

IN THE HIGH COURT OF SINDH AT Karachi

Constitutional Petition No.D-436 of 2023

(Allah Wadhio and 4 others v. Province of Sindh and another)

Date

Order with signature of Judge(s)

Before:

Muhammad Karim Khan Agha, J.
Adnan-ul-Karim Memon, J.

1. For hearing on CMA No.1786/2023.
2. For hearing of main case.

Date of hearing and order: 11.09.2025

M/s. Muhammad Fahad, Abdul Sami and Ahsan Anwar Memon, advocates for the petitioners

Mr. Ali Safdar Depar, AAG

ORDER

Adnan-ul-Karim Memon, J. Through this petition, the petitioners seek the following relief(s):-

“i. To hold that the act of respondents not considering the petitioners No.1 to 5 for proforma promotion to the post of Supervisor Stock Assistant (BS-17) in the departmental promotion committee without any lawful authority, therefore, the act of respondents is illegal, an unlawful violation of natural justice, and has no legal effect.

ii. To declare that the petitioners qualified for pro forma promotion to the post of Supervisor Stock Assistant (BS-17), but due to failure of the respondents, the petitioners stood retired on different dates, but they were not considered for proforma promotion in BPS-17. Petitioners stood retired on different dates, but they were not considered for proforma promotion in BPS-17.

iii. To direct the respondents to consider the petitioners for proforma promotion to the post of Supervisor Stock Assistant (BS-17) and Supervisor Livestock Inspector (BS-17) as the juniors of the petitioners were promoted in BPS-17 after their retirements.”

2. Petitioners were promoted to Senior Stock Assistant (BPS-16) on May 7, 2019, and are petitioning for a promotion to Supervisor Stock Assistant (BPS-17). Their petition is based on the fact that a departmental promotion committee meeting was scheduled to consider their promotion to BPS-17, but before the meeting took place, all five retired due to reaching the age of superannuation between December 2020 and October 2021. Meanwhile, 66 of their colleagues were promoted to the BPS-17 position on March 29, 2022. The petitioners are seeking a proforma promotion to the BPS-17 position, citing a precedent set by the Supreme Court of Pakistan on August 30, 2017. The court's order stated that those who have retired during the intervening period should be considered for a

proforma promotion, subject to their eligibility, qualifications, and fitness. The Sindh government complied with this order in 2019 by promoting 74 retired doctors. The petitioners argue that their applications for promotion were not considered before they retired, which has led them to file this petition.

3. The petitioners' counsel argues that the respondents acted with "mala fide intention and ulterior motive" by not considering the petitioners for promotion to Supervisor Stock Assistant (BPS-17). The key points of the argument are that the petitioners were eligible and their promotion was due before they retired, but the Departmental Promotion Committee (DPC) failed to meet in time; that the petitioners' names were at the top of the seniority list and the working papers, and they were deemed "fit for promotion" to BPS-17 by the Director General; that the DPC met and promoted others but ignored the petitioners, even though their names were included in the working papers for consideration; that this act of deprivation has caused the petitioners financial loss in their pensions and other benefits. The counsel cites a previous court order (CP No.D-7305/2022) as a precedent.

4. The Assistant Advocate General argued for the dismissal of the petition, stating that the Departmental Promotion Committee (DPC) meeting took place on January 31, 2022, and promotions were finalized on March 29, 2022. The petitioners, however, had already retired before this date, as they reached the age of superannuation. The AAG's main points are that the DPC's decisions cannot be applied retrospectively, so retired employees cannot be considered at this stage; that there is no legal provision to consider promotions retroactively. He argued that the petitioners already received significant career benefits, including promotions from BPS-07 to BPS-16. There is no record of a formal application from the petitioners for promotion, and they did not exhaust all available remedies before filing the petition. The same recruitment rules cited by the petitioners were used to promote them to BPS-16 in 2019, shortly before the new rules were notified.

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

6. Upon retirement, a civil servant typically cannot be considered for a regular promotion. However, a proforma promotion can be granted to rectify an injustice. This is relevant when a civil servant, who was eligible and fit for a promotion, was denied it due to an administrative error or delay, such as a postponed Selection Board meeting. The Supreme Court in recent judgment has ruled that in such cases, a civil servant has a legitimate expectation for a proforma promotion to compensate for the lost opportunity. However, in the present case,

the promotion rules, effective April 11, 2019, require candidates for BPS-17 to have A BPS-16 rank. A total of 20 years of service. At least one year of service at the BPS-16 level. Primarily, Promotions are based on seniority-cum-fitness. Besides, the petitioners, who had already been promoted from BPS-07 to BPS-16 vide posting order dated 29.3.2022 and retired in 2020 before the DPC meeting on January 31, 2022, and the final promotion orders on March 29, 2022. Due to their retirement, they were not considered for the BPS-17 promotion based on their positions on the upgraded posts.

7. Rule 7-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, allows for the promotion of civil servants even after they retire, provided the promotion was recommended by a committee while they were still in service. The rule states that a promotion can be approved from the date of the recommendation, and the retired officer does not need to take charge of the new post officially. The petitioners' case does not fall under this provision because the petitioners were promoted from BPS-07 to BPS-16 on March 29, 2022. However, they had all retired in 2020, before the promotion committee met on January 31, 2022. As a result of their retirement, they were not considered for a further promotion to BPS-17, which 20 years of service as Senior livestock Assistant was/is required for the promotion

8. We, for the aforesaid reasons, dismiss this constitutional petition along with pending application(s).

Judge

Head of Const. Benches