

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE MAQBOOL BAQAR  
MR. JUSTICE IJAZ UL AHSAN

**CIVIL APPEALS NO. 588 TO 590 OF 2017, CMAS. NO. 2032, 2421, 2422 & 2419 OF 2017 AND CIVIL APPEAL NO. 710 OF 2017.**

(On appeal against the judgment dt. 14.03.2017 passed by the High Court of Balochistan Quetta in CPs. No. 1163 and 1172 of 2016).

Aziz ul Allah and others  
Muhammad Akber Khan and others  
Muhammad Qasim Mengal  
Nazar Muhammad and another

*Appellant(s)*

**VERSUS**

Govt. of Balochistan thr. its Chief Secretary, Quetta  
and another.

*Respondent(s)*

For the Appellant(s)

: Mr. Wasim Sajjad, Sr. ASC  
Mr. Mehr Khan Malik, AOR.  
(in CA 588/17)

Khawaja Haris Ahmed, Sr. ASC  
Mr. Mehr Khan Malik, AOR.  
(in CA 589/17)

Mr. Qasim Mengal, In person  
(in CA 590/17)

Malik M. Qayyum, Sr. ASC  
Ch. Akhtar Ali, AOR  
(in CA 710/17)

For the Respondent(s)

: Mr. Amanullah Kanrani, AG  
Balochistan  
Mr. Ayaz Khan Swati, Addl. AG  
Balochistan  
Raja Ibrahim Satti, Sr. ASC  
(Rs 3-7 in CA 588 & Rs 2-6 in 589/17)

Syed Ali Zafar, ASC  
Mr. Zahid Nawaz Cheema, ASC  
(Rs 32-37 in CA 590/17)

Ms. Asma Jehangir, Sr. ASC  
(Rs 2-6 in CA 710/17)

In CMAs

: Raja Ibrahim Satti, Sr. ASC  
(CMA 3198/17)

Date of Hearing

: 26.05.2017 (Judgement Reserved)

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## **J U D G M E N T**

**EJAZ AFZAL KHAN, J.-** These appeals with the leave of the Court have arisen out of the judgment dated 14.03.2017 of the High Court of Balochistan, Quetta whereby it dismissed the Constitution Petitions filed by the appellants as being not maintainable.

2. Brief facts of the case are that appellants were appointed as Assistant Executive Officers on qualifying the examination held under the aegis of Balochistan Public Service Commission vide notification dated 22.10.2002. They worked as such till 2008. They were then absorbed in Balochistan Civil Service Executive Branch vide notification dated 03.04.2008. They continued as such till the time they were directed to report to S&GAD Balochistan for further orders vide notification dated 15.12.2016. They challenged the aforesaid notification in the High Court but it was dismissed as being non-maintainable as mentioned above. Points raised and noted at the time of grant of leave read as under :-

*"After hearing the learned counsel for the petitioners, leave is granted inter alia to consider whether the constitution petitions filed by the petitioners before the learned High Court were incompetent for the reason that since they were civil servants and sought enforcement of the terms and conditions of their service, the learned High Court's jurisdiction was barred under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973; whether the jurisdiction to attend to and resolve the grievance agitated by the petitioners before the learned High Court was only vested with this Court in light of the law laid down in the judgment reported as **Contempt Proceedings Against Chief Secretary, Sindh and others (2013 SCMR 1752)**; and whether the dismissal of the petitioners' writ petitions on the ground of maintainability in view of the reasons assigned therein was apt and appropriate.*

*The petitioners are directed to implead the interveners who had moved an application(s) before the learned High Court as respondents in the matter and notice be issued to them."*

3. Learned ASCs appearing on behalf of the appellants contended that case of the appellants is not hit by the case reported as **Contempt proceedings against the Chief Secretary Sindh**

**and others, Ali Azhar Khan Baloch. Vs. Province of Sindh** and **Muzaffar Hussain Vs. Federation of Pakistan (supra)**, therefore, their petitions before the Balochistan High Court could not have been dismissed as being not maintainable. The learned ASC next contended that even if it is assumed that the writ petitions filed by the appellants being related to the terms and conditions of service were not maintainable before the High Court, they could have been remitted to the Service Tribunal for decision in accordance with law. Merger of AEOs in Balochistan Civil Service and Balochistan Secretariat Service, the learned Sr. ASC added, as notified by the S&GAD vide notification dated 03.04.2008 on the recommendations of the Provincial Selection Board and approval of the competent authority was perfectly in accordance with law, therefore, it could not be reversed on the basis of the judgments rendered in the cases of **Contempt proceedings against the Chief Secretary Sindh and others, Ali Azhar Khan Baloch. Vs. Province of Sindh** and **Muzaffar Hussain Vs. Federation of Pakistan (supra)**, when appeals of the respondents raising similar issues were pending before this Court. Absorption of the appellants, the learned Sr. ASC went on to argue could not be held illegal on any account when they possessed the requisite qualification and were appointed as AEOs on qualifying examination held under the aegis of the Public Service Commission. No distinction, the learned Sr. ASC added, could be drawn between the Assistant Executive Officers (AEOs) and the Balochistan Civil Service Officers and Balochistan Secretariat Service Officers when their qualifications, syllabus of the examination, pattern of papers and the process of selection under the Public Service Commission are alike and even identical. Another imperative, the learned Sr. ASC

maintained, necessitating the absorption of the appellants in the Balochistan Civil Service and Balochistan Secretariat Service was that they had no channel of upward progression beyond BPS-18. The learned ASC next contended that when in Civil Review Petitions Nos. 90, 452, 285, 286, 287, 288 and 289 of 2016 in Civil Appeal No.184-L of 2013 a five members Bench of this Court permitted the petitioners in the said petitions to raise their grievances before the competent fora, the appellants too cannot be deprived of their such right, therefore, the appeals filed by the appellants be sent back to the Service Tribunal for decision in accordance with law.

4. The learned A. G. Balochistan appearing for the Government of Balochistan did not seriously oppose any of the contentions of the learned Sr. ASCs appearing on behalf of the appellants. The learned ASCs appearing on behalf of the respondents contended that it has been settled in the cases of **Contempt proceedings against the Chief Secretary Sindh and others, Ali Azhar Khan Baloch. Vs. Province of Sindh** and **Muzaffar Hussain Vs. Federation of Pakistan (supra)** that a civil servant of a non-cadre post cannot be absorbed against a cadre post when the latter is to be filled, under the rules, through a competitive process. The learned ASC next contended that absorption of the appellants in the BCS or BSS cannot be protected under Section 11-A of the Balochistan Civil Servants Act when they were not rendered surplus as a result of reorganization, abolition of a department, Office or abolition of a post in pursuance of any government decision. The learned ASC next contended that the summary approving absorption of the appellants was not only a deviation from the law but also beyond the power and competence of the caretaker Chief Minister. Such

deviation, the learned ASC added, is also hit by the dicta of this Court rendered in the cases of **Khawaja Asif. Vs. Federation of Pakistan** (PLD 2014 SC 206) and **Syed Mahmood Akhtar Naqvi and others. Vs. Federation of Pakistan and others** (PLD 2013 SC 195). Hell of a difference, the learned ASC added, lies between the qualifications, syllabus of the examination, pattern of papers and the process of selection of Assistant Executive Officers and those of BCS and BSS Officers under the Public Service Commission, therefore, the absorption of the former in the latter cannot be justified on any account. Change of cadre, the learned ASC argued, without a change in law was inconceivable, therefore, the set up so structured cannot sustain itself. Absence of a space for upward progression, the learned ASC maintained, also appears to be a lame excuse when posts of Executive Officers and Director Finance and Accounts and those of Executive Officers and Directors Planning and Economics in BS-18 and BS-19 were created pursuant to the amendments in AEO Rules. The learned ASC by concluding his arguments submitted that where the appellants failed to point out any error much less patent in the judgments rendered in the cases of **Contempt proceedings against the Chief Secretary Sindh and others, Ali Azhar Khan Baloch. Vs. Province of Sindh** and **Muzaffar Hussain Vs. Federation of Pakistan** (*supra*), their appeals, even if they are treated as review petitions, are liable to be dismissed.

5. We have carefully gone through the record and considered the submissions of the learned Sr. ASC and ASCs for the parties as well as the learned A. G. Balochistan.

6. Before we deal with the questions urged by the learned ASC for the parties and the learned Advocate General and the

learned Additional Advocate General for Government of Balochistan it is worthwhile to see what is the method of recruitment of the officers in Civil Service (Executive Branch). Rules 5, 6 and 7 of the Balochistan Civil Service (Executive Branch) Rules, 1984 furnish answer to the question which read as under:-

**"5. Method of Recruitment.** (1) Recruitment to the Service shall be made in the following manner :-

a) by initial recruitment on the recommendations of the Commission based on the result of a competitive examination conducted by it in accordance with Appendix 'A' to these rules; or

b) by promotion.

2) Fifty percent of the vacancies in the Service shall be filled by initial recruitment and the rest by promotion.

3) Vacancies to be filled by promotion shall be filled as follows:-

a) 87 ½ percent of such vacancies shall be filled from among members of the Balochistan Tehsildari Service whose names appear in the Select List 'A' to be maintained in accordance with the provisions of clause (a) of sub-rule (4).

b) The remaining 12 ½ percent of such vacancies shall be filled from among persons whose names appear in Select List 'B' to be maintained in accordance with clause (b) of sub-rule(4) of this rule.

4) Government shall maintain ---

a) a Select List 'A' in form I annexed to these rules, which shall be prepared in consultation with the Board of Revenue, of the Tehsildars who are considered fit for promotion to the Service;

b) a Select List 'B' in form 2 appended to these rules of persons who hold substantive posts of Superintendents, Personal Assistants, Stenographers, working in the Balochistan Secretariat, attached departments, Commissioners Office and Subordinate Offices and who are considered fit for promotion to the Service.

5) Selection of Officers for being brought on the Select Lists referred to in sub-rule 4 shall be strictly on merit with particular reference to fitness for higher responsibilities.

6) No entry shall be made in the Select List to be maintained under the provisions of sub-rule(4) of this rule nor shall an entry appearing in the Lists be removed or the order in which the names appear in the Select List without the previous approval of the Commission.

7) In making an appointment from among the persons whose names appear in the Select List to be maintained under the provisions of sub-rule (4), the order in which the names appear in the Select List, as far as may be followed.

8) Promotion against the departmental quota shall made first and the vacancies meant for initial recruitment shall be filled later; provided that under no circumstances the quota fixed for initial requirement shall be filled in by promotion.

**6. Age.** - (1) No person shall be appointed to the Service by initial recruitment who is less than twenty one years or more than twenty five years of age;

2) For the purpose of this rule, age shall be reckoned.

a) where recruitment is to be made on the basis of a written examination on the 1<sup>st</sup> January of the year in which the examination is held; and

b) in other cases, on the last date fixed for submission of applications for appointment;  
Provided that ---

i) Upper age limit for appointment to the Service by initial recruitment shall be relaxable for three years upto 31.12.1984 according to Government of Balochistan Services & General Admn Department Notification No. S-III-27(127)/S&GAD-74, dated 8.12.1979.

ii) in the case of persons serving in connection with the affairs of the Federation, who are domicile in Balochistan and persons serving in connection with the affairs of the Province of Balochistan with at least four years service as such, the upper age limit shall be thirty five years.

**7. Qualification** --- (1) No person shall be appointed to the Service by initial recruitment unless he is a graduate from a recognized University.

2) No person not already in Government service, shall be appointed to the Service unless he produces a certificate from the principal academic officer of the academic institution last attended, and also certificate of character from two other responsible persons, not being his relatives, who are well acquainted with his character and antecedents.

3) No person shall be appointed by initial recruitment to the Service unless he is declared to be physically fit by a Government Medical Officer not below the rank of a District Health Officer."

7. What is the method of recruitment of Sections Officers in Balochistan Secretariat Service Rules, 1982. Rule 5 is relevant in this behalf which reads as under :-

**5. Method of Recruitment.** – Recruitment to the service shall be made as follows :-

- a) Fifty percent of the vacancies shall be filled by initial recruitment based on the result of a competitive examination held by the Commission, in the prescribed subjects.
- b) The remaining fifty percent of the vacancies shall be filled by promotion in the following manner –

i) Five-seventh of the vacancies by selection on merit with due regard to seniority from among the members of the Provincial Secretariat (Ministerial Service) holding the posts of Superintendents or, if no such Superintendents are considered suitable for appointment to the Service, then amongst the members of the Provincial Secretariat (Ministerial Service) holding the posts of Assistants with at least twelve years service as such; and

ii) Two-seventh of the vacancies by selection on merit with due regard to seniority from among the Private Secretaries of the Balochistan Secretariat or if no such Private Secretaries are considered suitable for appointment to the Service, then from amongst the Senior Scale Stenographers of the Balochistan Secretariat with at least twelve years service as such."

8. The Balochistan Secretariat (Section Officers) Service Rules, 1982 were repealed by the Balochistan Secretariat (Grade 16 and above) Service Rules, 2002. The method of initial recruitment according to the Rules of 2002 has been provided by Rule 5 which reads as under:-

**“5. Method of Recruitment:** Appointment to the post in Service shall be made as specified in the Appendix.”

The appendix of the said rules gives the details which read as under:-

**APPENDIX**  
(See Rules 3(3), 5 and 7(1)).

S. N o.	Nomenclature of Post	Minimum Qualificatio n for initial recruitment	Method of Recruitment.
1.	Administrative Secretary B-21 or BPS-21 post	-	By selection on merit from a panel of officers (B-20) of the Balochistan Secretariat Service who possess 22 years service in B-17 and above and have successfully completed regular course at Pakistan Administrative Staff College/National Defence College.



2.	Administrative Secretary B-20 or BPS-20 post		By selection on merit from amongst four officers (B-19) of the Balochistan Secretariat Service who possess 17 years service in B-17 and above and have successfully completed regular course at NIPA.
3.	Additional Secretary B-19 or BPS-19 post.		By selection on merit from amongst three officers (B-18) of the Balochistan Secretariat Service who possess 12 years service in B-17 and above.
4.	Deputy Secretary B-18 or BPS-18 post.		a) 40% post of the total shall be filled by promotion from amongst members of the Balochistan Secretariat Service (Under Secretary/Section Officer) who possesses five years service as such. b) 40% post of Deputy Secretaries in the Balochistan Secretariat shall be reserved for members of the APUG and BCS (EB). c) 20% posts of the total shall be filled in by transfers of suitable officers from attached departments of government.
5.	Section Officer B-17 or BPS-17 post.	Graduate from a recognized University.	a) 87% posts of Section Officers shall be reserved for members of the Balochistan Secretariat Service in the ratio of 50% by initial recruitment and 50% by promotion from amongst Superintendents and Private Secretaries of the Balochistan Secretariat Service in the following manner:-  i) 70% from amongst Superintendents of Balochistan Secretariat Service or, if no such Superintendents are considered suitable for appointment to the service then from amongst Assistants of Balochistan Secretariat Service with at least 15 years service as such, and ii) 30% from amongst the Private Secretaries of Balochistan Secretariat Service or, if no such Private Secretaries are considered suitable for appointment to the service, then from amongst senior scale Stenographers/personal Assistants of Balochistan Secretariat Service with at least 15 years service as such.  b) 13% post of Section Officer shall be reserved for BCS/EB and by transfer from amongst officers of the attached departments of Government in the ratio of 70% and 30% respectively.
6.	Superintendent B-16 or BPS-16 post.		By promotion from amongst Assistants of the Balochistan Secretariat Service having five years experience as such.
7.	Private Secretary B-16 or BPS-16 post.		By promotion from amongst Senior Scale Stenographers/Personal Assistant B-15 of the Balochistan Secretariat Service having five years experience as such.

What is the method of initial recruitment of Assistant Executive Officers (Finance and Accounts) Balochistan has been provided by Rule 5 of the Balochistan Finance and Accounts Group Service Rules, 2001 and the appendix added thereto which read as under :-

**"5. Method of Recruitment.** Appointment to the service shall be made by initial recruitment as specified in the Appendix based on the

recommendations of the Commission based on the result of a competitive Examination conducted by its in accordance with the syllabus prescribed for BCS/BSS.

S. No.	Name of Post and Grade	Minimum qualification prescribed for appointment by initial recruitment	Method of recruitment
1.	Assistant Executive Officer (Finance & Accounts) (B-17)	Graduate from recognized University	By initial recruitment.

Sd/-  
(Asmatullah Kakar)  
Deputy Secretary (Reg:)  
S&GAD.

2.	Executive Officer (Finance and Accounts) (B-18).	-	By promotion from amongst the Assistant Executive Officer (Finance and Accounts) B-17 on seniority-cum-fitness with five years service as such provided he has cleared the departmental examination.
3.	Director (Finance and Accounts) B-19	-	By promotion from amongst holder of the post of Executive Officer (Finance and Accounts) on seniority-cum-fitness with at least seven years service as such.

By Order of  
Chief Secretary  
Government of Balochistan"

9. Perusal of the rules reproduced above and the appendix added thereto shows how the officers in the Balochistan Civil Service Executive Branch and Balochistan Secretariat (Section Officers) Service are appointed, how long they stay on probation, how are they promoted, what are the conditions therefor, what is the percentage of the vacancies to be filled by initial recruitment or by promotion from amongst the members of the service holding posts in lower scales and what are the requisites therefor. Any other mode of appointment is alien to the rules and so is absorbtion of a civil servant of a non-cadre post against a cadre post. This aspect was highlighted by the Chief Secretary of the Province in the summary proposing the absorption of Assistant Executive Officers of Finance and Account and Planning and Economics groups. But the caretaker

Chief Minister without realizing that he had no power and competence under the Balochistan Civil Servants Act 1974 and the rules made thereunder proceeded to approve the summary absorbing the Assistant Executive Officers of both the groups in Balochistan Civil Service (Executive Group) and Balochistan Secretariat (Section Officers) Services. Such absorption is sought to be protected by invoking section 11A of the Balochistan Civil Servants Act but the application of this provision could only be invoked where a civil servant is rendered surplus as a result of reorganization or abolition of a department, office or a post in pursuance of any decision of the government. In this case the rules regulating appointment by initial recruitment, promotion and transfer in the Balochistan Civil Service (Executive Branch) and the Balochistan Secretariat (Section Officers) Service are still intact as no amendment has been made to squeeze in any intruder, therefore, individual or en-bloc absorption from any other group of service, being essentially against law, cannot be upheld. In the case of

**Contempt proceedings against the Chief Secretary Sindh and others**

**(2013 SCMR 1752)** this Court, while deciding a similar issue, held as under:

*"126. From the above discussion, the aforesaid legislative instruments on the issue of absorption are liable to be struck down being violative of Constitutional provisions referred to hereinabove, therefore, we hold as under:--*

*(i) That the Sindh Government can only appoint a person by absorption by resorting to Rule 9A of the Rules of 1974.*

*(ii) Sindh Government cannot order absorption of an employee who is a non-civil servant, however, an employee of an autonomous body can be absorbed in Sindh Government subject to conditions laid down under Rule 9-A of the Rules of 1974.*

*(iii) Sindh Government cannot absorb a civil servant of non-cadre post to any cadre which is meant for the officers who are recruited through competitive process.*

(iv) Any backdated seniority cannot be granted to any absorbee and his inter-se seniority, on absorption in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority.

(v) No civil servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process. A civil servant can be transferred out of cadre to any other department of the government subject to the restrictions contained under Rule 9(1) of the Rules of 1974.

(vi) The legislature cannot enlarge the definition of "civil servant" by appointing a non-civil servant through transfer on the basis of absorption conferring him status of civil servant pursuant to the impugned legislation which is violative of the scheme of civil service law as provided under Articles 240 and 242 of the Constitution."

The principle laid down in the paragraph reproduced above was reiterated in the case **Ali Azhar Khan Baloch. Vs. Province of Sindh**

**(supra)** by holding as under:

"117. We have heard the learned Counsel representing beneficiaries on the scope of Rule 9-A of the Rules. Under Rule 9-A, a person who has been rendered surplus on account of abolition of his post, in any Office or Department of the Government or autonomous body and/or on account of permanently taking over of the administration of such autonomous body wholly or partially by the Government, can be appointed by transfer to any post in a Department or Office in the Government subject to his eligibility and qualifications as laid down under Rule 3(2) for appointment to such Office. It is further provided under Rule 9-A of the Rules that such person shall be appointed to a post of equivalent or comparable basic scale and, in case such post is not available, then to a post of lower Basic Scale. Rule 9-A of the Rules provides further restriction to the seniority of such person to the post by reckoning his seniority at the bottom of the seniority list from the date of such appointment, with a further rider that his previous service, if not pensionable, shall not be counted towards pension and gratuity. We have dealt with the aforesaid issue in para 116 of the judgment under review and have set parameters of Rule 9-A of the Rules in para 126 of the judgment under review.

118. After hearing the arguments of the learned counsel for the petitioners, we need to further clarify the scope of Rule 9-A of the Rules. Rule 9-A of the Rules has been introduced with the object to accommodate the persons who are rendered surplus by abolition of their posts or the organization in which they were working has been taken over by the Sindh Government. This Rule, as has been noticed, cannot be used as a tool to accommodate a person by abolishing his post with an object to appoint him by transfer to a cadre or service or post in deviation of Rule 3(2), which is a condition precedent for appointment to such post. In order to exercise powers under Rule 9-A of the Rules, there has to be some justification for abolition of the post against which such person was working. This justification should come from the Department and or organization which shall be in consultation with the S&GAD and approved by the Competent Authority. Rule 9-A of the Rules does not permit appointment by transfer of a non-Civil Servant to any other Department and/or organization controlled by the Government to a post which restricts the transfer under Rule 3(2) of

the Rules. A person can only be appointed by transfer under Rule 9-A, if he has the eligibility, matching qualifications, expertise coupled with the conditions laid down under Rule 3(2) for appointment to such post. The Competent Authority under Rule 9-A of the Rules while ordering appointment by transfer cannot lose sight of the conditions prescribed under Rules 4, 6(A) and 7. Therefore, any appointment by transfer under Rule 9-A of the Rules in violation of the aforesaid conditions is a nullity, and the conclusion reached by us in para 126 of the judgment under review has to be read in addition to the findings recorded herein above.

### **ABSORPTION**

119. The learned Additional Advocate-General, as well as the counsel representing the petitioners had argued that the Competent Authority had the powers under Rule 9(1) of the Rules to absorb any person from within and/or outside the Province through appointment by transfer. We have already dealt with the scope of Rule 9(1) of the Rules, which permits appointment by transfer subject to the conditions prescribed therein. It does not permit absorption from one cadre to another cadre. The Competent Authority in the cases of the petitioners has ordered absorption by relaxing the rules, which is in deviation of the scheme of the Act framed pursuant to the dictates of Article 240, read with the qualifications incorporated in the Rules of 1974. We may observe that section 5 of the Act does not give any discretion to the Selection Authority to bypass the restriction by relaxing the Rules. If such discretion is allowed to prevail, it would destroy the fabric of Civil Service, which is protected by the mandates of Articles 240 and 242 of the Constitution. It is also a misconception that Rule 9-A permits transfer of a non-Civil Servant to a Cadre, Service or Post meant for a Civil Servant, recruited in the Cadre or Service or Post after competitive process. Such an appointment by transfer in the nature of absorption would only be permissible, if the preconditions laid under Rule 9-A of the Rules are met.

120. At the time of hearing of Petitions No.71 of 2011 and others the learned Additional Advocate-General, as well as the petitioners appearing in these Petitions, attempted to justify absorption on the basis of legislative instruments, which were declared unconstitutional. In these review proceedings, the petitioners have changed their stance claiming their absorption on the basis of Rule 9(1) of the Rules. We have separately dealt with the scope of Rule 9(1) of the Rules. Under Rule 9(1), appointment by transfer would only mean an ordinary transfer from one post to another post, subject to the restrictions contained in the Rules of 1974. Neither a person can be absorbed under these Rules nor a Civil Servant or non-Civil Servant or a deputationist could be allowed to travel horizontally outside his cadre to penetrate into a different cadre, service or post through an appointment by transfer. Rule 9(1) cannot override the provisions of section 8 of the Act, which have been introduced by the Legislature for proper administration of Service law. For the aforesaid reasons, in addition to our findings recorded in the judgment under review, we are of the considered view that the petitioners have failed to make out any justifiable ground to seek review of the judgment.

### **ABSORPTION IN UNIFIED GROUP**

C.R.P. 409 of 2013 Mr. AqailAwan for the petitioner 1 - 3 Criminal R.P.81 of 2013 and C.R.P. 412 of 2013

121. It was contended by MessrsAqilAwan, ShoaibShaheen, Muhammad MunirPeracha and Tariq Mehmood, learned ASCs, that the impugned judgment is only applicable to Civil Servants and does not cover non-civil servants. We, with respect, disagree with the

contentions of the learned Counsel. The impugned judgment would be equally applicable to the Government Servants, employees of any statutory or non-statutory organization controlled by the Sindh Government, who were wrongly absorbed in different Cadres, Services, Posts of the Government Departments, Statutory Organizations against their service Rules. The contention of the learned counsel was that the petitioners were non-Civil Servants and were absorbed from different organizations to Sindh Councils Unified Grades Service under Rule 9(1) of the Rules of 1974, read with Rule 12(5) of the Unified Grades Service Rules 1982. We have already held that the power to appoint by transfer under Rule 9(1) would only extend to a Civil Servant. The Sindh Councils Unified Grades Service Rules 1982 regulate the terms and conditions of the employees appointed therein. Rule 3(1) provides composition of Service, whereas Sub-Rule (2) of Rule 3 spells out its Sub-Branches. Rule 3(4) places a restriction on the members for transfer from one Branch or Sub-Branch to another Branch or Sub-Branch within the service group. Rule 12 of the (Unified Group) Service Rules deals with the seniority of the members. Rule 12(5)(a) confers powers of transfer by Appointment on the competent authority. The petitioners, who were not members of the Unified Services and were wrongly absorbed in the Service of Unified Group, in deviation of the Service Rules of 1982 cannot be allowed to continue in the Unified Services Group. The Chief Minister or the Board cannot induct any stranger in the service of Unified Group either by exercising powers under Rule 9(1) of the Rules of 1974 or by Rule 12(5) of the Rules of 1982. Any such induction is against the recognized norms of Service law and, therefore, the petitioners were liable to be repatriated to their parent departments forthwith in terms of the judgment under review. 'Absorption' of the petitioners under the garb of 'Appointment by Transfer' in the Unified Services Group has directly affected the rights of the employees in the service, guaranteed under Articles 4 and 9 of the Constitution. Such act on the part of the Chief Minister or the Board had circumvented the very framework of the Service Rules of 1982 by introducing a parallel system based on discrimination and favouritism, which the law does not recognize.

#### **ABOLITION OF POSTS**

139. During the hearing of the Review Petitions, we have noticed that the Sindh Government has abolished some posts in individual cases with the object to accommodate civil Servant or Government Servant to appoint him by transfer to a post, service or cadre contrary to the restrictions contained in Rule of 1974 against his eligibility. The term 'abolition' has not been defined in the Sindh Civil Servants Act, 1973. However, this expression has been used in Rule 9-A of the Rules of 1974. A department can only abolish a post with the concurrence of the S&GAD. Abolition of a post is permissible in case, if the department requires restructuring, reform or to meet exigency of service in public interest. The department can abolish a post for justiciable reason. Therefore, in future if a post has to be abolished within the Department and/or within the statutory body or organization controlled by the Sindh Government, the Department shall seek concurrence from the S&GAD coupled with the reasons justifying abolition."

10. The argument that another imperative necessitating the absorption of the appellants in Balochistan Civil Service and Balochistan Secretariat Service was that they had no channel of upward progression beyond BPS-18, appears to have no force both legally and factually when the posts of Executive Officers and

Director Finance and Accounts and those of Executive Officers and Director Planning and Economics in BPS-18 and BPS-19 were created pursuant to the amendments made in the Balochistan Finance and Accounts Groups Service Rules 2001 and the Balochistan Planning and Economics Group Service Rules 2001 vide notification dated 21.11.2005.

11. The argument that no distinction could be drawn between the Assistant Executive Officers and the Balochistan Civil Service officers and the Balochistan Secretariat Service officers when their qualifications, syllabus of examination, pattern of papers and the process of selection under the Public Service Commission are alike and even identical does not appear to be correct when on comparison the syllabus, pattern of papers and process of selection of the latter appear to be more extensive. Even if they be alike or identical no provision of law and the rules would justify such absorption unless of course the law and the rules as observed above are amended.

12. The argument that when in Civil Review Petitions Nos. 90, 452, 285, 286, 287, 288 and 289 of 2016 in Civil Appeal No.184-L of 2013 a five-member bench of this Court permitted the petitioners in the said petitions to raise their grievances before the competent fora, the appellants cannot be deprived of their such right, therefore the appeals filed by the appellants be sent back to the Service Tribunal for decision in accordance with law has left us unmoved because in those cases the controversy raised required decision of the competent fora whereas the controversy raised in this case has been settled once and for all as is evident from para 126 of the judgement rendered in the case of **Contempt proceedings against**

**the Chief Secretary Sindh and others (supra)** and paragraphs 117, 118, 119, 120, 121 and 139 of the judgement rendered in the case of **Ali Azhar Khan Baloch. Vs. Province of Sindh (supra)**. Such controversy having already been settled could more adequately be dealt with by this Court through a review petition than through a petition before the High Court under Article 199 of the Constitution or through an appeal before the Service Tribunal as held in para 153 and 154 of the judgement rendered in the cases of **Ali Azhar Khan Baloch. Vs. Province of Sindh (supra)**.

13. The short and long of what has been discussed above is that nothing during the course of arguments has been pointed out by the learned Sr. ASC for the appellants as could call for a change or modification in the judgements mentioned above. We, thus, by treating these appeals as review petitions and having heard them as such dismiss them.

JUDGE

JUDGE

JUDGE

Announced in open Court at Islamabad on 25.09.2017.

JUDGE

*'Not Approved for Reporting'*  
M. Azhar Malik