

IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-7657 of 2018
(Muhammad Irshad v Province of Sindh & others)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 05.05.2025

Mr. Usman Tufail Shaikh advocate for the petitioner
Malik Altaf Jawed adovate for the respondent
Mr. Ali Safdar Depar, Assistant AG

ORDER

Adnan-ul-Karim Memon, J: Petitioner Muhammad Irshad prayed that this Court direct the respondents to consider the case of the petitioner for proforma promotion, and also requests retirement benefits.

2. Employed permanently by Respondent No. 2 since 1991 as Superintendent Communication (initially BS-16, upgraded to BS-17 in 2003 due to a Supreme Court directive), the Petitioner, despite seniority (ranked 2nd) and qualifications (Annexures A & B), was repeatedly denied promotion, while junior colleagues (ranked 3rd-5th) were elevated to BS-18 (Annexure G). His multiple promotion requests in 2009, 2013, and 2018, supported by positive internal notes that have since gone missing, yielded no results. Transferred on OPS in 2015 to the Sindh Solid Waste Management Board (Respondent No. 3) (Annexure E), he retired on December 25, 2022 (Annexure H) and has yet to receive retirement benefits, unlike later retirees.

3. The petitioner's lawyer argued that while the case was ongoing, the petitioner retired on December 25, 2022, and his retirement benefits remained unsettled. Consequently, according to a court order dated May 20, 2024, the petitioner revised his petition to request a pro forma promotion. This request stemmed from the fact that his juniors received promotions because the petitioner was transferred to the Sindh Solid Waste Management Board (SSWMB) for further assignment, leaving him in a state of uncertainty. The lawyer further asserted that the petitioner consistently pursued his claim for promotion to BS-18 based on his seniority, as his service was still considered within the Karachi Metropolitan Corporation (KMC). He emphasized that the petitioner served approximately 12 years in KMC as an Assistant Executive Engineer without receiving a promotion to BS-18. The lawyer contended that it was apathetic of the authorities to wrongly forward his promotion case to the Managing Director of SSWMB for action. Ultimately, the lawyer requested the court to grant a proforma promotion to the next higher rank, along with all associated service benefits, effective from the date his juniors were promoted to BS-18.

4. Conversely, Mr. Ali Safdar Depar, Learned Assistant Advocate General Sindh, has strongly opposed this Petition on the analogy that the proforma promotion cannot be

granted to the retired employees of the KMC. He prayed for dismissal of the instant petition.

5. We have heard Learned Counsel for the petitioner, learned Assistant Advocate General Sindh, and examined the record.

6. The Supreme Court has repeatedly affirmed that promotion is not an inherent right of a civil or public servant, and therefore, cannot be demanded as such. However, in this specific instance, the petitioner was initially appointed as a Superintendent, Communication BS-16 in the Solid Waste Management Board (SWMB) of the Karachi Metropolitan Corporation (KMC) in 1991. Subsequently, his position was re-designated as Assistant Executive Engineer BS-17 following his B.Tech (Hons) qualification, as per an order dated March 8, 2023. Nevertheless, the petitioner's promotion prospects are contingent upon the legal precedent established in the case of Moula Bux Shaikh (2018 SCMR 2098), and a similar matter is currently under consideration by the Supreme Court. Consequently, this Court cannot examine the petitioner's eligibility for promotion to BS-18 based on his B.Tech degree, as the Supreme Court has already provided a definitive ruling on this matter.

7. In the National Bank of Pakistan case **2024 PLC (CS) 276**, the Supreme Court held in paragraph 3 that the respondent's supersession in 2010 was not challenged within a reasonable timeframe, leading to laches in their High Court petition. Furthermore, the respondent's claim for proforma promotion lacked support in the relevant service rules. Considering the respondent's retirement and receipt of all due benefits, the Supreme Court found the High Court's intervention unsustainable, converted the petition into an appeal, allowed it, and set aside the Peshawar High Court's judgment.

8. The petitioner's lawyer did not identify any discriminatory treatment in his client's case. The matter needs to be assessed according to the applicable recruitment regulations and the Supreme Court's rulings on this specific issue. Based on an initial review, the petitioner seemingly lacks the necessary qualifications as defined by the Supreme Court in the previously mentioned cases.

9. Considering the aforementioned legal standing, particularly the Supreme Court's decision in the National Bank case, no directive (writ of mandamus) can be issued in the petitioner's favor following his retirement.

10. For what has been discussed hereinabove, we do not find any merits in the instant petition warranting interference by this Court. Consequently, the Constitution Petition is dismissed with pending applications if any.

JUDGE

Head of the Cost. Benches