

JUDGMENT SHEET  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
(Judicial Department)

**“Writ Petition No. 1521 of 2014”**

Ms. Iffat Rana and others  
*Versus*  
Federation of Pakistan and another

Petitioners By:	Mr. Muhammad Umair Baloch, Advocate,
Respondents By:	Ch. Abdul Jabbar, AAG Majid Khan, A.D (Legal), M/o NHSRC. M.Anwar A.D.(Admn). PIMS
Date of Hearing:	17.07.2020.

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**Ghulam Azam Qambrani, J.:-** Through the instant writ petition, the petitioner has sought the following prayer.-

*“In view of the above mentioned facts and circumstances, it is respectfully prayed that the instant writ petition may kindly be accepted and the petitioners may kindly be granted ante-dated up-gradation in BPS-17 with effect from 31.05.2006, the date when the post of “Assistant Nursing Superintendent” in BPS-17 was created and/or w.e.f the date when their juniors colleagues were granted up-gradation with all consequential back benefits, in the interest of justice.”*

2. Brief facts of the case as narrated by the petitioners are that they were initially appointed as Charge Nurses (BPS-14) in the respondents department. Subsequently, on 23.01.2006, five Charge Nurses including petitioners were promoted as Assistant Nursing Superintendent (BPS-16), whereas thirteen Charge Nurses, who were juniors to the petitioners as per seniority list circulated on 15.05.2007, were also promoted as Head Nurses (BNPS-16); that on 21.07.2006, the post of “Head Nurses” was upgraded to BPS-17, whereas the post of “Assistant Nursing Superintendent” was not upgraded to BPS-17 which has caused serious administrative issues regarding the up-gradation of junior colleagues into higher scale which has affected the seniority of the petitioners. Further submitted that nine posts of Assistant Nursing Superintendent (BPS-17) were created on

31.05.2006, but the petitioners were up-graded/promoted to grade BPS-17 w.e.f 07.05.2010, instead of the date when the posts were created; that case of the petitioners was put up before the Ministry of Health vide letter dated 04.03.2011 and respondent No.2 recommended that the petitioner should be up-graded from the date of creation of post of Assistant Nursing Superintendent in BPS-17, however, the cases of the petitioner for ante-dated up-gradation could not be processed due to devolution of Ministry of Health to the provinces under the 18<sup>th</sup> Amendment of the Constitution of Islamic Republic of Pakistan, 1973; that the matter of the petitioner was taken by the committee constituted for FR-17 (1) on 06.02.2013; as per minutes of the meeting of the committee issued on 14.06.2013, case of the petitioners with regard to their ante-dated promotion was rejected with the reasons that the case does not fall in its purview as it is not a case of wrongful prevention with the meaning of FR-17(1) and ante-dated promotion is not the mandate of FR-17(1) committee, which has badly affected their legitimate right, which also resulted a short of length in service in BPS-17 for further promotion in BPS-18, whereas their juniors are being considered for promotion in BPS-18.

3. Learned counsel for the petitioners contended that non-grant of ante-dated up-gradation to the petitioners w.e.f. 31.05.2006 is illegal, unlawful and the legitimate rights of the petitioners. Further contended that the post of Head Nurses in BPS-17, including junior colleagues of the petitioners, was already up-graded w.e.f. 28.07.2006, whereas the post of Assistant Nursing Superintendent was up-graded w.e.f 07.05.2010 instead of 31.05.2006, as such, discriminatory treatment has been meted out with the petitioners who are senior most and are being deprived from their due right of ante-dated up-gradation which is in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973; that action of the respondent is prejudicing the rights of the petitioner. Next contended that action of the respondent reflects malafide suffering with arbitrariness which requires interference by this Hon'ble Court.

4. Conversely, the learned Assistant Attorney General submitted that post of Charge Nurses BPS-14 and Head Nurses BPS-16 were up-graded from BPS-14 to BPS-16 and BPS-16 to BPS-17 respectively by the then Prime Minister of Pakistan but unfortunately, the post of Assistant Nursing Superintendent was not upgraded and remained in its previous position; that the case of the petitioner was taken up with the former Ministry of Health for up-gradation of the post of Assistant Nursing Superintendent but due to the 18<sup>th</sup> Amendment, the case of antedated promotion of the petitioners was not sent to the concerned ministry.

5. Arguments of the learned counsels for the parties have been heard and record perused with their able assistance.

6. Minute perusal of the record reveals that initially the petitioners were appointed as Charge Nurses (BPS-14) but later on, they were promoted as Assistant Nursing Superintendent in BPS-16, whereas, thirteen Charge Nurses who were Juniors to the petitioners were promoted as Head Nurses (BPS-16) on 15.05.2007, the said post of Head Nurses was up-graded to BPS-17 on 21.07.2006 whereas, the post of Assistant Nursing Superintendent was not up-graded. The petitioners, however, were promoted against the created post w.e.f 07.05.2010, which has created disparity between these two parallel cadres. Record further shows that case of the petitioners was put up before the Ministry of Health vide letter dated 04.03.2011 and respondent No.2 recommended that the petitioners should be up-graded from the date of creation of posts of Assistant Nursing Superintendent in BPS-17 w.e.f 08.11.2005, however, the petitioners' case for ante-dated up-gradation could not be processed due to devolution of Ministry of Health to the provinces under the 18<sup>th</sup> Amendment of the Constitution of Islamic Republic of Pakistan, 1973, which resulted a short of length in service in BPS-17 for further promotion of the petitioners to BPS-18. In this way, the employees working as Assistant Nursing Superintendent have become junior to the employees working as Head Nurses, which has resulted in reversal of seniority of the petitioners. Two groups of employees similarly

placed could not be treated differently. Dictates of law, justice and equity requires exercise of power by all concerned to advance the cause of justice and not to thwart it.

7. In the instant case, the act of respondents depicts their discriminatory treatment with the petitioners which is not recognized under the law and even by the Constitution of the Country. In this context, Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 may be referred which enshrines golden rule of equality of citizens before law. The Article reads as under:---

***"Article 25. Equality of Citizens:***

*(1) All citizens are equal before law and are entitled to equal protection of law.*

*(2) There shall be no discrimination on the basis of sex.*

*(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*

This Article clearly provides that all citizens similarly placed are to be treated equally and not otherwise. The right to be treated equally is one of the fundamental rights guaranteed in Part II, Chapter I of the Constitution of Islamic Republic of Pakistan, 1973. Treating the persons differently and discriminately, who falls in the same category, by making divergent yardsticks would be mockery of law and cannot be permitted to continue in any manner. Steering thoughts in this regard can also be taken from the cases of *Shrin Munir and others v. Government of Punjab through Secretary Health, Lahore and another* (PLD 1990 SC 295), *Pakistan International Airlines Corporation through Chairman and others v. Shahzad Farooq Malik and another* (2004 SCMR 158), *Market Committee, Multan through its Administrator and another v. Muhammad Sabir* (1995 SCMR 305) and *Muhammad Ikram v. Principal and Chairman Admission Committee, Sukkur and 2 others* (2014 MLD 1).

8. In the case of *"M.y.Labib-ur-rehman versus Federation of Pakistan and others"* (2018 P L C (C.S.) Note 65), it was held as under:-

*“There was no justification left with the respondents to refuse him ante dated promotion in BS-21 w.e.f. 09.10.2002 instead of 30.03.2010 and proforma promotion to BS-22 w.e.f. 04.05.2005 (the dates his junior batch mate Mr. Sabtain Fazal-e-Haleem was promoted to BS-21 and BS-22).”*

Reliance in this regard is placed upon the case, reported as “Government of N.-W.F.P. v. Buner Khan” (1985 SCMR 1158) wherein it was directed that *“the officers shall be considered for promotion to Grade-18 post with effect from the dates when vacancies in their quota became available and thereafter a joint seniority list, was directed to be issued”*. In this regard, I am also fortified by the law laid down by the Hon’ble Supreme Court of Pakistan in “Islamic Republic of Pakistan v. Abdul Karim, Deputy, Accountant General, N.W.F.P. (1978 SCMR 289), and Abu Saeed v. Government of N.W.F.P. (1990 SCMR 1623).

9. Keeping in view the above facts and circumstances and to remove the discrimination, respondents are directed that the petitioners alongwith the post of Assistant Nursing Superintendent be also upgraded w.e.f 21.07.2006, when the post of Head Nurses was upgraded to BPS-17, with all consequential benefits.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

*Announced in open Court, on this 28<sup>th</sup> day of July, 2020.*

**JUDGE**

*\*Rana .M. Ift\**

***“Approved for reporting.”***