

THE HIGH COURT OF SINDH, KARACHI
Constitutional Petition No D-5014 of 2023
(*Abdul Hameed & others versus Province of Sindh & another*)

Before:

Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order : 02.10.2025

Mr. Sarfaraz Ali Metlo, advocate for the petitioners
Mr. Ali Safdar Depar, AAG, and Ms. Saima Imdad, AAG

ORDER

Adnan-ul-Karim Memon, J., The Petitioners through the instant Constitutional Petition have prayed as under: -

- a) *Declare that right to be considered for promotion vested in petitioners on the day when they became eligible, and posts of Executive Engineer (BS-18) became vacant;*
- b) *Declare that the petitioners are entitled to be promoted to the post of Executive Engineer (BS-18) in accordance with law;*
- c) *Direct the respondents to immediately convene a meeting of the departmental Promotion Committee to consider the petitioners for promotion to the post of Executive Engineer, Civil (BS-18) immediately.*
- d) *Permanently and pending disposal of the instant petition, restrain the respondents from holding DPC to promote any person other than the petitioners who is/are ineligible for promotion to the post of Executive Engineer (BS-18) on the day of filing of the instant petition.*

2. This petition outlines a promotion case for several Sub-Engineers (BS-11) who, after diligent service since 1993-1995, were promoted to Assistant Executive Engineer (AEE) (BS-17) between 2019 and 2021. It is submitted that the petitioners have served for over 27 years with an unblemished record. Some had already received Acting Charge Promotion (BS-17) in 2014. They are among the most senior AEEs (BS-17) and possess the necessary qualifications (Bachelor of Engineering) and extensive experience, submitting that they meet the criteria for promotion to Executive Engineer (EE) (BS-18). They asserted that under the relevant rules (Sindh Civil Servants Promotion Rules, 2022, and a 1984 notification), their prior service in BS-16 and below should be counted toward the required five years' minimum service in BS-17 for EE (BS-18) promotion. The EE (BS-18) post is an 80% promotion-based position. The petitioners submitted that 37 vacant Executive Engineers (BS-18) posts were/are currently available in the Irrigation Department, which is detrimental to the public interest and violates their right to be considered for promotion. The petitioners seek their consideration and promotion to the vacant Executive Engineer (BS-18) posts.

3. The petitioners' counsel contended that 37 out of 96 Executive Engineer (BS-18) posts are vacant in the Irrigation Department. It is in the public interest and the petitioners' legal right to have these posts filled by eligible officers. He submitted that, despite having over 30 years of service and making multiple requests, the respondent department has failed to convene the Departmental Promotion Committee (DPC). This delay is mala fide (in bad faith) to defeat the petitioners' vested right to consideration and to allow ineligible, directly appointed Assistant Executive Engineers (BS-17) to gain experience/eligibility. He emphasized that Respondents have illegally posted ineligible favorite BS-17 officers to BS-18 posts on OPS (Own Pay and Scale) or Additional Charge, violating Supreme Court orders on the subject issue that prohibit filling foreseeable vacancies this way when eligible officers are available for regular promotion. Learned counsel stated that the petitioners are eligible for promotion, citing a 1984 Notification that requires counting half of BS-16 and one-quarter of BS-16 and below service towards the required five years of minimum service for promotion to BS-18. He added that the right to be considered for promotion is a legal right of every eligible civil servant, supported by Supreme Court precedent **2021 SCMR 97**. He argued that the respondents' failure to hold the DPC violated the petitioners' fundamental rights guaranteed by Articles 4, 9, 25, and 27 of the Constitution. He submitted that the employee's right to promotion from the date a vacancy occurred as such, the petitioners are entitled to a writ of mandamus to direct the respondents to consider their case for promotion. On the maintainability of the instant petition, he submitted that the petition is maintainable in this court because promotion is exempted from Section 4 of the Sindh Service Tribunal Act, 1973, and no final order exists to appeal to the Service Tribunal in terms of the decision of the Supreme Court **2012 SCMR 971**. In support of his contentions, he relied upon the cases of *Khalid Mehmood v Chief Secretary Government of Punjab and others* (**2013 PLC (CS) 786**) and *Director General National Savings Central Directorate of National Saving v. Muhammad Sultan* (**2021 SCMR 97**). He lastly prayed for allowing the instant petition.

4. The learned Assistant Advocates General has contended that the petitioners being already in Government service before their promotion, were eligible and considered for promotion in BS-18 according to the Notification dated 27.2.1984; besides that this constitutional petition is not maintainable before this Court because of the specific bar contained in Article 212(2) of the Constitution of the Islamic Republic of Pakistan 1973 and in the terms of the ratio of the judgment passed by the Supreme Court in the cases of *Khalillullah Kakar v. Provincial Police officer* (**2021SCMR 1171**) and *Chief Secretary Government of Punjab Lahore and others v. Ms. Shamim Usman* (**2021 SCMR 1390**). He lastly prayed for dismissal of the instant petition.

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

6. The question for determination in this petition boils down to the delay in the promotion process of the petitioners and the proper application of service rules for calculating eligibility. The question is whether prior service (e.g., half of BS-16 service) counts towards the required five years of minimum service in BS-17 for promotion to BS-18? What is the correct application of the Sindh Civil Servants Promotion Rules and the 1984 Notification regarding this service requirement?

7. Senior Assistant Executive Engineers (AEEs) (BS-17), with over 27 years of service, are seeking promotion to Executive Engineer (BS-18) based on the claim that they meet the five-year service requirement for the BS-18 position. They reference a 1984 notification that allows counting half of their BS-16 service and a quarter of lower-grade service toward this requirement. Their alleged exclusion from promotion is claimed to violate their rights, especially since some received Acting Charge Promotions (BS-17) as early as 2014, ahead of junior AEEs hired years later. The 1984 Notification establishes minimum service lengths for promotion: five years in B-17 for B-18, and twelve years in B-17 and above for B-19. It also includes provisions for calculating service when appointments were in higher scales or lower grades. Rule 10 of the Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975, states that seniority is counted from the date of regular appointment. Rule 8 of APT Rules-1974 stipulates that regular promotion to BS-18 through BS-21 requires officers to complete a minimum length of service as notified by the government. Rule 8-A of APT Rules-1974 permits the appointment of the most senior and eligible officer, who lacks the required service length, to a promotional post on an acting basis if deemed in the public interest. These provisions clearly indicate that a civil servant's seniority is to be recognized from the date of their appointment following recommendation by the Departmental Promotion Committee, not from an earlier date. Even the Seniority Rules empower the government to determine the seniority of probationers after service confirmation or passing the Final Examination. It is well-established that a civil servant's seniority is always based on their regular appointment to a post and continuous service in that grade.

8. It is well settled that the right to be considered for promotion is a legal right of every eligible civil servant, which proposition is supported by the Supreme Court, **2021 SCMR 97**

9. The Supreme Court, in the recent judgment, has held that the legal concept of legitimate expectation is a key principle in administrative law. It suggests that a person may have a reasonable expectation that a public authority will treat them in a particular way. This expectation is not a formal legal right but can arise from

a promise, an assurance, a consistent practice, or a policy established by the authority. Essentially, this doctrine acts as a check on administrative authorities, obligating them to act fairly and transparently. In various legal cases, including *Uzma Manzoor and others vs ViceChancellor Khushal Khan Khattak University* (2022 SCMR 694), the Supreme Court has affirmed that a legitimate expectation can stem from an express promise or a regular, established practice. The expectation must be justifiable and can be inferred if it is based on a legal, customary, or established procedure. However, a legitimate expectation does not automatically become a legal right; instead, it's a principle used to ensure fairness in administrative decisions.

10. The case of *Tariq Aziz-ud-Din and others* (2011 PLC (C.S.) 1130), the Supreme Court directed all authorities, judicial, quasi-judicial, and administrative, must exercise their powers and discretion reasonably and fairly. This is essential for upholding the rule of law, preventing injustice, and achieving good governance. The Supreme Court emphasized that good governance requires a strong and honest bureaucracy that implements the law impartially. Therefore, promotions in civil services must be based on merit, following the law and Constitution, rather than on favoritism or nepotism. This ensures the integrity and purity of the administration, which is the backbone of the government.

11. The legal principle, including in the case of *Secretary to Government of the Punjab Vs Muhammad Khalid Usmani* (2016 SCMR 2125), is that ad hoc, officiating, or temporary appointments should be a short-term, exceptional measure, not a long-term practice. These temporary arrangements are a "stopgap" and are discouraged because they create insecurity and anxiety for civil servants, undermining transparency, certainty, and good governance. Prolonging such appointments defeats the purpose of the law and can create a legitimate expectation for regularization in the minds of the employees. Courts have consistently held that government departments must prioritize filling posts with regular, merit-based appointments in the shortest time possible, rather than keeping positions notionally vacant with temporary arrangements for extended periods.

12. The Supreme Court in the recent judgment, *The Province of Sindh through Chief Secretary & others Vs Ghulam Shabbir and others*, passed in (Civil Appeals Nos 52-K to 71-K of 2022) vide judgment dated 30.12.2025, has observed that the competent authority was/is expected to carefully consider the promotions of candidates who hold acting charge positions. This consideration should be retroactive, dating back to when the promotional posts first became vacant. However, the service tribunal's decision was not deemed illegal because it simply directed the competent authority to re-evaluate the case rather than making the final promotion decision itself.

13. The Supreme Court in the recent judgment has declared that a civil servant's promotion must be considered from the date a vacancy in their quota becomes available, provided they are otherwise eligible at that time. The competent authorities must apply their mind judiciously and cannot delay promotion on administrative pretexts once a substantive vacancy arises. The Supreme Court overturned a Federal Service Tribunal judgment regarding the promotion of Asad Hussain, an Assistant Private Secretary (BS-16) in the Accountant General's office, Khyber Pakhtunkhwa. He was eligible for promotion to Private Secretary (BS-17) when the post became vacant on 06.08.2015. He was unjustifiably bypassed in Departmental Promotion Committee (DPC) meetings in 2016, 2017, and early 2018, before finally being promoted on 03.10.2018 (via a May 4, 2018 notification). He submitted that his promotion should be effective from the vacancy date, 06.08.2015, as he was the senior-most eligible officer. The Supreme Court ruled that the delay was due to "internal administrative mismanagement" and that departmental procedural irregularities (like issues with his Performance Evaluation Reports, or PERs) cannot defeat his rightful claim. The Supreme Court ordered that his promotion notification be modified to grant him promotion with effect from the date the post fell vacant, 06.08.2015. The Supreme Court has also held that if a person is not considered due to any administrative slip-up, error, or delay when the right to be considered for promotion is matured, and then, in all fairness, they have a legitimate expectation for promotion with consequential benefits with effect from the date the promotion post fell vacant.

14. Before parting with the order, we deem it proper to observe that the issue of promotion is subject to the ratio of the judgment passed by the Supreme Court in the case of *Maula Bux Shaikh and others v. Chief Minister Sindh and others* (2018 SCMR 2098), which case is still in review before the Supreme Court in another case. 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 the Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess an accredited engineering qualification from an accredited

engineering institution, and whose name is not registered as a registered engineer or professional engineer under the PEC Act.

15. For the reasons stated above, this constitutional petition, along with pending application(s), is disposed of with direction to the competent authority/ the official respondents/Departmental Promotion Committee to review the petitioner's case for promotion to the next rank within three months. This review must consider the petitioner's eligibility, the availability of a vacancy, and all other relevant rules. The authority must also adhere to the law established by the Supreme Court in the Maula Bux Shaikh case and other relevant judgments on the subject issue, specifically the one that mandates that a civil servant's promotion must be considered from the date a vacancy in their quota became available, provided they were eligible at that time, and in accordance with the 1984 notification, if applicable/and or any decision of the supreme court in earlier round of litigation between the parties.

16. This petition stands disposed of in the above terms. Let this order be communicated to the Chief Secretary and the head of the department of the Government of Sindh, for compliance.

JUDGE

HEAD OF CONST. BENCHES

SHAFI