

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-3003 of 2022

(*Mazhar Ali and 08 others v. Province of Sindh and 02 others*)

Date

Order with signature of Judge(s)

Before:

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

**Date of hearing and order: 03.09.2025**

Mr. Altaf Hussain,, advocate for the petitioners.

Mr. Ali Safdar Depar, AAG.

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## **ORDER**

**Adnan-ul-Karim Memon, J.** Through this petition, the petitioners have sought the following relief:

- a. *To hold and declare that the order dated 21.10.2021 is illegal, unlawful, unconstitutional, malafide and non-est; hence to set aside the same.*
- b. *To suspend the operation of the Impugned Order dated 21.10.2021, till final adjudication of this petition.*
- c. *Any other relief(s) which this Hon'ble Court may deem fit for the disposal of the instant case/petition.*

2. The petitioners, who are government employees in Sindh, are challenging the reversal of their promotions to the post of Junior Clerk (BPS-11) after they had already been serving in that capacity for almost two years. In July 2017, a Departmental Promotion Committee (DPC) promoted the petitioners and other employees from BPS-02 to BPS-05 to the position of Junior Clerk (BPS-11). This promotion was based on an initial DPC meeting on July 7, 2017, and a subsequent meeting on September 15, 2017, following an inquiry into initial promotions. The petitioners joined their new posts and performed their duties. The petitioners assert that the promotions were valid and followed existing rules, citing a history of amendments to the Junior Clerk post. The post was initially BPS-05 and later upgraded to BPS-07 (2008) and then BPS-11 (2016). The promotion ratio for BPS-01 to BPS-04 employees was fixed at 20% in 1997 and later increased to 30% in 2008, and these rules were clarified to apply to all government departments, not just the Secretariat. In March 2019, the Director General of Colleges ordered the recall of the promotions. This action was allegedly taken in compliance with a Sindh Service Tribunal order from March 14, 2019, which had directed that departmental appeals by disgruntled employees be decided. The petitioners submit that the tribunal did not order the promotions to be canceled and that their promotions were recalled on the false pretext that no rules were available for their promotion. The petitioners state that the final blow came with an order dated October 21, 2021, which they refer to as

"the Impugned Order." This order, issued by the Province of Sindh, made observations that led to the promotions being revoked, despite the petitioners having served in their new positions for a significant period.

3. The petitioners' counsel argues that the October 21, 2021, order revoking their promotions is illegal and should be set aside. The main points of contention are that there is a clear precedent for promoting employees from BPS-01 to BPS-04 to the post of Junior Clerk (BPS-05). As far back as May 31, 2007, 28 officials were promoted in this manner. One such example is Mr. Shah Muhammad Shah, a Lab Attendant (BPS-01 to BPS-04), who was promoted to Junior Clerk and later to Assistant (BPS-16), showing that these types of promotions were accepted and led to further career advancement. While the government's November 6, 2020, order promoted 23 employees from BPS-01 to BPS-04 to Junior Clerk (BPS-11) in the Hyderabad region, the petitioners' promotions were canceled. This shows a discriminatory and contradictory application of promotion policy. The counsel points out that notifications from September 7, 2021, February 2, 1998, and July 4, 2009, which introduced changes to the method of appointment for Junior Clerk (BPS-11), were deliberately concealed from this court. These changes did not prohibit the promotion of BPS-01 to BPS-04 officials. He submits that the impugned order is a malicious and unconstitutional attempt to deny the petitioners their rightful promotions. It was made without giving them a fair hearing, which violates Article 10-A (right to a fair trial) and Article 9 (right to life and liberty) of the Constitution of Pakistan. In essence, the counsel maintains that the promotions were valid, supported by a history of similar actions, and that their cancellation was an arbitrary and illegal act that violated the petitioners' constitutional rights. He prayed for allowing the petition.

4. The Assistant Advocate General argues for the dismissal of the petition, contending that the promotions were invalid from the start due to legal and procedural flaws. The key points of his argument are that the promotions made in 2017 were unlawful because the Director of College Education, Larkana, issued the initial promotion letters without proper authority or permission from the competent body, which is defined by the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. Furthermore, the College Education Department's own 1993 rules stipulated that the post of Junior Clerk (BPS-05) was for initial recruitment only, with no provision for promotion from lower grades. At the time of the promotions, there was no valid seniority list for BPS-01 to BPS-04 employees, which is a mandatory prerequisite for promotion consideration. The initial promotions were challenged in the Sindh Service Tribunal, which, in its order dated March 14, 2019, observed the absence of a final seniority list and directed the competent authority to decide the departmental appeals after providing a proper hearing. This led to the promotions being recalled. To rectify the situation, the College Education Department amended its rules on September 7, 2021, to include a

new provision for a 30% promotion quota for BPS-01 to BPS-04 employees to the post of Junior Clerk (BPS-11). The subsequent order of October 21, 2021, was issued in compliance with the Tribunal's directive to carry out the promotions under these new, legally sound rules. The Assistant Advocate General asserts that the petitioners were found to be too junior and thus not considered for promotion during the subsequent DPC meeting on February 15, 2022, which was conducted according to the new rules and a new, correct seniority list. He concludes by stating that the petitioners' promotions were rightly canceled and that they are now trying to mislead the court. He prayed for dismissal of the petition.

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

6. The Supreme Court in the case of Nazeer Ahmed Chkrani v Government of Pakistan (2004 SCMR 623), reiterating the principle from Pakistan International Airlines v Nasir Jamal Malik (2001 SCMR 934), established that a promoted employee cannot be demoted without being given a chance to be heard and present their case. In the Nazeer Ahmed Chkrani case, the petitioner was promoted to General Manager in 1995 and then demoted to Deputy General Manager in 1997 without any prior explanation sought regarding the circumstances of their promotion or their capability to hold the higher post. The demotion order also lacked any stated reasons for the Competent Authority's opinion that the promotion was wrongful. The Supreme Court, without delving into the merits of the case, held that the demotion violated the principles of natural justice ("no one should be condemned unheard"). Consequently, the petition was converted into an appeal and allowed, setting aside the Federal Service Tribunal's order and the departmental demotion order. The Supreme Court clarified that the Pakistan State Oil Company Limited remains free to initiate fresh action against the petitioner, provided they follow the correct legal procedure, and no order regarding costs was issued. In recent judgment of 2022, the Supreme Court has ruled that no decision be taken effacing the right of any person without first being informed of the case and affording an ample opportunity of defense, therefore judicial propriety demand that this matter needs to be taken care of by the competitive authority of respondents before taking adverse view until and unless there is strict compliance of the Supreme Court decisions.

7. Based on the Supreme Court's findings, it is clear that a government cannot demote an employee to a lower position without providing them notice and a chance to be heard. This fundamental principle of natural justice is implicitly part of all laws, rules, and organizational decisions, including those made by the respondents.

8. At this point, we proposed remitting the case to the respondents' competent authority for reconsideration. This would involve a thorough review of the service record of the petitioners, consideration of relevant Supreme Court judgments, and granting the petitioners a proper hearing to reach a fresh decision within three months. As such, we find it appropriate to remit the matter to the Chief Secretary of

Sindh. The Chief Secretary will coordinate with the Secretary of Education to convene a meeting. After examining the petitioners' service records and promotion orders, a new decision will be made within three months.

9. This petition stands disposed of in the aforesaid terms.

Judge

Head of Const. Benches

Shafi