the Auqaf Service Rules, excluding a Services Department representative, and ignoring promotion quotas as required under the law. He emphasized that the Chief Administrator recommended cancellation of the promotions due to procedural errors and conflict with the Supreme Court's 2013 ruling as discussed supra, making appeals of the petitioners unsustainable. He added that the Services Department stated that the Law Department could not interpret the Supreme Court's judgment as well as AAG office. The AAG asserted that the Sindh Service Tribunal should handle the matter at hand as per Supreme Court precedent, however he denied malafide intent on the part of respondents, reiterated the DPC's flaws, and argued the Advocate General's opinion in terms of Article 140-A of the Constitution could not override the Supreme Court decision. He stated legitimate promotion expectations have limits and deemed further arguments unnecessary due to the Supreme Court's judgment on the subject issue. Regarding the prayers of the petitioners, the AAG argued it challenged Supreme Court authority as the impugned order followed its directive, thus needing no further consideration on the part of this Court. He prayed for the dismissal of the petition.

5. We have heard the learned counsel for the parties and reviewed the record with their assistance, along with the case law cited at the bar.

6. There is no cavil the proposition that if the promotion of the petitioners have been de-notified by the order of the Supreme Court, this Court will not travel into that arena. However, before we reach to the conclusion, let at the first instance, the competitive authority of the respondents to see this aspect and take decision in accordance with law.

7. It is well settled law that the cancellation of the individuals promotions without proper, separate notices was/is unlawful. However in the present case, the reasons provided for this cancellation, subsequent to the promotions' implementation with effect from 2012 to 2016 with benefits, are vague and lack legal basis. The claim that the Supreme Court's judgment necessitated the recall of promotion orders of the petitioners, contradicts the advice of the Advocate General Sindh and other departmental heads as pointed out by the parties. The respondents failed to provide justifiable and lawful reasons for reconsidering and cancelling the petitioners' promotions already granted vide Notification dated 31.05.2012, acting unilaterally without adhering to legal procedures. It is well settled law that altering vested rights, including promotions, requires granting the affected parties a meaningful hearing, which the learned AAG conceded was not provided. In our view that separate proceedings ought to have been initiated before recalling the promotion orders. Furthermore, legal precedents, including **PLD 1992 SC 207, 2007 PLC (C.S) 364** and Capital Development Authority case **2022 SCMR 627**, suggest that such a recall may not be permissible.

8. The Supreme Court in the case of Nazeer Ahmed Chkrani v Government of Pakistan (**2004 SCMR 623**), reiterating the principle from Pakistan International Airlines v Nasir Jamal Malik (**2001 SCMR 934**), established that a promoted employee cannot be demoted without being given a chance to be heard and present their case. In the Nazeer Ahmed Chkrani case, the petitioner was promoted to General Manager in 1995 and then demoted to Deputy General Manager in 1997 without any prior explanation sought regarding the circumstances of their promotion or their capability to hold the higher post. The demotion order also lacked any stated reasons for the Competent Authority's opinion that the promotion was wrongful. The Supreme Court, without delving into the merits of the case, held that the demotion violated the principles of natural justice ("no one should be condemned unheard"). Consequently, the petition was converted into an appeal and allowed, setting aside the Federal Service Tribunal's order and the departmental demotion order. The Supreme Court clarified that the Pakistan State Oil Company Limited remains free to initiate fresh action against the petitioner, provided they follow the correct legal

procedure, and no order regarding costs was issued. In recent judgment of 2022, the Supreme Court has ruled that no decision be taken effacing the right of any person without first being informed of the case and affording an ample opportunity of defense, therefore judicial propriety demand that this matter needs to be taken care of by the competitive authority of respondents before taking adverse view until and unless there is strict compliance of the Supreme Court decisions.

9. Based on the Supreme Court's findings, it's clear that a government cannot demote an employee to a lower position without providing them notice and a chance to be heard. This fundamental principle of natural justice is implicitly part of all laws, rules, and organizational decisions, including those made by the respondents.

10. At this point, we proposed remitting the case to the respondents' competent authority for reconsideration. This would involve a thorough review of the service record of the petitioners, consideration of relevant Supreme Court judgments, and granting the petitioner a proper hearing to reach a fresh decision within three months. During this period, the challenged notification would be suspended. While the petitioner's counsel requested setting aside the notification and the learned AAG sought a decision on the case's merits, we find it appropriate to remit the matter to the Chief Secretary Sindh. The Chief Secretary will coordinate with the Secretary Auqaf and the Secretary Services and General Administration to convene a meeting. After examining the petitioners' service records and promotion orders, a new decision will be made within three months, with the challenged notification remaining suspended in the meantime.

11. This petition is disposed of in these terms.

JUDGE

HEAD OF CONST. BENCHES

SHAFI