

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Justice Qazi Faez Isa, CJ  
Justice Muhammad Ali Mazhar  
Justice Musarrat Hilali

**CIVIL PETITION NO.1893-L OF 2021**

[Against the judgment dated 13.09.2021 passed by the Lahore High Court, Bahawalpur Bench, in W.P. No.3963 of 2021]

*Province of Punjab through Secretary (Primary & Secondary Healthcare Department), Lahore, etc* ...**Petitioner(s)**

***Versus***

*Hafiz Muhammad Kaleem-ud-Din* ...**Respondent(s)**

For the Petitioner(s) : Barrister Muhammad Mumtaz Ali,  
Addl. AG, Punjab a/w Ms. Saima  
Jehan, Sr. Law Office & Mr. Nasir Ali,  
Law Officer

For the Respondent(s) : Mr. Muhammad Naveed Farhan, ASC

Date of Hearing : 17.01.2024

**JUDGMENT**

**Musarrat Hilali, J.**— This petition is directed against the judgment of the Lahore High Court, Bahawalpur Bench dated 13.09.2021 by which the writ petition filed by the Respondent was allowed.

2. Briefly stated the facts of this case are that Respondent, Hafiz Muhammad Kaleem-ud-Din filed a writ petition in the High Court seeking direction to the Petitioners to promote him from BPS-18 to BPS-19. The Respondent contended that his case for promotion from Deputy Drugs Controller (BPS-18) to the rank of Drugs Controller (BPS-19) was deferred due to the pendency of an inquiry and incomplete service record of 5 years (1993, 2000, 2001, 2002, 2009). Record reveals that Respondent joined Health Department as Hospital Pharmacist on a regular basis vide order dated 20.01.1990. He was promoted as Deputy Drugs Controller (BPS-18) vide order dated 01.06.2012. While working as Secretary, District Quality Control Board (BPS-18), Bahawalpur, FIR No.25/13 dated 05.11.2013 was lodged against

him by the Inspector, Circle Officer, Anti-Corruption Establishment, Bahawalpur on the charges of misconduct, inefficiency and corruption. The Respondent retired from government service on 11.12.2019 on attaining the age of superannuation. He filed W.P. No.187/2021 before the High Court praying to direct the competent authority to grant him proforma promotion from BPS-18 to BPS-19 which was disposed of on 12.01.2021 with the direction to the Petitioner-department to decide the application of the Respondent in accordance with law. Pursuant to the order, the Petitioners rejected the application of the Respondent on 19.04.2021. Whereafter the Respondent filed a W.P. No.3963/2021 before the High Court challenging the order dated 19.04.2021 for his promotion and timely direction to the Petitioners for releasing his pensionary benefits. The High Court while allowing the writ petition on 13.09.2021 allowed to the Petitioner-department to promote the Respondent which order has been impugned before this Court.

3. Learned counsel for the Petitioners contended that the jurisdiction of the High Court is barred under Article 212(1) of the Constitution of the Islamic Republic of Pakistan, 1973. That jurisdiction to entertain matters relating to civil servants and retired civil servants lies with Service Tribunals under Section 4 of the Punjab Service Tribunal Act, 1974 (the “Act”). That the High Court should not have entertained the W.P. No3963/2021 filed by the Respondent as it was a matter relating to the eligibility of the Respondent and not his fitness and seniority. Reference was made to cases titled **Chief Secretary Government of Punjab v. Ms. Shamim Usman** (2021 SCMR 1390), **Tasleem Jan v. Muhammad Zaman** (2005 SCMR 695) and **Mian Abdul Malik v. Dr. Sabir Zameer** (1991 SCMR 1129).

4. On the other hand, while defending the impugned judgment learned counsel for the Respondent contended that his promotion was due in December of 2014 but it was deferred due to pendency of an inquiry and also on account of incomplete service record. That the inquiry against him was dropped by the Director Anti-Corruption Establishment, Bahawalpur on 17.12.2016 and the cancellation report was accepted by the competent authority.

That Respondent attained the age of superannuation and was not granted his proforma promotion. Further that there was no fault on his part and he well within time applied for his proforma promotion to the authority but his case was not considered. Learned counsel added that even after retirement of the Respondent his application for the entitled promotion was not considered while his juniors were promoted.

5. We have heard the learned counsel for the parties and gone through the case record.

6. According to Sub-Section 6 of Section 8 of the Punjab Civil Servants Act, 1974 a post may either be a selection post or a non-selection post. As far as promotion to a selection post is concerned, the seniority and merit have to be considered whereas non-selection post is to be filled on the basis of seniority-cum-fitness. According to Para 5 of the Promotion Policy, 2010, all posts in BPS-19 and above shall be selection post and will be filled on selection on merit basis. Para 8 of the said policy states that the seniority shall not carry extra weightage for determination of merit for promotion to selection posts.

7. The case of the Petitioners is that the Respondent, Hafiz Muhammad Kaleem-ud-Din was appointed in the Health Department as Hospital Pharmacist on 20.01.1990. In the year 2012, he was promoted as Deputy Drugs Controller, however, he could not be promoted from BPS-18 to BPS-19 as his case was deferred due to pendency of an inquiry against him and also due to incomplete service record (5 years ACRs). The Respondent retired from service on 11.12.2019 on attaining the age of superannuation. After his retirement, on 10.01.2021 (after 13 months) he filed W.P. No.187/2021 before the High Court which was disposed of on 12.01.2021 and a copy of the writ petition was sent to the Secretary, Primary and Secondary Healthcare Department with direction to consider the same as a representation and decide the issue in accordance with the law. The Secretary dismissed the representation of the Respondent on 19.04.2021, which was challenged before the High Court on 22.04.2021. The High Court by setting aside the order of the Petitioner-department dated 19.04.2021 allowed the W.P.

No.3963/2021 and directed the Petitioners to promote the Respondent from BPS-18 to BPS-19 from the due date with all pensionary benefits.

8. The judgment of the High Court cannot sustain for two reasons. The post to which the Respondent wanted promotion is a selection post and such post according to Section 8 (6) (a) of the Punjab Civil Servants Act, 1974 could only be filled on the basis of merit and not on seniority and also that Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 ousts the jurisdiction of the High Courts and Civil Courts in the matters relating to the terms and conditions of a civil servant as the bar in the Constitution is absolute.

9. For what has been discussed above, this petition is converted into appeal and allowed.

10. Above are the reasons of our short order of even date.

ISLAMABAD

17.01.2024

APPROVED FOR REPORTING

*Mishal Khan LC\**