

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D – 6134 of 2024

[Dr. Muhammad Suleman and another *versus* Federation of Pakistan and 5 others]

Present:  
**Mr. Muhammad Faisal Kamal Alam, J.**  
**Mr. Nisar Ahmed Bhanbhro, J.**

Date of hearings : 26.02.2025, 10.03.2025, 14.04.2025.

Petitioners : Dr. Muhammad Suleman and another through Mr. Salman Talibuddin, Advocate.

Respondent No.1 : Federation of Pakistan, through Raja Khaleeq-uz-Zaman Ansari, Assistant Attorney General for Pakistan.

Respondents No.2, 3 and 4 : Province of Sindh and 2 others, through Mr. Abdul Jalil Zubedi, Additional Advocate General Sindh.

Respondent No.5 : Jinnah Postgraduate Medical Centre [JPMC], through M/s. Syed M. Khurram and Muhammad Rahib Lakho, Advocates along with Dr. Adeel Samoo, Deputy Director JPMC [Legal Focal Person].

Respondent No.6 : Dr. Kausar Abbas Saldera, through Sardar Muhammad Abdul Latif Khan Khosa, Sardar Balakh Sher Khosa, Malik Altaf Hussain and Imtiaz Solangi, Advocates.

**Case law cited by Counsel for the Petitioners.**

**2025 S C M R 104**

[*Mohsin Raza Gondal and others versus Sardar Mahmood and others*].

**Case law relied upon by the Legal Team of Respondent No.6.**

- i. **2024 S C M R 2004**  
[*Ahmad Ullah and others versus District Education Officer (Male), Buner and others*];
- ii. **1993 S C M R 609**  
[*Federation of Pakistan and others versus Rais Khan*];
- iii. **1998 S C M R 969**  
[*Dr. Sher Wali Khan, Assistant Director, Health Service, Northern Areas, Gilgit versus Dr. M. Hassan Khan Amacha and 4 others*];  
and

- iv. **2020 P L C (C.S.) Note 35**  
[*Salma Aziz versus Government of Gilgit-Baltistan, through Chief Secretary, Gilgit-Baltistan and 4 others*] – **Salma Aziz Case**.

**Case law relied upon by the Additional Advocate General Sindh.**

- i. **P L D 2003 Supreme Court 110**  
[*Government of Pakistan through Establishment Division, Islamabad and 7 others versus Hameed Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others*];
- ii. **1991 S C M R 2330**  
[*Aslam Warraich and others versus Secretary, Planning and Development Division and 2 others*];
- iii. **2017 S C M R 890**  
[*Federal Public Service Commission through Secretary versus Anwar-ul-Haq (Private Secretary) Islamabad and others*] - **Anwar-ul-Haq case**;
- iv. Unreported Judgment dated 17.12.2018 passed in C. P. No. D – 6611 of 2018 [*Muhammad Ismail Shaikh and 116 others versus Province of Sindh and another*] – **Ismail Shaikh case**;
- v. **2005 P L C (C.S.) 1068 [Sindh Service Tribunal]**  
[*Dr. Iqbal Ahmed Memon, Professor of Paediatrics, D.M.C., Karachi versus Government of Sindh through Chief Secretary, Government of Sindh, Karachi and others*]; and
- vi. **2015 S C M R 1257**  
[*Pir Imran Sajid and others versus Managing Director / General Manager (Manager Finance) Telephone Industries of Pakistan and others*].

**The Legal Research Cell of this Court has mentioned the following Judgments in the Bench Memo:**

- i. **2016 S C M R 773**  
[*Chairman, Federal Board of Revenue and others versus Iqbal Hussain Shaikh and others*];
- ii. **2019 S C M R 349**  
[*Chairman, FBR through Member Administration versus Muhammad Asfandiyar Janjua and others*];
- iii. **2022 S C M R 448**  
[*Bashir Ahmed Badini, D&SJ, Dera Allah Yar and others versus Hon'ble Chairman and Member of Administration Committee and Promotion Committee of Hon'ble High Court of Balochistan and others*]; **Badini Case** and
- iv. **2024 S C M R 527**  
[*Vice-Chancellor Agriculture University, Peshawar and others versus Muhammad Shafiq and others*].

**Law under discussion:**

1. The Constitution of the Islamic Republic of Pakistan, 1973.

2. The Sindh Civil Servants [Appointment, Promotion and Transfer] Rules, 1974 and the Amended Promotion Rules, 2022.
3. Notification [16.12.2021] of Health Department, Government of Sindh for JPMC Employees.

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** Through this Petition, eligibility of Respondent No.6 for promotion is questioned so is the Notification dated 08.08.2024, whereby, She was appointed as Professor of Physiology [BS-20] in Respondent-JPMC, on acting charge basis, under Rule 8-A of the Sindh Civil Servants [Appointment, Promotion and Transfer] Rules, 1974 – **Service Rules**.

2. Mr. Salman Talibuddin, learned Counsel appearing for the Petitioners, has referred to Paragraph-11 of the Petition, in which a Comparative Table is given showing the shortfall in length of service of Respondent No.6, in view of Service Rules; that Respondent No.6 was appointed on Contract on 15.04.2008, vide Notification of Respondent No.1, and was regularized in BPS-17 on 16.07.2011, through the Notification dated 16.07.2011 [*Annexure “B”, at page-23 of the Court File*]; referred to the Parawise Comments filed by the Accountant General and, in particular, *Pages-29 to 31*, in which the date of employment of Respondent No.6 is mentioned as 17.03.2008, which is contrary to record; that on the Representation, rather, mis-representation of Respondent No.6, her date of employment in Respondent No.5-JPMC is taken as 17.03.2008 [from the date of initial appointment on Contract], instead of 16.07.2011 [*supra*]; she has surreptitiously got accelerated promotions; first, as Associate Professor in BS-19, vide Notification dated 08.05.2023 [*Annexure “G”, Page-39*] and then recently on 08.08.2024 [*Annexure “J”, page-87*] as Professor of

Physiology, because the Respondent No.6 was made Assistant Professor [in BS-18] vide Notification dated 07.12.2021 [Annexure “F”, page-37]. Referred to C. P. No. D – 1594 of 2024, filed by Dr. Nasreen Fatima [as Petitioner], in which stance of present Respondent No.5 [JPMC] is that the present Respondent No.6 [Dr. Kausar Abbas] is not eligible for promotion in BPS-20. Counsel has referred to C. P. No. D – 2255 of 2022, filed by present Respondent No.6, *inter alia*, seeking direction against Respondents to consider the candidature of Respondent No.6 for promotion in BPS-19. In the Parawise Comments filed by present Respondent No.3-Secretary of Health, it is stated that the Board, deferred the promotion of Respondent No.6 [Dr. Kausar Abbas], for the reason that she was [at the relevant time] was recently promoted in BPS-18 and did not complete the required length of service nor she earned the ACR [Annual Confidential Report] of her present Grade, that is, PBS-18.

3. Mr. Muhammad Latif Khan Khosa, learned Counsel appearing for Respondent No.6, has rebutted the above arguments of Petitioner’s Counsel. Commenced his arguments by referring to the Order dated 05.12.2024, passed by this Court, whereby, the Notification dated 08.08.2024 has been suspended. Stated that by virtue of the said Notification, the Respondent No.6 was given Acting Charge in terms of Rule 8-A of the Service Rules; in this Rule, length of Service has specifically been dispensed with, besides, it is not a promotion by any stretch of imagination, and, therefore, the arguments of Petitioners’ Counsel is misconceived in nature. Has questioned the maintainability of this Petition, because it relates to terms and condition of service of Respondent No.6 and bar mentioned in Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 [the “**Constitution**”], is fully applicable to the facts of present case, *inter alia*, because both Petitioners, who are also

employees of Respondent-JPMC and civil servants, cannot agitate the issue of earlier promotion and present incumbency of Respondent No.6, who also is a Civil Servant, through this Petition; present Petition is the evidence of *mala fide* on the part of the Petitioners, who did not challenge the promotion of Dr. Sanum Ali, promoted earlier on 08.05.2023 with the present Respondent No.6, so also, because Respondent No.6 filed a Suit No.1212 of 2024, in which this Court vide Order dated 07.11.2024, suspended the Notification dated 18.10.2024, whereby, Rules for Recruitment against the post of Joint Executive Director [BPS-20] were notified, has antagonized the vested interest in Respondent No.5 and present Petition is just a counter blast and be dismissed. Has laid much emphasis on his arguments that the earlier period preceding regular appointment of Respondent No.6 has to be taken into account for her overall career growth and the same stance is recognized by one of the Government functionaries, viz. Accountant General Office, which has filed separate Parawise Comments [*at page-793 of the Court File*], are referred to by the learned Counsel in support of his stance, showing total length of service of Respondent No.6 in her Salary Slip as sixteen years, four month and sixteen days [*Annexure 'D', page-31 of the Court File*], which fulfills the requirement of her promotion to next higher grades. Contended that this is not a Writ Petition in the nature of *Quo Warranto*, because the Petitioners have agitated their interest in the subject matter, which means that the latter [Petitioners] have personal interest, rather bias, towards Respondent No.6. To augment his arguments, he has cited the Case Law mentioned in the opening part of the Judgment.

4. Mr. Abdul Jalil Zubedi, Additional Advocate General Sindh, appearing for Respondent No.3, has placed on record the Amended Promotion Rules, 2022, and Schedule II thereof, in which Table is given for

promotion to various basic pay scales from BPS-18 to BPS-21. Contended that length of service of present Respondent No.6 was illegally changed from eleven years, six months and four days, as mentioned in her Salary Slip for the month of December 2022 [Annexure 'C', page-29 of Court File], to sixteen years, four month and sixteen days in the recent Salary Slip for the month of July 2024 [Page-31, Annexure 'D' with Petition]; *whereas*, Salary Slips available in the record from Pages-33 to 35, of other two employees, namely, Dr. Asif Ahmed Qureshi and Dr. Malik Abid, who, admittedly, were appointed with the Respondent No.6, are not amended and their total length of service is shown as thirteen years, one month and four days. Referred to the pleadings of C. P. No. D – 2255 of 2022 [at page-227] filed by present Respondent No.6, *inter alia*, against Respondent No.3, and the Parawise Comments of the latter [Secretary of Health], in which it is stated in response to corresponding paragraph of the said Petition that the present Respondent No.6 [Petitioner of the above Petition] was promoted as Assistant Professor Physiology in BPS-18 through Departmental Promotion Committee on regular basis with effect from 07.12.2021, and thus her further promotion was deferred in the Board meeting of 11.02.2022, on the basis that she had not completed [at the relevant time] the required length of service nor she has earned ACRs of her present Grade [BPS-18]. Concluded his arguments by stating that the Respondent No.6 is not eligible to hold the present post nor her promotion in BPS-19 was within the parameters of Service Rules. In support of his arguments, he has cited the Case Law shown in the opening part above.

Relevant part of the above Rules [2022] is reproduced as under\_

*For BPS 18 5 years in BS-17*

*For BPS 19 12 years in BS-17 and above*

*For BPS 20 17 years in BS-17 and above*

*For BPS 21 22 years in BS-17 and above*

5. Learned counsel for Respondent-JPMC has stated that the Management of JPMC has not forwarded F.O. Form-II to the Accountant General Office- Respondent No.4, for correction of date of birth of Respondent No.6, and thus, did not oppose the Petition.

6. Arguments heard and record perused.

7. The crux of the case law cited by the Petitioners' Counsel is that regularization of a contract employee constitutes a fresh appointment into the stream of regular appointment in civil services.

8. Précis of case law relied upon by the Counsel for Respondent No.6 is that since Article 212 of the Constitution starts with a non obstante clause, then except for the Tribunal established under the said provision, no Court can grant any injunction or entertain any proceeding in respect of the case falling within the domain of the Service Tribunal; eligibility and other matters regarding the terms and conditions of service are exclusively within the domain of the Tribunal and thus cannot be entertained under Article 199 of the Constitution; In Salma Aziz Case [*supra*] while placing reliance on Rule 22.1 of the Estacode, it is held that service rendered on ad hoc / contract basis in a post under the Federal Government, followed by regular appointment to a post in the same pay scale shall be counted towards length of service prescribed for promotion to the higher post, provided that there is no break between the ad hoc and regular appointment.

9. Summary of the Case Law cited by the learned Additional Advocate General Sindh is\_

The Honourable Supreme Court in the case of Anwar-ul-Haq [*supra*] has approved the Office Memorandum dated 02.06.1983 [issued by Government of Pakistan Cabinet Secretariat Establishment Division] where under minimum length of service for promotion to the next higher grade is

mentioned. Learned Division Bench of this Court in the case of Ismail Shaikh [*ibid*] ruled, that for the purpose of promotion, petitioner's seniority can be reckoned from the date of regular appointment, that is, 16.01.2018 [when the Notification was issued], in view of Section 8, Sub-Section 4 of the Sindh Civil Servants Act, 1973, while holding that period of employment preceding the regularization is not added in the length of service, *inter alia*, because, the person / petitioner is not a civil servant, while serving as a contract employee.

10. The Legal Research Cell of this Court has also provided able assistance in this case with the Case Law mentioned in the opening part of the Judgment, summary whereof is as under\_

Regularization of a contractual employee is a fresh appointment into the stream of regular appointment, which can be done on the basis of a well thought out policy of the Institution concerned; the Honourable Supreme Court in Badini Case [*ibid*] has ruled that services rendered by the employees on ad hoc basis prior to their regularization cannot be counted for the purpose of their seniority, but their seniority will be counted from their substantive regular appointments. In FBR Judgment [*supra*], the grievance of respondent No.1 [of the reported case] was that he was not recommended for promotion from BS-18 to 19 for want of 12 years mandatory service in BS-18 and above. The **Office Memorandum** issued by the Federal Government [Secretariat Establishment Division] mentioning the minimum length of service for promotion to various grades has been held to have a force of law. Held, since, neither seniority nor promotion are the vested rights of the civil servants, therefore, same cannot be claimed or granted without completing the actual length of service. It is observed by the Apex Court after discussing various judicial precedents, that in none of the cited judgments, the minimum length of service was



relaxed to concede promotion to higher grade, while observing that respondent at the relevant time even did not qualify to be considered for appointment to BS-19 on acting charge basis.

11. In view of the above Case Law, the judicial consensus is that for promotion, length of service will be counted from the date of regular appointment in the cadre, if a person has been inducted as a contract employee, which is the case of Respondent No.6. The contract period of Respondent No.6 cannot be added in the length of her employment after the above regularisation in service from 29.6. 2011 [Notification dated 16.7.2011, *supra*]. The Judgement of learned Gilgit Baltistan High Court in Salma Aziz Case [relied upon by the Legal Team of Respondent No.6] is per incuriam and thus, cannot be considered. Correctly observed by this Court in the Case of Ismail Shaikh (*supra*) that since the person working on contract basis is not considered as a civil servant, therefore, in the present case also, the contract period of employment of Respondent No.6 cannot be included in calculating her seniority and length of service, *inter alia*, for promoting to next higher grade.

12. Admittedly, Respondent No.6 [Dr. Dausar Abbas Saldera] was inducted as Medical Officer in BS-17 in the Project of Establishment of the Institute of Neuro Surgery, JMPC at Karachi on contract basis for a period of one year with other persons, vide Notification dated 15.04.2008 [*Page-21 of the Petition*]. Subsequently, by the Notification dated 16.07.2011 issued by the Respondent No.1 (Capital Administration & Development Division), services of employees working on contract basis, in Respondent JPMC, including of **Respondent No.6** was **regularized** as a special case with effect from 29.06.2011 in BS-17. Her first promotion in next higher grade, in BS-18 as Associate Professor, Physiology was through Notification dated 07.12.2021 [*Page-37, Annexure 'F' with Petition*] (undisputed), and

then she was promoted as Associate Professor in BS-19, by Notification dated 08.05.2023. Eventually by the Notification dated 08.08.2024, Dr. Kausar Abbas is appointed to the post of Professor of Physiology in BS-20, JPMC, Health Department, on acting charge basis, purportedly under Rule 8A of Service Rules.

13. Another employee of Respondent JPMC, namely, Dr. Nasreen Fatima has filed a Constitution Petition No. D – 1594 of 2024, questioning the inclusion of name of Respondent No.6/Dr. Kausar Abbas Saldera in the Working Paper, prepared for promotion in BS-20. Parawise Comments thereto submitted by JPMC, has stated that present Respondent No.6 [Dr. Kausar Abbas Saldera] is not eligible to be promoted to the post of Professor in BS-20. However, this has been refuted by the Counsel of Respondent No.6, stating that the impugned Notification itself states that Respondent No.6 is holding acting charge under Rule 8A and thus the Parawise Comments of JPMC in the said Petition are incorrect and misconceived in nature.

14. The Petitioner in Paragraph-5 of the Petition has highlighted the shortfall in length of service of Respondent No.6, for promotion to next higher grade which was partly controverted in Para-12 of her Counter Affidavit [Respondent No.6] by stating that for promotion on acting charge basis, there is no requirement of length of service, **without dilating upon her promotion in BS-19** [it means, there is no specific denial]. The said Table of length of service prepared by the Petitioner, is based on the Notification dated 16.12.2021 issued by Respondent-Health Department (Government of Sindh), which coincidentally has also been relied upon by the Respondent No.6 as Annexure “M” of her Statement dated 07.03.2025. According to this Notification—**JPMC Rules**—

*“Twelve years’ service in BPS-17 and above or as prescribed by the Government from time to time, in same cadre, which includes three years’ service in teaching as an Assistant Professor, on seniority-cum-fitness basis.*

*Provided that total teaching service as Assistant Professor is not less than five years and must have produced at least 5 research papers during last 3 years as Assistant Professor.*

**And for promotion as Professor in BS-20:----**

*Seventeen years’ service in BPS-17 and above or as prescribed by the Government from time to time, in same cadre, which includes three years’ teaching experience as an Associate Professor.*

*Provided that total service Associate Professor is not less than eight years and must have produced at least 2 research papers during last 3 years as Associate Professor and further total research papers as Assistant/Associate Professor should not be less than 5.”*

15. Learned Counsel for Respondent No.6 has referred to Annexures ‘O’ and ‘P’ appended with his Statement dated 07.03.2025 [Pages-633, 701 and 703 in the second part of the *Lis* record]. Contends that these Certificates dated 18.12.2021 and 13.01.2022, issued from the Office of the Executive Director of Respondent No.5, confirm that the Respondent No.6 has requisite teaching experience as mentioned in the JPMC Rules [*ibid*]. As per the above Certificates, the Respondent No.6, as Assistant Professor [on c.c. basis in the Department of Physiology] has rendered service in teaching for four years, nine months and three days and on regular basis, for 22 days.

As per the above JPMC Rules, two basic criteria for promotion are mentioned, that is, *firstly*, twelve years’ service in BS-17 and above; and, *secondly*, including three years’ service in teaching as Assistant Professor on seniority-cum-fitness basis, with a proviso that the total teaching service as Assistant Professor should not be less than five years.

The above two criteria are to be considered together and not separately, which means that if either of them is not fulfilled, then the person is not eligible for promotion in BS-19. The Respondent No.6 is, as

per the above Certificates, still lacking teaching experience of five years and shortfall in her total length of service was around Two months [ date of Regularization- 29-6-2011 and Promotion in BS-19 on 8<sup>th</sup> May 2023]. On the date of the impugned Notification dated 08.05.2023, Respondent No.6 was not qualified to hold the post of Associate Professor Physiology in BS-19.

*Similarly*, in view of the above discussion, for promotion as Professor [BS-20], the Respondent No.6 should have seventeen years of service in BSP-17 and above and eight years teaching experience. Undisputedly, her total length of service on the date of the impugned Notification dated 8<sup>th</sup> August 2024, was, Thirteen years and Two months, so also shortfall in teaching experience, thus, she is not eligible for the said position of Professor, hence, the above Notification of ‘Acting Charge’ is unlawful. Since the promotion of Respondent No.6 in BS-19 was/is illegal in view of the above discussion, She cannot even hold an ‘acting charge’ of Professor Physiology in BS-20, by virtue of the above impugned Notification of 08.08.2024.

***Secondly***, the stance of JPMC, as mentioned in the Parawise Comments in the present Petition [while referring to its Parawise Comments filed in C. P. No. D – 1594 of 2024, *supra*], is that the Respondent No.6 lacks total length of service for promotion in BS-20.

16. Mere purported correction in the Salary Slip would not and should not lend any better support to the case of Respondent No.6, considering the above undisputed legal and factual aspects of the Case, and especially when both learned AAG and learned Counsel for the Respondent No.5 have not supported the alleged correction.

17. Consequently, this Petition is accepted to the extent of Prayer Clause (a), (b) and (c). Thus, her promotion in BS-19 is null and void and the

impugned Notifications dated 08.05.2023 and 08.08.2024, are set aside. Official Respondents should immediately take steps for filling up the vacancy of Professor of Physiology as per Service Rules and Regulations, within four [04] weeks. It is clarified that this Judgment will not be an obstacle in the career progression of Respondent No.6, including, her promotion in BPS 19, as per Law and Service Rules.

18. Petition stands disposed of along with all pending application(s), if any, with no order as to costs.

**Judge**

**Judge**

**Karachi.**

**Dated: 07.05.2025.**

Riaz / P.S.