

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)



Bench-I:

Mr. Justice Syed Mansoor Ali Shah, ACJ
Mr. Justice Shahid Bilal Hassan

C.P.L.A.3116/2022

(Against the order dated 10.01.2022 passed by the Punjab Service Tribunal, Lahore in Appeal No.5689/2019)

Aatika Hina Mushtaq

... Petitioner(s)

Versus

Secretary Special Education Government of the Punjab, Special Education Department Lahore, etc.

.... Respondent(s)

For the petitioner(s): Mr. Mahmood Ahmad Qazi, ASC.

For the respondent(s): Mr. Khalid Masood Ghani, AAG, Pb.
a/w Abu Bakar, L.O. Spl. Edu. Dept. Pb.

Date of hearing: 21.04.2025

JUDGMENT

Syed Mansoor Ali Shah, J.- Briefly, the petitioner while working as a Physical Education Teacher ("PET") (BS-09) in the Punjab Special Education Department ("Department") was considered for promotion for the post of Lecturer Physical Education (BS-17) under the Special Education Department (Directorate of Special Education) Service Rules, 2006¹ ("Rules"). Her case was recommended for promotion through a working paper submitted by the Department. However, on 07.03.2019, the Departmental Promotion Committee ("DPC") deferred the promotion of the petitioner on the pretext that the Rules required amendment, and promotions would be considered thereafter. The petitioner's representation against the decision of the DPC was rejected on 19.08.2019, while her departmental appeal was dismissed on 29.11.2019. Consequently, the petitioner challenged both these orders by filing a service appeal before the Punjab Service Tribunal, Lahore ("Tribunal"), which too was dismissed *vide* order dated 10.01.2022 ("impugned order"). Hence, the instant petition for leave to appeal.

¹ As they stood on 25.08.2009.

2. We have heard the learned counsel for the parties, examined the impugned order, relevant laws and the record of the case.

3. As per the Rules, the promotion to the post of Lecturer Physical Education (BS-17) has the following requirement:

Name of the post	Appointing Authority	Minimum Qualification for appointment for		Method of Recruitment
		By Initial Recruitment	Promotion	
3	4	5	6	7
143. Lecturer Physical Education/ Lecturer (DPE)/ Instructor Physical Education (BS-17)	Admn Secretary	M.A. (Physical Education) in 1 st Division or Grade B from any recognized university. Preference will be given to those having additional qualification relating to Special Education.		(i) 50% by initial recruitment. (ii) 25% by promotion on seniority cum fitness basis from amongst the D.P.E. (BS-16). (iii) <u>25% by promotion from amongst PTI/PET/DPE having qualification prescribed for initial recruitment.</u> <u>Note:- Seniority of PTI/PET/DPE will be maintained from the date of acquiring requisite qualification or from the date of joining in case of a person who hold the requisite qualification prior to appointment as such. If none is available for promotion then by initial recruitment.</u>

The working paper put up by the Department recommended the promotion of the petitioner in the following terms:

"She has more than 14 year's service to her credit. Her service record is satisfactory. No inquiry is pending against her and no penalty was ever awarded to her. Her character roll and synopsis are complete in all aspects. She is M.A. Physical Education in 1st Division so, she fulfills required criteria for promotion She is recommended for promotion as Physical Education /Lecturer (DPE)/Instructor Physical Education (BPS-17) on regular basis."

However, the DPC considered the case of the petitioner and deferred her promotion after recording the following in its Minutes dated 07.03.2019:

During the course of discussion, Deputy Secretary (Regulations), S&GAD pointed out that each post is to be filled as per provisions of the service rules and there were the following discrepancies in the Service Rules:

Sr.	Services Rules for the post of	Deficiency
3.	Lecturer Physical Education /Lecturer (DPE)/Instructor Physical Education (BS-17)	<p>It was pointed out that 25% of the posts were to be filled by promotion from amongst PTI/PET/DPE having qualification prescribed for initial recruitment which was M.A Physical Education (1st Div), hence the persons having 2nd Div were not eligible.</p> <p><u>Moreover, The Note given at the end of the service rules provide that seniority of PTI/PET /DPE will be maintained from the date of acquiring requisite qualification or from the date of joining in case of person who holds the requisite qualification prior to appointment and in presence of this note all PTI/PET/DPE will be excluded from the seniority list who have not gained such qualification and no one could be excluded from the seniority once he or she stood appointed.</u></p>

7. Keeping in view the above observations, raised by the Deputy Secretary/Representative of Regulations Wing, S&GAD, **the Departmental Promotion Committee unanimously decided that the service rules of above-mentioned posts may be amended in first instance and meeting of the Departmental Promotion Committee for consideration of the above-mentioned agenda items may be held thereafter.**" *(emphasis supplied)*

The above decision was challenged by the petitioner, however, the Department as well as the Tribunal maintained the view of the Department.

4. We have examined the Note appended to the Rules (reproduced above), which clearly stipulates that the seniority of PTIs, PETs, and DPEs is to be determined either from the date they acquire the requisite qualification, namely, an M.A. in Physical Education or, where the qualification was already held at the time of the appointment, from the date of joining service. Notably, the only requirement for promotion under the 25% quota from among

PETs and others to the post of Lecturer Physical Education is possession of an M.A. in Physical Qualification (1st Division), as provided in the Rules. In this case, the petitioner had already acquired the requisite qualification at the time of the DPC meeting on 07.03.2019; thus, the exclusion under the Note (Rules) did not apply to her. There has also been no dispute between the parties regarding the accuracy of the revised seniority list. However, in the petitioner's case, the DPC, under serial No. 3 and paragraph No. 7 of its Minutes dated 07.03.2019 (reproduced above), recorded that seniority cannot be revised once an individual has been appointed to a post. This reasoning is misconceived and untenable. The DPC does not possess the mandate or the authority to question the Rules or refuse their enforcement. The Rules, including the Note, provide a clear mechanism for determining seniority from the date of acquiring the requisite qualification which had to be given effect by the DPC. The decision of the DPC that the Rules governing the posts of PTI, PET, and DPE needed to be amended first before considering promotions, leading to the deferment of the petitioner's case, is without any lawful authority. Parties aggrieved of the Note/Rules can challenge the Rules, if they are so advised, but the DPC cannot sit in judgment over the legality and enforceability of the Rules, which are duly framed under the law. The DPC is to examine the candidature of the officers under the law and process their cases for promotion, it lacks the authority to question the legality of the law or the Rules, which it is bound to enforce. Therefore, any proposed future amendments of the Rules proposed by a Deputy Secretary/Representative of Regulations Wing, S&GAD, cannot bind the DPC to lay their hands off and defer promotions on this pretext. The DPC is bound to follow the law as it exists. It is axiomatic that the promotion of a civil servant cannot be withheld merely because amendments to the Rules are being contemplated.

5. Members of the DPC in this case ought to be reminded that while a civil servant does not have a vested right to promotion², he or she certainly has an enforceable right to be considered for

² Secretary, Ministry of Finance v Muhammad Anwar 2025 SCMR 153; Naseem Khan v. Government of Khyber Pakhtunkhwa 2024 SCMR 1341; Federal Service Public Commission v. Shiraz Manzoor 2023 SCMR 2087; Muhammad Amjad v. D.G, Quetta Development Authority 2022 SCMR 797; Abdul Hameed v. Ministry of Housing and Works PLD 2008 SC 395; Zafar Iqbal v. Director, Secondary Education 2006 SCMR 1427 and Muhammad Ishaque v. Government of Punjab 2005 SCMR 980.

promotion in accordance with law³. This right also finds its ideological roots in the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). Article 9 of the Constitution guarantees the right to life, which, through consistent judicial interpretation, has evolved beyond mere animal existence⁴ to encompass the right to live with dignity and purpose.⁵ Integral to this dignified existence is the right to livelihood⁶, a concept that extends mere employment to include the genuine opportunity for growth, progress, and advancement in one's career in accordance with law. The right to a dignified livelihood transcends the mere possession of a job; it includes the essential opportunity for professional advancement and rise in one's career on basis of merit, experience, and adherence to established criteria.⁷ A livelihood stripped of progression, stagnated by arbitrary or opaque service practices, renders the constitutional guarantee hollow and illusory. It is thus axiomatic that fair, transparent, and merit-based consideration for promotion forms an essential facet of the right to livelihood, and thus, of the right to life itself. Further, where a civil servant meets the prescribed qualifications and conditions for promotion, the lawful and transparent consideration of their case creates a legitimate expectation that such progression will materialize, unless cogent reasons to the contrary exist.⁸ Denial or indefinite deferral of such consideration, particularly when based on arbitrary, opaque, or shifting grounds violates this expectation and reduces constitutional guarantees to mere rhetoric.

6. It is not out of place to reiterate and underscore that the civil bureaucracy is meant to be the steel frame of the State, not the rubber stamp of the political party in power. The civil bureaucracy serves as the backbone of the State, entrusted with ensuring continuity, stability, and efficiency in governance.⁹ Unlike

³ Federal Service Public Commission v. Shiraz Manzoor 2023 SCMR 2087; Federation of Pakistan v. Misri Ladhani 2023 SCMR 915; Fazali Rehmani v. Chief Minister, N.W.F.P PLD 2008 SC 769 and MA. Rafique v. Managing Director (Power), WAPDA 1990 SCMR 927. See Union of India v. Sangram Keshari Nayak (2007) 6 SCC 704 whereby the Supreme Court of India declared the right to be considered for promotion as a fundamental right.

⁴ Islamabad Wildlife Management Board v. Metropolitan Corporation PLD 2021 Islamabad 6.

⁵ Shehla Zia v. WAPDA PLD 1994 SC 693.

⁶ Divisional Superintendent v. Umar Daraz 2023 SCMR 761; Province of Punjab v. Kanwal Rashid 2021 SCMR 730; Pir Imran Sajid Versus Managing Director 2015 SCMR 1257; Abdul Wahab v. HBL 2013 SCMR 1383 and Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180.

⁷ Novita Wahyu Setyawati, Dewi Sri Woelandri PG and Muhammad Richo Rianto, 'Career Development, Motivation and Promotion on Employee Performance' (2022) 1 East Asian Journal of Multidisciplinary Research 1957.

⁸ Federation of Pakistan v. Jahanzeb 2022 SCMR 2020; Contempt Proceedings Against Chief Secretary, Sindh 2013 SCMR 1752 and Mrs. Farkhanda Talat v. Federation of Pakistan 2007 SCMR 886.

⁹ Muhammad Nasir Ismail v. Government of Punjab 2025 SCP 57.

political leadership, which changes with electoral cycles, the civil service provides the institutional memory and administrative steadiness required for uninterrupted government functioning. It plays a vital role in implementing policies, delivering services, and upholding the institutional framework of the State. A fundamental characteristic of an effective civil service is impartiality and meritocracy.¹⁰ In order to perform this role effectively, the civil service must remain free from political interference. Its independence, integrity, and intellectual honesty are essential to sustaining the rule of law and the constitution. Its allegiance lies with the Constitution and the law, not with shifting political winds. According to Professor Lorne Sossin, civil servants are the guardians of public trust and their duty of loyalty to the public interest must in some circumstances be a higher obligation than the duty of loyalty owed to the government of the day.¹¹ They should not be penalized for opposing government policies, especially in cases of illegal acts or threats to public safety.

7. Max Weber's classic theory¹² of bureaucracy reminds us that only a professional, merit-based, and politically neutral¹³ civil service can sustain the rational-legal authority of a modern constitutional State. E.N. Gladden consistently stresses that the civil servant's loyalty is to the state and its institutions, not to transient political leaders or parties.¹⁴ In the end we draw strength from the words of our founding father, Quaid-e-Azam Muhammad Ali Jinnah, who said: "Civil officers should have no hand in supporting this political party or that political party, this political leader or that political leader—this is not [their] business. Whichever government is formed according to the constitution, and whoever happens to be the Prime Minister or Minister coming into power in the ordinary constitutional course, [their] duty is not only to serve

¹⁰ Kohei Suzuki and Mehmet Akif Demircioglu, 'Is impartiality enough? Government impartiality and citizens' perceptions of public service equality' (2021) 34 Governance (Special Issue: The Territorial Architecture of Governance).

¹¹ Lorne Sossin, 'The Speaking Truth to Power - Search for Bureaucratic Independence in Canada' (2005) 55 U Toronto LJ 1.

¹² Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (edited by Guenther Roth and Claus Wittich, University of California Press 1978) and Max Weber, *The Theory of Social and Economic Organization* (translated by A.M. Henderson and Talcott Parsons, Free Press 1947).

¹³ Political neutrality is a constitutional convention which provides that public servants should avoid activities likely to impair, or seem to impair, their political impartiality or the political impartiality of the public service.

¹⁴ E. N Gladden, *An Introduction to Public Administration* (Staples Press 1952).

that government loyally and faithfully, but at the same time, fearlessly, maintaining [their] high reputation.”¹⁵

8. We underline that arbitrary obstruction, unwarranted delay, capricious interference, unjustified hindrance, manipulation or undue delay in the career progression of a civil servant erode the independence and morale of the civil bureaucracy, transforming it into an instrument of political patronage, a phenomenon that is antithetical to the ethos of constitutional democracy and democratic governance. Such interference fosters networks of favoritism and erodes the impartiality and credibility of the civil service. It is therefore imperative that service laws must, therefore, be transparent, predictable, and uniformly applied, to ensure equal treatment. Purity of service can be obtained only if promotions are made on merit without favouritism or nepotism.¹⁶

9. For the above reasons we are of the view that decision of the DPC of withholding the promotion till such time that the Rules are suitably amended is not sustainable. We therefore direct the DPC to consider the case of the petitioner for promotion to the post of Lecturer Physical Education on merits and decide the same within one month from the receipt of this judgment.

10. In this background of the matter, we set aside the impugned order. Resultantly, this petition is converted into an appeal and allowed in the above terms.

Judge

Islamabad,
21st April, 2025.

Judge

Approved for reporting
Umer A. Ranjha LC

¹⁵ Quaid-e-Azam Muhammad Ali Jinnah’s address to Civil Officers, Peshawar (1948).

¹⁶ Tariq Aziz-ud-Din 2010 SCMR 1301.