

# THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

**CP No D- 4251 of 2019**

(Nudrant Buland Iqbal & others v Province of Sindh & others)

**Date of hearing and order:- 29.5.2025**

Mr. Muhammad Arshad Khan Tanoli advocate for the petitioners.

Mr. Ali Safdar Depar, Assistant Advocate General along with

Muhammad Aziz Rana, Law officer

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## **ORDER**

**Mohammad Karim Khan Agha J.,** The petitioners seek the following from the court:

*Declare the June 11, 2019 Office Order null and void as it violates natural justice and Supreme Court judgments.*

*Declare that the decision to withdraw person-specific up-gradations does not apply to their policy-based upgrade.*

*Direct the lawfully constituted Governing Body to regularize their up-gradation to Audit/Account Officers (BPS-17) effective July 8, 2013, in line with the Supreme Court judgment and Finance Division O.M.*

*Declare the appointments of Respondents No. 5-9 as Governing Body members unlawful.*

*Direct Respondents No. 3 & 4 to upgrade 25% of Audit/Account Officer posts to BPS-18, consistent with the Sindh Employees Social Security Institution (Revised) Service Regulations 2006.*

*Restrain Respondents No. 3 & 4 from implementing the June 11, 2019 Office Order and initiating any adverse action against them.*

2. This case revolves around the downgrade of Audit/Account Officer (BPS-17) positions at SESSI (Respondent No. 3), impacting petitioners who had been serving in these upgraded roles since July 18, 2013. The petitioners' initial upgrade from BPS-16 to BPS-17 was based on a Finance Division Office Memorandum dated April 3, 2010. This memorandum was issued to comply with a Supreme Court judgment of March 15, 2010, which had upheld an earlier Federal Service Tribunal decision from December 5, 2008. The Supreme Court explicitly directed relevant authorities, including the Secretary Finance, to implement the upgrade within specific timelines. Despite these clear directives and the fact that similar posts were upgraded elsewhere (e.g., Ministry of Defense to BPS-18, and in Sindh), the SESSI Governing Body (Respondent No. 4) repeatedly stalled the regularization of the petitioners' upgraded posts. Their stated reasons, such as a supposed "ban on up-gradation in Sindh Government," are contested by the petitioners as malafide, especially since the Governing Body simultaneously approved other individual and post-specific upgradation. It is urged that the Governing Body's inconsistency is evident in its meeting minutes:

*139th meeting (June 10, 2016): Regularization deferred due to the alleged "ban."*

*142nd meeting (August 13, 2015): Approved individual up-gradations for an electrician and a psychologist's post, while the petitioners' case was ignored.*

*143rd meeting (April 28, 2016): Decided to refer the matter to a committee, which was never formed.*

*147th meeting (December 14, 2017): Referred the case to a Departmental Promotion Committee (DPC) for examination, yet again without creating the committee.*

3. Ultimately, in its 149th meeting (February 12, 2019), the Governing Body resolved to withdraw all "person-specific" up-gradations and out-of-turn promotions. This led to SESSI issuing an Office Order on June 11, 2019, which downgraded the Audit/Account Officer positions back to BPS-16, effectively reversing an upgrade that had been in effect for over six years, resulting in further litigation before this court.

4. The petitioners' counsel contended that the downgrade is illegal and without proper authority for several legal reasons. He argued that the initial upgrade was a policy decision mandated by Supreme Court directives, not an individualized promotion, making its reversal unfounded. He next argued that the petitioners were denied a personal hearing before the downgrade, violating fundamental principles of natural justice. He pointed out that the Governing Body's decision to downgrade contradicted its own prior resolutions to establish a Departmental Promotion Committee (DPC) for the matter. He added that the downgrade creates a significant anomaly in the Audit & Accounts branch, as all positions (Assistant, Audit/Account Assistant, Cashier, Audit/Account Officer) are now BPS-16, while Audit/Account Officers nationwide are typically BPS-17 or BPS-18. Crucially, the counsel argued that the appointments of Respondents No. 5 to 9 on the Governing Body are also unlawful and void from the outset. This is because they were not selected from the legally mandated lists of recognized organizations, thereby rendering the Governing Body's decisions, including the downgrade, invalid. He prayed to allow the petition.

5. learned AAG referred to the comments of Respondent No. 3 (SESSI) who submitted a compliance report indicating that the post of Audit/Account Officer was indeed upgraded from BPS-16 to BPS-17 in their 163rd Governing Body meeting held on March 16, 2023, and that the petitioners had been receiving BPS-17 pay since 2013.

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

7. In 2013, SESSI lacked a specific "Upgradation Policy" relevant to the petitioners. Nonetheless, it is a standard legal principle that any upgraded position requires corresponding amendments to its Recruitment Rules, detailing the method of recruitment and necessary qualifications. These rules should also lay out the procedure for such

upgrades. A key point is that an upgraded post does not automatically lead to the incumbent's promotion. Notably, the 2023 recruitment rules now categorized the position in question as promotion-based, meaning direct "upgradation" is no longer applicable. However, re-grading (a change in the grade of a post) might still occur. This shift in policy which led SESSI to recall the petitioners' earlier upgradation, potentially to align with the Supreme Court's decision and the updated rules.

8. The terms "up-gradation" and "promotion" are distinct. Up-gradation refers to improving a position's grade, often to address issues like stagnation for employees in roles with no clear promotion path, despite long and satisfactory service. Promotion, on the other hand, typically involves moving to a higher position within an established career ladder. However in the present case, effective immediately, the SESSI Governing Body's decision from its 149th meeting on February 12, 2019, resulted in the withdrawal and cancellation of Office Order No. SS-Admn/2013-64, dated July 8, 2013. This action reverted all Audit/Accounts Officers within the institution to their original BPS-16 grade. However, new recruitment rules, updated on June 5, 2023, outline that the Accounts/Audit Officer (BPS-17) position is to be filled via a 50/50 split: 50% by new hires, and 50% by promotions. Promotions will be granted to either Cashiers (BPS-16) or Accounts/Audit Assistants (BPS-16) who have at least three years of service, based on seniority and fitness.

9. In the case of Fida Muhammad versus Government of Khyber Pakhtunkhwa (2021 SCMR 1895), the Supreme Court held that upgradation cannot be claimed as a matter of right but it is in fact based on a policy decision of the competent authority for its implementation across the board for the particular categories of employees jotted down in the scheme/notification who fulfilled the required qualification which is normally a particular length of service in a particular pay scale. The promotion involves advancement in rank, grade or a footstep en route for advancement to higher position, whereas the facility or benefit of upgradation simply confers some monetary benefits by granting a higher pay scale to ventilate stagnation. It is also a well-settled exposition of law that the benefit of upgradation is normally granted to the persons stuck-up in one pay-scale for considerable period of their length of service either having no venue for promotion or progression. In order to minimize the anguish or suffering being stuck-up in particular pay scale for a sizeable period, the mechanism of up-gradation as a policy decision comes in field for redress and rescue. In the case of Ali Azhar Khan Baloch and others vs. Province of Sindh and others (2015 SCMR 456), the Supreme Court, in paragraph 138 of the judgment, has held that the upgradation cannot be made to benefit a particular individual in terms of promoting him to a higher post or further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs restructuring, reform or to meet the exigency of service in public interest. In the absence of these pre-conditions, upgradation is not permissible. Reference can also be made to the

dictums laid down by the Supreme Court in the case of Regional Commissioner Income Tax versus Syed Munawar Ali (2016 SCMR 859) and Federal Public Service Commission through Secretary vs. Anwar-ul-Haq (Private Secretary) Islamabad and others (2017 SCMR 890).

10. This court find that the upgradation issued in 2013 did not create a vested right for the petitioners, as it lacked legal sanction or authority. Therefore, the doctrine of *locus poenitentiae* (the ability to withdraw a flawed decision) does not apply. This court clarifies that a benefit incorrectly granted due to misunderstanding, error, misinterpretation of law, or lack of proper authority is not sacrosanct and can be withdrawn. A wrongful benefit extended beyond the bounds of law and policy cannot be claimed indefinitely.

11. Given these points, this Court find no flaw or perversity in the impugned order dated June 11, 2019, and consequently, dismissed the petition.

HEAD OF CONST. BENCHES

JUDGE

SHAFI