

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

CP No D- 1605 of 2021

(Mst. Arshad Akhtar v. Federation of Pakistan & others)

Petitioner : through Syed Shou-un-Nabi, advocate.
Respondents No. 1 to 3 Ms. Zehra Sehar, Assistant Attorney General
Date of hearing: 15-05-2025
Date of order 15-05-2025

ORDER

Adnan-ul-Karim Memon, J., Petitioner seeks the following direction:-

a) Order Respondents to upgrade Petitioner from Sister Tutor BPS-17 to BPS-18 effective 15.12.2008 per S.R.O 1270(I)/2008.

b) Order Respondent to promote Petitioner via DPC from Nursing Instructor BPS-18 to Principal BPS-19 or Deputy Chief Nursing Superintendent BPS-19 (ref. letter No F.1-1/2006-Per-I dated 21.05.2011).

c) Order Respondents to upgrade Petitioner from Principal School of Nursing BPS-19 to BPS-20 per PNC, OR upgrade the School of Nursing to College of Nursing with Principal at BPS-20.

2. Currently an Acting Principal/Nursing Instructor (BPS-18), the Petitioner's long career began in 1986 as a Charge Nurse (BPS-14), progressing through Head Nurse (BPS-16) and Sister Tutor (BPS-17) roles. While under Federal control until June 2011, a 2008 Federal S.R.O. (1270(I)/2008, dated 15.12.2008) mandated an upgrade from Sister Tutor BPS-17 to BPS-18, which was not applied to her despite earlier requests. However, promoted to Nursing Instructor BPS-18 in 2011, she submitted that proper implementation of the 2008 upgrade would have made her eligible for Principal (BPS-19) or Deputy Chief Nursing Superintendent (BPS-19) based on a Ministry of Health letter (21.05.2011). It is averred by the petitioner that post-devolution to Sindh in June 2011, she became Acting Principal in 2014 without the corresponding benefits or BPS-19 promotion. She further submitted that her promotion request in 2015 and 2018 were denied due to an upgrade ban as per Sindh Government Decision. However, a 2018 upgrade process excluded her while including non-nursing staff, and some National Institute of Child Health (NICH) employees, including the Executive Director, were upgraded in 2019. The Petitioner emphasized that higher nursing leadership roles (Chief Nursing Superintendent and Principal) have been upgraded per relevant policies. Finally, she pointed out that the nationwide shift from diploma to BSc Nursing has led to the upgrade of nursing schools to Colleges with BPS-20 Principals, a change not yet implemented at her institution.

3. The Petitioner's counsel argued that her case is comparable to that of Dr. Syed Jamal Raza, Director NICH; if the Director was upgraded, the Petitioner possesses a similar legal right to an upgrade and subsequent promotion from her current Acting Principal/Nursing Instructor (BPS-18) position to Principal (BPS-19), and then to Principal College of Nursing (BPS-20). The counsel further contended that the Director NICH discriminated against the nursing cadre, specifically the Petitioner, intentionally denying her known right to upgrade/promotion. This action, bypassing a transparent process and inappropriately upgrading other NICH employees (Serial No. 5 to 12 of Appendix no 15), violated the Petitioner's fundamental rights under the Constitution. Additionally, the counsel stated that the Federal Government's notifications regarding upgrades were not properly followed or implemented by the relevant department. He added that the Respondents' actions are described as arbitrary and unfair, with a risk of further misuse of their official positions. Facing extreme discrimination, the Petitioner has no other effective legal recourse than this Petition. He prayed to allow the petition.

4. The learned Assistant Attorney General/ Assistant Advocate General (AAG) argued that the nursing cadre's clinical side was upgraded in 2006, followed by federal approval of new nursing rules in 2008. However, implementation at NICH was delayed until August 20, 2019, due to the institution's transfer to Sindh Government control and a pending court case. This 2019 implementation upgraded Nursing Instructor posts from BPS-17 to BPS-18. Since the Petitioner was already at BPS-18, she did not directly benefit from this particular upgrade, though her three prior promotions were acknowledged. The AAG emphasized that NICH actively sought the adoption of the 2008 federal rules. Following the Chief Minister's directives, the Health Department reviewed promotions for devolved NICH staff in 2018 and 2020, and the upgradation of various positions, including the Executive Director, adhered to due process. The Petitioner's position was not further upgraded at that time because she was already in BPS-18, although many colleagues in BPS-17 did receive upgrades. The AAG stated that the Petitioner's case for promotion from Nursing Instructor (BPS-18) to Principal School of Nursing (BPS-19) was submitted to the Health Department on January 2, 2021. Unfortunately, she retired on April 12, 2021, before this could be finalized. A high-level meeting in January 2018, chaired by the Chief Minister, addressed NICH's issues, including the nursing cadre upgrade, in accordance with government regulations. The resulting upgrade order did not directly benefit the Petitioner due to her existing BPS-18 status, and her promotion to Principal (BPS-19) was not considered before her retirement. The AAG submitted that the Petitioner's involvement in initiating the BSc Nursing program at NICH, as per PNC guidelines. The request to elevate NICH from a School to a College of Nursing is currently under review by the Health Department, with action to be taken upon notification. Finally, the AAG pointed out the Petitioner's retirement on April 12, 2021, and the subsequent retirement of the Executive Director. The remaining arguments presented by the Petitioner were denied, with the AAG stating that she could

apply for proforma promotion for consideration. The AAG concluded by requesting the Court to decide the petition based on its merits.

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

6. The Petitioner retired before her BPS-19 promotion could be finalized by Provincial Selection Board (PSB-II). However, the very essence of proforma promotion is to address situations where the promotion process was in progress or the right to be considered had already been established before retirement. While the Petitioner attributes the delay to administrative factors, the Respondents have not explicitly admitted fault. Nevertheless, it appears the Petitioner was indeed eligible and due for promotion to Principal School of Nursing (BPS-19) before her April 2021 retirement. This is evidenced by the issuance of agenda items for the Provincial Selection Board No. II meeting on March 5, 2021, which included the promotion to Principal School of Nursing. Furthermore, the Petitioner's working papers were submitted for promotion to this post. Despite this, the PSB deferred her case without assigning valid reasons, and she subsequently retired. Therefore, the delay in her promotion case appears to stem from administrative reasons or oversight, not from any fault on the Petitioner's part.

7. Thus, we are inclined to entertain the request of the petitioner in the matter. On the aforesaid proposition, we are fortified by the decisions of the Supreme Court rendered in the cases of Dr. Syed Sabir Ali v. Government of Punjab through Secretary Health Punjab and others, (2008 SCMR 1535), Federation of Pakistan and others v. Amir Zaman Shinwari, Superintending Engineer, (2008 SCMR 1138) and Dr. Muhammad Amjad v. Dr. Israr Ahmed, (2010 SCMR 1466).

8. We for the aforesaid reasons, dispose of this constitutional petition and direct the competent authority of the official respondents to re-consider the case of the petitioner for proforma promotion in BS-19, after her retirement, by way of circulation within two months subject to the availability of vacancy in BPS-19 under the Recruitment Rules. As the petitioner has already retired on April 12, 2021, therefore, her proforma promotion will not affect the seniority of any person already in service and he would be entitled to his emoluments and pensionary benefits under the law.

JUDGE

HEAD OF CONST. BENCHES

SHAFI