

**IN THE HIGH COURT OF SINDH, KARACHI**

**Constitutional Petition No.D-4437 of 2023**

*(Mehmood Akhtar & others versus Province of Sindh and others)*

Before:

**Justice Muhammad Karim Khan Agha**

**Justice Adnan-ul-Karim Memon**

**Date of hearing & order: 30.9.2025**

Mr. Muhammad Arshad Khan Tanoli, advocate for the petitioners

Ms. Saima Imdad Mangi, Assistant AG

Mr. Naveed Ahmed, Law Officer, Education Department, Government of Sindh

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**ORDER**

**Adnan-ul-Karim Memon, J.** Petitioner has filed this Constitutional Petition with the following prayer(s): -

- A) *To Direct the Respondents to process and consider the case of Petitioners for grant of incentive of higher grade based on time scale basis in line with Teachers of School Education, Home department and Para-Medical Staff and Supporting Staff of Health and Population department Sindh and as well as in line with Sub-Engineers of Federal Ministry of Water Resources allowed in pursuant to letter dated 07.06.2010, 23.05.2012, 06.07.2020, 25.01.2016, 14.06.2018, 07.06.2022, 06.04.2023 and Notification dated 07.06.2022*
- B) *To direct the Respondents to grant higher grade based on time scale to the Petitioners as well as other Sub-Engineers of Education department in the light of law laid down by Hon'ble Apex Court in the case reported in 2021 PLC (CS) 1383 and in line with similarly situated Teachers and Staff (Librarian, DPEs & IT Teachers) serving in the Province and Federation and removed disparity amongst them.*
- C) *To restrain the Respondents from taking any adverse coercive action against the Petitioners except due course of law and to act strictly in accordance with law during the pendency of the above petition.*

2. The facts in a nutshell are that the petitioners, who are Sub-Engineers (BPS-11) with 30 years of service in the Education Works Department/Education & Literacy Department, Government of Sindh, are seeking Time Scale Promotion (TSP) to higher pay scales due to stagnant career progression.

3. The petitioners were appointed in 1993 (or similar time frame) and, due to a very low promotion ratio (17% for D.A.E. and 10% for B.Tech (Hons.) to Assistant Engineer/BPS-17), they and many of their colleagues are expected to retire in the same post they were initially appointed to, despite 30 to 35 years of service. The petitioners submitted that this is discriminatory because Teaching Cadres and Braille Instructors within the same department (Education & Literacy) have been granted TSP up to BPS-19/20 based on length of service. Technical Drawing Staff (Irrigation Department) and employees in other departments (Home, Population Welfare, Health, Ministry of Water Resources in Pakistan, and

Lahore High Court Sub-Engineers) have also been granted TSP/up-gradation to address the lack of career progression. Court orders have previously mandated the extension of TSP to other teaching staff to prevent discrimination. The petitioners note that Time Scale Promotion is not a regular promotion under the Sindh Civil Servants Act 1973 but a policy-based financial benefit (higher pay scale without change in post/designation) granted to cadres with no regular promotion avenues. The petitioners have formally pursued their grievance. The administrative department forwarded their request for TSP to the Finance Department, which instead advised a summary to the Chief Minister for granting BPS-16 (on the pattern of Works & Service department Sub-Engineers). However, the administrative department has failed to implement even this alternative suggestion for over a year. In essence, the Sub-Engineers seek the same policy-based financial incentive (Time Scale Promotion) already extended to other similarly situated, non-progressing cadres, especially the teaching staff within their own administrative department, to alleviate the injustice of retiring without a single promotion after decades of service.

4. The learned counsel for the petitioners argued that the Sub-Engineers are more deserving of Time Scale Promotion (TSP) than the Teaching Staff (PSTs, JSTs, etc.) who have already received it, primarily due to their severely limited promotion prospects. He argued that denying Sub-Engineers TSP is an "ostensible discriminatory treatment" compared to other cadres, especially the Teaching Staff, violating Article 10-A (Right to Fair Trial) and Article 25 (Equality of Citizens) of the Constitution. He submitted that Sub-Engineers have significantly poorer promotion quotas (17% for D.A.E., 10% for B.Tech (Hons.) to Assistant Engineer) compared to teachers (PSTs to JSTs is 50%; JSTs to SSTs is 30%), making the Sub-Engineers' career stagnation much more severe. He further submitted that the total working strength of all Sub-Engineers (not more than 200) is comparable to, or even less than, the working strength of just a few categories of teaching staff (e.g., PSTs and JSTs combined are over 300), demonstrating that granting TSP is administratively feasible. Learned counsel, citing Supreme Court precedent (Khushdil Khan Malik and L.A. Sherwani cases), argues that TSP is a policy-based financial incentive, not a "term and condition of service" under the Sindh Civil Servants Act 1973. This means it does not change the post's status or designation.

5. The Learned Assistant Advocate General (AAG), representing the respondents, argues for the dismissal of the petition, primarily on grounds of jurisdiction and the existence of alternative remedies and promotion avenues. The AAG argues that the petition is not maintainable before this Court under Article 199 because the term "Time Scale" falls under the terms and conditions of service for civil servants. Therefore, the Sindh Service Tribunal (under Article 212(2)) is

the appropriate forum to hear the matter. He submitted that the post of Sub-Engineer is not isolated, whereas TSP was allowed to isolated/non-promotional civil servants only from BPS-01 to BPS-16 per a 2019 Circular. He argued that Sub-Engineers do have promotional avenues, and promotions must be granted according to recruitment rules, on a seniority-cum-fitness basis, and subject to the availability of posts against the decided ratio. He submitted that some of the petitioners have already been promoted to Assistant Engineer (BPS-17) on October 30, 2024, or recently (Petitioners at Sr. Nos. 1, 2, & 3 in the E/M seniority list). He emphasized that Petitioners with the B. Tech (Hons.) degree (Sr. Nos. 6-9) have already been awarded BPS-16 as per policy. He added that A 1983 policy from the Works & Services Department allows 25% of Sub-Engineers (BPS-11) to be placed in BPS-16 based on seniority-cum-fitness after 10 years of service and passing a departmental exam. He argued that the Finance Department had already advised the administrative department to process a summary for BPS-16 for the petitioners' cadre, following the analogy of the Works & Services Department. He submitted that some petitioners have retired (Sr. Nos. 25, 37, & 45) or are no longer alive (Sr. No. 2). He asserted that the respondents are bound to discharge their duties "per law and rules" and deny any claim of discrimination, asserting that TSP is not a general entitlement but a benefit allowed to specific cadres.

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

7. To appreciate whether the petitioners have the requisite length of service in their cadre and their promotion could not take place for the last 30 years, in violation of dicta laid down by the Hon'ble Supreme Court of Pakistan vide judgment dated 12.09.2017 passed in the case of *Kaneez Zehra Kazmi v. Syed Hassan Naqvi* (Crl. Org. Petition No.97/2017 in Crl. Org. Petition No.89/2011). Paragraphs 9 & 11 are reproduced as under:

*"9. The upgradation granted to the petitioner from BPS-16 to BPS-17 and from BPS-17 to BPS-18 appears to have been to incentive encourage and to grant financial benefits without creating additional vacancies. The petitioner did not have any prospect of promotion, there was no other librarian, and the petitioner did not affect the right of any other person when she was granted the upgradation. It will also be a case of extreme hardship if the benefits that the petitioner has earned/accumulated over the years are retrospectively undone for no fault of her own when she has retired from service.*

*11. Therefore, for the reasons stated above, the impugned notification is hereby struck down as its issuance was not necessitated by any judgment/order of this Court. This petition stands disposed of in such terms."*

8. The petitioners have been working in the Education Works Department/Education & Literacy Department, Government of Sindh, for about 30 years of service; however, they have been deprived of the Time Scale

Promotion policy as applied to other departments of the Government of Sindh due to stagnant career progression. This stance has been refuted by the learned AAG on the premise that the post of Sub-Engineer is not isolated, whereas TSP was allowed to isolated/non-promotional civil servants only from BPS-01 to BPS-16 as per a 2019 Circular. Besides, Sub-Engineers do have promotional avenues, and promotions must be granted according to recruitment rules, on a seniority-cum-fitness basis, and subject to the availability of posts against the decided ratio. Be that as it may, to qualify for the promotion, the least that is expected of an officer/employee is an unblemished record and have the requisite length of service, and the availability of the vacancy. However, eligibility itself is not the benchmark for promotion, rather the most vital yardstick is fitness, which can be judged from the service record which includes ACRs, qualification, length of service in a particular grade/scale, integrity, knowledge, and proficiency in the work/ assignments, all of which are essential dynamics for weighing and appraising the merits for promotion more particularly to the selection post which is a quite common procedure and practice articulated under the law for considering the promotions on merit.

9. The Time Scale concept is often used in the context of employment and labor law. It involves the period spent on duty in a post being counted in increments. In time scale promotion, the Basic pay of the employee is fixed to the next above the higher scale only. The Time Scale Formula is simply the grant of financial benefits of a higher pay scale without a change in designation, and does not amount to up-gradation of the said post nor requires amendment in the recruitment rules. Even after the grant of a higher time scale, the incumbent continues to hold the same post without there being any change in its status.

10. It is well settled that the Time scale can not be granted from the back date; it can be effective from the date of approval of the Policy by the competent authority.

11. Before parting with the order, we deem it proper to observe that perhaps the respondent department, in compliance with the ratio of the judgment passed by the Supreme Court in the case of *Maula Bux Shaikh and others Vs. Chief Minister Sindh and others (2018 SCMR 2098)*, which case is still in review before the Supreme Court in another case. However, at this stage the petitioners counsel submitted that in the above case, the petitioner Maula Bux Shaikh in Service Appeal challenged a Notification to be ultra vires to the Pakistan Engineering Council Act, 1976 (PEC Act) on the ground that his chance for promotion as Executive Engineer BS-18 was diminished for the reason that said notification provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons.) Degree holders for the post of Executive Engineer BS-18. The Supreme Court held that it is exclusively within the domain

of the Government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade, and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. Though the petition was dismissed with a note of caution that Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and whose name is not registered as a registered engineer or professional engineer under the PEC Act. He added that the petitioners can be allowed non professional engineering work and the time scale promotion will not effect the ratio of the aforesaid judgment of the Supreme court. Be that as it may this petition stands disposed of in the terms of the judgment dated 12.09.2017 passed in the case of Kaneez Zehra Kazmi and preceding paragraphs, along with pending applications with no order as to costs. The said exercise shall be undertaken within three months from the date of receipt of this order.

JUDGE

HEAD OF CONST. BENCHES

SHAFI