

IN HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D-890 of 2023

PRESENT:

MR. JUSTICE ARBAB ALI HAKRO

MR. JUSTICE RIAZAT ALI SAHAR

Petitioner : Shujaat Ali through Mr. Ishrat Ali
Lohar, Advocate.

Respondents: No notice was issued.

Date of Hearing : **02.05.2025**

Date of Decision : **02.05.2025**

JUDGMENT

RIAZAT ALI SAHAR J: - Through this judgment, we propose to decide the instant constitutional petition filed by the petitioner, a civil servant, seeking directions to the official respondents for his due promotion in accordance with the applicable promotion policy. The petitioner, while not directly challenging previous promotions, contends that his right to promotion has been consistently ignored despite his seniority, service record, and eligibility. The petitioner prays as under:-

- (A). *That, this Honourable Court may kindly be pleased to declare the act of the official respondent No.1 & 3 to not consider the petitioner for next promotion is illegal, unlawful and void-ab-intio.*
- (B). *That, this Honourable Court may kindly be pleased to direct the respondent No.1 & 3 to promote the Petitioner being eligible as per promotion policy.*
- (C). *That, this Honourable Court may very graciously be pleased to restrain the official respondents not to consider the further promotions of Junior Employees other than the petitioner.*

(D). *That, this Honourable Court may very graciously be pleased to consider the promotion of the petitioner along with all consequential benefits.*

(E). *That, any other relief which this Honourable Court may deem fit and proper to award the petitioner.*

2. In his petition, the petitioner avers that he was appointed as Manual Assistant (BPS-05) in the Weight and Measures Department, Badin, in the year 1985. Despite over 38 years of satisfactory service, he has neither been upgraded nor considered for promotion. He relies on departmental seniority lists dated 31.12.2010 and 31.10.2020, asserting that many of his juniors were promoted in the years 2011 and 2015 while he was ignored without lawful justification. The petitioner does not seek to set aside the promotions already made but has cited them to demonstrate a pattern of discrimination. His primary grievance is that respondents continue to bypass him in considering eligible employees for promotion. Despite written representations, his case has not been considered, as such, he has filed the present petition.

3. Learned counsel for the petitioner submits that the petitioner fulfills all criteria for promotion as per the governing promotion policy and rules. He contends that the failure of the department to consider the petitioner for promotion is arbitrary and discriminatory, especially when juniors have already been promoted in the past. Learned counsel emphasizes that the petitioner only seeks his own due promotion and a restraint against further promotions of juniors without consideration of his case.

4. After perusing the material and hearing the learned counsel we have examined the critical issues to determine the maintainability and merit of the petition (i) Jurisdictional Bar Under Article 212(2) of the Constitution of the Islamic Republic

of Pakistan, 1973, (ii) Nature of the Petitioner's Grievance, (iii) Availability of Alternate Remedy and (iv) Delay and Laches.

i) Jurisdictional Bar Under Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973.

Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973, provides:

“Notwithstanding anything herein contained, a tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of persons who are or have been in the service of Pakistan...”

Promotion squarely falls within the realm of ***terms and conditions of service*** of a **civil servant**. In this regard, the Sindh Service Tribunal, established under the Sindh Civil Servants Act, 1973, read with Article 212 of the Constitution, is the exclusive forum for such service-related disputes. Consequently, this Court lacks jurisdiction to entertain the petitioner's grievance, even if inferred as a constitutional violation under Article 199 of the Constitution.

(ii) Nature of the Petitioner's Grievance.

Although, the petitioner has not directly challenged the promotions already made, he relies on those instances to show discriminatory treatment. His main relief pertains to his own non-promotion and the future possibility of juniors being considered ahead of him. Nonetheless, even this form of preventive or prospective relief remains within the exclusive domain of the Service Tribunal.

(iii) Availability of Alternate Remedy.

The petitioner has not availed the statutory remedy provided under Section 4 of the Sindh Service Tribunals

Act, 1973. He has also not shown any compelling grounds to bypass the alternate forum, such as denial of access or manifest illegality. The well-established principle is that where a statutory remedy exists, constitutional jurisdiction is not to be invoked as a substitute.

(iv) Delay and Laches.

The petitioner refers to events going back to 2011 and 2015, but filed this petition in year 2023. Even though his grievance is continuing in nature, he has not shown any diligent pursuit of his claim through the proper legal channel. Such unexplained delay also contributes to the non-maintainability of this petition.

5. In view of the above discussion, we are of the considered view that the petitioner, being a civil servant, is governed by the Civil Servants Act and is bound to seek his redressal before the Service Tribunal. The grievance relates to service matters, specifically, promotion; thus, falling within the exclusive jurisdiction of the Service Tribunal under Article 212 of the Constitution. The petitioner has neither availed the alternate remedy nor shown compelling reasons for invoking constitutional jurisdiction and the petition is also affected by unexplained delay and no urgent or irreparable harm has been demonstrated to justify interference.

6. For what has been discussed above, the petition is **dismissed in *limine*** with no order as to costs.

JUDGE

JUDGE